

# SUPREME COURT OF INDIA

Ramji Veerji Patel & Ors.

Vs.

Revenue Divisional Officer & Ors.

C.A.No.137 of 2003

(R.M. Lodha and Jagdish Singh Khehar,JJ.,)

02.11.2011

## JUDGMENT

**R.M.Lodha,J.,**

1. The appellants were unsuccessful in challenging the acquisition of their land before the Single Judge as well as the Division Bench of the Madras High Court. They are in appeal, by special leave.

2. On the requisition of Cholan Roadways Corporation Limited, Kumbakonam (for short, 'the Corporation') for making available land for expansion of their depot, particularly for a workshop, at Chidambaram, the State Government of Tamil Nadu (for short, 'the Government') issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') which was published in the Gazette on March 3, 1989 notifying for general information that the land mentioned therein, namely, land admeasuring 1.45 acres comprised in T.S. No. 14, classified as government wet land in Chidambaram Municipal Town, South Arcot District was needed for the above public purpose. The notification under Section 4(1) was also published in the two newspapers on November 18, 1988 and in the locality on March 27, 1989. The appellants filed objections to the acquisition before the Revenue Divisional Officer (for short, 'RDO'), Chidambaram. The diverse objections to the acquisition were raised; one of such objections being that the other lands behind the existing depot of the Corporation were available and could be used for the purpose for which their land was sought to be acquired. They stated that their family was dependant upon the income from the saw mill existing on the land and by compulsory acquisition of their land, they would be deprived of the sole means of livelihood.

3. The RDO considered the objections put forth on behalf of the appellants and submitted his report to the Government on conclusion of the enquiry under Section 5-A of the Act.

4. It appears that when the report of the RDO was under consideration, the appellants sent a representation to the Government bringing to its notice that the land belonging to Tamil Nadu Evengelical Lutheran Church ('TELC') just behind the existing depot has been

advertised for sale and, therefore, instead of resorting to the compulsory acquisition of the appellants' land, the land of TELC may be acquired.

5. The Government was not persuaded by the appellants' objections and the declaration under Section 6 of the Act was issued which was published in the Gazette on March 21, 1990. The publication of the Section 6 declaration was made by other modes as well.

6. The appellants challenged the notification under Section 4(1) and declaration under Section 6 of the Act in the writ petition before the Madras High Court. In opposition to the writ petition, counter affidavit was filed on behalf of the Government. The learned Single Judge of the High Court dismissed the writ petition by his order dated November 18, 1998.

7. Against the order of the Single Judge, the appellants preferred intra-court appeal which has been dismissed by the impugned order on July 25, 2001.

8. Mr. Pallav Shishodia, learned senior counsel for the appellants raised two-fold contention. His first contention was that the appellants' objections about the availability of land belonging to TELC which is situated behind the existing depot of the Corporation and was available for sale were not rationally considered by the RDO and the Government. He submitted that the livelihood of about 40 members of the family was directly affected by the compulsory acquisition of their land and, therefore, the objections ought to have been considered in a reasonable manner more so since the public purpose for which the appellants' land was sought to be acquired could have been easily met by the acquisition of the TELC's land. In this regard, he referred to three decisions of this Court, namely, (i) *Delhi Administration v. Gurdip Singh Uban and Others*<sup>1</sup>, (ii) *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and others*<sup>2</sup> and (iii) *Radhy Shyam (Dead) Through LRs. and others v. State of Uttar Pradesh and Others*<sup>3</sup>.

9. The second contention of the learned senior counsel for the appellants was that the acquisition of the appellants' land by the Government was for the purposes of the Corporation and the Corporation being a 'company' for the purposes of the Act, the procedure contemplated in Part VII of the Act was required to be mandatorily followed and since the said procedure has not been followed, the acquisition is bad in law. In this regard, Mr. Pallav Shishodia placed reliance upon a decision of this Court in *State of Punjab and Others v. Raja Ram and others*<sup>4</sup>.

10. On the other hand, Mr. B. Balaji, learned counsel for the State of Tamil Nadu supported the view taken by the Single Judge and the Division Bench of the High Court. He submitted that the proceedings for acquisition of the appellants' land have been initiated and concluded in accordance with the procedure prescribed in the Act. There is no illegality in the acquisition of the appellants' land. He referred to the counter affidavit filed on behalf of the Government before the High Court in opposition to the writ petition.

11. The Act was enacted in 1894 for the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on such

acquisition. The Act has undergone some amendments in 1919, 1921, 1923, 1933, 1962, 1967 and 1984; the last major amendments being by the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984).

12. The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the land owners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected. For years, the acquired land remains unused and unutilised. To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A of the Constitution. We expect the law making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.

13. Reverting back to the Act, that Section 5-A of the Act confers a valuable right on the person interested in any land which has been notified under Section 4(1) as being needed for a public purpose or likely to be needed for public purpose is beyond doubt. By this right, the owner/person interested may put forth his objections not only in respect of public purpose but also the suitability of the acquisition in respect of his land. The objector gets an opportunity under Section 5-A to persuade the Collector that his land is not suitable for the purpose for which the acquisition is being made or the availability of other land suitable for that purpose. Section 5-A proceedings are two-tier proceedings. In the first step, the objections by the owner/person interested are heard by the Collector and a report is submitted to the Government. In the second step, the final decision is taken by the Government on the objections so furnished by the person interested and the consideration of the report submitted by the Collector.

14. In *Munshi Singh and others v. Union of India*<sup>5</sup>, in paragraph 7 of the Report, this Court stated as follows :

"7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A: "

15. The above legal position has been reiterated by this Court in various decisions including the decisions of this Court in *Hindustan Petroleum Corpn. Ltd.*<sup>2</sup> and *Radhy Shyam*<sup>3</sup> cited by Mr. Pallav Shishodia. In *Hindustan Petroleum Corpn. Ltd.*<sup>2</sup>, this Court in paragraph 6 of the Report stated thus :

"6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."

16. In *Union of India v. Mukesh Hans*<sup>6</sup>, this Court referred to *Munshi Singh*<sup>5</sup> and in paragraph 35 of the Report stated that the limited right given to the owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right.

17. As a matter of law, under the Act, the only right that the owner/person interested has, is to submit objections to the compulsory acquisition of his land under Section 5-A. No question, such right and the consideration of objections filed by the land- owner/person interested in exercise of such right must be given the importance it deserves. The question before us, is whether the consideration of the appellants' objections to the acquisition of their land by the Government suffers from any illegality or irrationality.

18. The appellants and their family members purchased the subject land admeasuring 1.45 acres on January 27, 1981. The said land was agricultural at the time of purchase and was depressed in as much as it was low in level than the main road. The appellants incurred expenditure in raising the level of the land and made improvements; raised the building thereon and installed a saw mill somewhere in 1986. In their objections filed on May 24, 1989 before the RDO, the facts concerning the expenditure incurred by them for converting the agricultural land into building site; the deprivation of their sole means of livelihood and the availability of other lands were stated. The objectors also stated that the workshop of Thanthai Periyar Transport Corporation was originally put up in Anna Kalayarangam land owned by the Municipality. Later, they had purchased four acres of land comprised in T.S. Nos. 133 and 151 at Lal Puram main road, and constructed a workshop and that workshop was functioning. The Corporation, the objectors submitted, can acquire any extent of land next to them to construct a workshop.

19. The RDO considered the above objections raised by the appellants and in the proceedings drawn on September 14, 1989 overruled the same. The RDO held that when the requisitioning authority approached TELC for making available their land, the TELC refused to sell the said land and informed them that they required their land for their religious purposes. The RDO, in this backdrop, observed that TELC's land cannot be acquired for the purpose of expansion of depot. As regards the availability of lands near Thanthai Periyar Transport Corporation, the RDO observed that these lands were one kilometre away from the Corporation's depot and, thus, the land of the appellants alone was suitable for the expansion of depot. The RDO, accordingly, forwarded its report to the Government.

20. On October 26, 1989, TELC issued a public notice in a daily newspaper 'Dina Malhar' for sale of its land referred to above. The appellants sent the copy of the said notice to the

Government. However, the Government was not persuaded to accept the landowners' objections and on consideration of the RDO's report proceeded with the issuance and publication of declaration under Section 6 of the Act.

21. Mr. Pallav Shishodia, learned senior counsel for the appellants vehemently contended that the land belonging to the TELC is suitable as that land is situated just behind the existing depot; the existing depot has already access to the main road from Chidambaram to Cuddalore and on acquisition of the land of TELC, the acquired land too would have access to the main road through the existing depot of the Corporation. He, thus, submitted that suitability aspect has not at all been rationally considered by the Government.

22. It is difficult to accept the contention of the learned senior counsel for more than one reason. In the first place, in paragraph 5 of the counter affidavit filed by the Government before the High Court, inter alia, following averment was made:

".....The land acquired exists adjacent to the existing depot and it has easy access to the main road from Chidambaram to Cuddalore and it is found to be more suitable in all aspects for the expansion of the depot....."

The above averment remains unrebutted and unchallenged by the appellants as no rejoinder was filed.

23. Secondly, if the land proposed to be acquired and the alternative land suggested by the owners/persons interested are equally suitable for the purpose for which land is being acquired, the satisfaction of the Government, if not actuated with ulterior motive, must get primacy. In the judicial review, it is not open to the court to examine the aspect of suitability as a court of appeal and substitute its opinion. In any case the present case is not a case where the other lands suggested by the appellants have been found to be equally suitable. The Government has given reasons as to why the appellants' land has been found to be more suitable for expansion of the depot. The appellants' land is adjacent to the existing depot of the Corporation having easy access to the main road. In our view, the manner in which the decision has been taken by the Government regarding suitability of the appellants' land for expansion of the depot of the Corporation is not vitiated by any error of law nor it is irrational or founded on the extraneous reasons.

24. Third and more important, at the insistence of the learned senior counsel for the appellants, we considered the site plan referred to by him and from a perusal thereof no doubt is left that the land of the appellants is more suitable than the land of TELC situate behind the existing depot. TELC land has no direct access from the Chidambaram to Cuddalore main road. It has access from a different side road passing adjacent to the canal. The size of the TELC's land is also awkward; it is a long piece of land of which width narrows down from 175 feet to 56 feet west to east. On the other hand, the appellants' land is adjacent on the southern side to the existing depot and has access from the Chidambaram to Cuddalore main road. Having regard to the purpose for which the land is sought to be acquired, namely, expansion of existing depot, particularly, for a workshop, the appellants'

land is definitely more suitable. Pertinently, in their objections, the appellants have not challenged the public purpose for the acquisition of their land. In what we have indicated above, it cannot be said that suitability aspect has not been reasonably or rationally considered by the Government.

25. Then comes the second contention of Mr. Pallav Shishodia. He relied upon the decision of this Court in the case of Raja Ram<sup>4</sup> and submitted that the erstwhile Corporation or the successor Tamil Nadu State Transport Corporation (TNSTC) is a 'government company' for the purposes of the Act and, therefore, compliance with the provisions of Part VII of the Act had to be made in order to lawfully acquire any land for its purpose. In this regard, he referred to the averment made in the reply to I.A. No. 3 of 2003 that TNSTC was the beneficiary of the acquisition; it is they who have remitted the extent of compensation quantified by the authorities under the land acquisition.

26. With regard to the above contention of Mr. Pallav Shishodia, it is enough to say that it overlooks Section 3(cc) and Section 3(e) of the Act, substituted by Act 68 of 1984. The definition of 'company' in Section 3(e) after substitution in 1984 is as follows:

"S.3(e).- the expression "company" means--

(i) a company as defined in section 3 of the

Companies Act, 1956 (1 of 1956), other than a

Government company referred to in clause (cc);

(ii) A society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

(iii) A co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc)".

Section 3(cc) of the Act defines the expression "corporation owned or controlled by the State" as follows :

"S.3(cc).- the expression "corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society

within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per centum of the paid-up share capital is held by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;"

27. That Corporation and the TNSTC fall within the definition of Section 3(cc) is not in dispute. Both may not have been divested of their character as a government company but sub-clause (i) of Section 3(e) excludes a government company from the definition of company. Part VII (Sections 38 to 44B) of the Act provides for acquisition of land for companies. In view of the definition of the `company' in Section 3(e) which excludes government company, the Corporation or for that matter its successor TNSTC does not fall within the definition of the `company' and, therefore, is not covered by Part VII of the Act at all.

28. In *Raja Ram4*, the definition of `company' in Section 3 (e) of the Act prior to its substitution fell for consideration. The definition of `company' under consideration read as follows :

"the expression "company" means a company registered under the Indian Companies Act, 1890 or under the (English) Companies Acts, 1862 to 1882 or incorporated by an Act of Parliament of the United Kingdom or by an Indian law, or by Royal Charter or Letters Patent and includes a society registered under the Societies Registration Act, 1860, an a registered society within the meaning of the Cooperative Societies Act, 1912, or any other law relating to cooperative societies for the time being in force in any State."

29. It was in the context of the above definition that this Court held in *Raj Ram4* that the Food Corporation of India was not divested of its character as a company within the meaning of definition of clause (e) of Section 3 of the Act. As noticed above, the definition of `company' has undergone complete change and the government company has been expressly excluded from the expression `company' for the purposes of the Act.

30. For the above reasons, it has to be held that Part VII of the Act has no application to the present case as the acquisition of land is not for a `company' as defined in Section 3(e).

31. Mr. Pallav Shishodia, learned senior counsel also urged that the appellants are migrants from Gujarat. They have settled in Chidambaram about thirty years back and the livelihood of the entire family of the appellants which comprised of about 40 members is dependant on the saw mill existing on the subject land. Having regard to these facts, he would submit that we invoke our jurisdiction under Article 142 of the Constitution and declare the acquisition of the appellants' land bad in law to do complete justice. There is no doubt that by compulsory acquisition of their land, the appellants have been put to hardship. As a matter of fact, the RDO was alive to this problem. In his report dated September 14, 1989, the RDO did observe that the land owners have spent considerable money to raise the level of the land

for constructing compound wall and running saw mill. He was, however, of the opinion that the appellants' land was very suitable for the expansion of the depot and the suitable compensation can be paid to the land-owners to enable them to purchase an alternative land. The appellants, however, proceeded to challenge the acquisition. The litigation has traversed upto this Court and taken about 22 years. The public purpose has been stalled for more than two decades. Being the Highest Court, an extraordinary power has been conferred on this Court under Article 142 to pass any decree, order or direction in the matter to do complete justice between the parties. The power is plenary in nature and not inhibited by constraints or limitations. However, the power under Article 142 is not exercised routinely. It is rather exercised sparingly and very rarely. In the name of justice to the appellants, under Article 142, nothing should be done that would result in frustrating the acquisition of land which has been completed long back by following the procedure under the Act and after giving full opportunity to the appellants under Section 5-A. The possession of the land has also been taken as far back as on July 25, 2001. The appellants made an application (I.A. No. 2 of 2002) for direction to the respondents not to interfere with the functioning of the saw mill and permit them to use the saw mill but this Court in its order dated May 8, 2002 only said that the saw mill shall not be demolished till further orders. No permission was granted to the appellants to use the saw mill. In other words, for more than ten years the saw mill is closed after possession was taken over from the appellants. In the circumstances, this is not a case fit for exercise of power under Article 142 and declare the acquisition of the appellants' land bad although the acquisition proceedings have been completed in accordance with law.

32. Lastly, the learned senior counsel invited our attention to the application (I.A. No. 4) wherein the appellants offered for amicable settlement by expressing their readiness and willingness to give an area of land admeasuring 13250 square feet out of the total land of 1.45 acres (i.e. 1 acre and 19445 sq. ft.) free of cost to the Corporation. The offer is not acceptable to Mr. B. Balaji. He submitted that such a small area is of no use for expansion of the existing depot. We do not find any unreasonableness in the submission of the counsel that an area of 13250 square feet would not meet the purpose for which the appellants' land has been acquired.

33. In view of the above, there is no merit in the appeal and it is dismissed. I.A. No. 4 and other pending applications, if any, stand disposed of. No costs.

Judgment Referred.

<sup>1</sup> (2000) 7 SCC 0296

<sup>2</sup> (2005) 7 SCC 0627

<sup>3</sup> (2011) 5 SCC 0553

<sup>4</sup> (1981) 2 SCC 0066

<sup>5</sup> (1973) 2 SCC 0337

<sup>6</sup> (2004) 8 SCC 0014