GUJARAT HIGH COURT

Ramji Popatbhai Patel

Vs.

Jamnadas Shah

Special Civil Application No. 944 of 1968

(P.N. Bhagwati C.J., N.K. Vakil and D.A. Desai, JJ.)

16.04.1968

JUDGMENT

P.N. Bhagwati C.J.,

1. This is a petition for an appropriate direction, order or writ to quash and set aside a notification dated 9th October 1959 issued by the Commissioner, Rajkot Division under Section 4 of the Land Acquisition Act, 1894 and a notification dated 8th May 1960 issued by the Commissioner, Rajkot Division under Section 6 of that Act in respect of survey No. 296 belonging to the petitioners. Purvey No. 296 admeasures 20 acres 29 gunthas and is situate on Kotharia Road in Rajkot. It appears that the Saurashtra Housing Board constituted under the Saurashtra Housing Board Act, 1954 required survey No. 296 for executing a low income group housing scheme and therefore the Commissioner, Rajkot Division issued a notification dated 9th October 1959 under Section 4 of the Act notifying that Survey No. 296 was likely to be needed for a public purpose, namely, low income group housing scheme on Kotharia Road. The petitioners lodged their objections under Section 5A Sub-section (1) against the proposed acquisition of their land and the Collector after holding an inquiry made a report to the Commissioner under Section 5A Sub-section (2). In the meantime, the State of Bombay was bifurcated into the States of Maharashtra and Gujarat and the petitioners' land came within the State of Gujarat. The Commissioner, Rajkot Division thereafter issued a notification dated 8th May 1960 under Section 6 declaring that the lands specified in the Schedule which included inter alia the petitioners' lands were required for the public purpose, namely, low income group housing scheme at Kotharia Road. The Saurashtra Housing Board was succeeded by the Gujarat Housing Board with effect from 1st September 1961 as a result of the enactment of the Gujarat Housing Board Act, 1961 and the Gujarat Housing Board thereafter took up the execution of the low income group housing scheme on Kotharia Road. Notice under Section 9 was then issued to the petitioners and after holding an inquiry into the value of the lands at the date of the notification under Section 4, the Special Land Acquisition Officer made an award dated 31st January 1961 determining the amount of

compensation payable to the petitioners. The petitioners being dissatisfied with the award applied for a reference under Section 18 and the reference was accordingly made to the District Court. Whilst the reference was pending before the Civil Judge, Senior Division, Rajkot, the case of the petitioners was that on or about 16th April 1962 a settlement was arrived at between the petitioners, the Collector representing the State Government and the Gujarat Housing Board under which four acres of land out of survey No. 296 was to be handed over to the Gujarat Housing Board in acquisition and the remaining 16 acres 29 juntas of land was to be released from acquisition under Section 48 and pursuant to this settlement, four acres of land was handed over by the petitioners to the Gujarat Housing Board on 27th April 1962. The State Government and Gujarat Housing Board disputed that any such settlement was arrived at between the parties: they contended that what the petitioners alleged to be a settlement was merely a proposal on the part of the petitioners and it was neither accepted by the State Government nor by the Gujarat Housing Board. The State Government accordingly declined to release the remaining 16 acres 29 gunthas of land from acquisition under Section 48. The Gujarat Housing Board thereafter proceeded to prepare the low income group housing scheme and it was sanctioned by the State Government on 20th September 1962. Various steps In the implementation of the scheme involving considerable expenditure and firm commitments were also taken by the Gujarat Housing Board. All throughout this period the petitioners did not challenge the validity of the acquisition but their only insistence was on carrying out the alleged settlement of 16th April 1962 and since the State Government and the Gujarat Housing Board did not honour the said alleged settlement, the petitioners filed Civil Suit No. 297 of 1963 in the Court of the Civil Judge, Senior Division, Rajkot for specific performance and injunction. The petitioners applied for an interim injunction to restrain the State Government and the Gujarat Housing Board from taking possession of the remaining 16 acres 29 gunthas of land from the petitioners in breach of the said alleged settlement but the interim injunction was refused by the trial Court and the appeal preferred by the petitioners against the refusal of the interim injunction also failed. In the meantime, the State Government by an order dated 12th August 1963 made in exercise of the powers conferred under Section 43 of the Gujarat Housing Board Act, 1961, exempted certain scheme "entrusted by the Government to the Gujarat Housing Board" and mentioned in the Schedule to that order from the provisions of Section 27 and 34 of the Act and one of such schemes was the low income group housing scheme at Kotharia Road. When the petitioners realized that they would no longer be able to hold back delivery of possession of the remaining 16 acres 29 gunthas of land, they filed present petition on 1st November 1963 challenging for the first time the validity of the notifications under Section 4 and 6.

2. There were only two grounds originally taken in the petition but by an amendment made with leave of the Court before the petition reached hearing, two further grounds were added and therefore there were in all four grounds on which the validity of the impugned notifications was challenged in the petition. The first ground related to the question whether the Commissioner, Rajkot Division had authority to issue the impugned notifications but this ground was not pressed as it is concluded by a decision given by a Division Bench of this Court in *Kanaiyalal Maneklal*

Chinai and Ors. v. The Stale of Gujarat and Ors[1]. and the view taken in that decision is confirmed by the Supreme Court in *Arnold Rodricks and another v. State of Maharashtra and Ors*[2]., The second ground raised the question whether the purpose of low income group housing scheme was a public purpose but this ground too was not pressed as it could not be contended that the provision of housing for persons belonging to the low income group was not a public purpose. The other two grounds of challenge were:

[1] VII G.L.R., 717

[2] AIR 1966 SC 1788

(A)-The Saurashtra Housing Board for which the acquisition was made by the Government by issuing the impugned notifications was a company within the meaning of Section 3(e) of the Act and the acquisition made by the Government was, therefore, an acquisition for a company and since the provisions of Part VII of the Act were admittedly not complied with by the Government before issuing the impugned notification under Section 6, the impugned notification under Section 6 was null and void.

(B)-The specification of the public purpose in the impugned, notifications was incomplete and vague inasmuch as it was not set out in the impugned notifications that the petitioners' land was needed for the law income group housing scheme to be executed by the Saurashtra Housing Board.

We shall deal with these grounds in the order in which we have set them out.

Re: Ground (A).

3. It is now well-settled that an acquisition of land may be made for a public purpose or for a company. If the acquisition is, for a public purpose, the compensation has to be paid wholly or partly out of public revenue or some fund controlled or managed by a local authority. On the other hand, if the acquisition is for a company, the compensation has to be paid by the company and the provisions of Part VII of the Act have to be complied with. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provision of Part VII if the cost or a portion of the cost of acquisition is to come out of public revenue or some fund controlled or managed by a local authority. Such an acquisition would be an acquisition for a public purpose to be executed by a company and the only condition for the validity of such an acquisition would be that the cost of the acquisition must be borne wholly or in part out of public revenue or some fund controlled or managed by a local authority and it would not be necessary to comply with the provisions of Part VII. It is only where an acquisition for a company is to be made entirely at the cost of the company that such acquisition would come under the provisions of Part VII and would have to satisfy the requirements of that P article Vide *Motilal Vithalbhai Patel v. State of Gujarat*[3] *Babu Barkya Thakur v. State of Bombay, AIR 1960 SC 1203* , and *Pandit Jhandu Lal v. State of Punjab*[4]

4. These principles must govern the determination of the question of the impugned notifications. To apply these principles we must ask ourselves the question? Whether the acquisition under the

impugned notifications was an acquisition for a company simpliciter or an acquisition for a public purpose? If the acquisition was for a company simpliciter it would unquestionably be bad for the provisions of Part VII were admittedly not complied with before issuing the notification under Section 6. But even if we assume for the purpose of argument that the Saurashtra Housing Board for whom the impugned acquisition was made by the Government was a company within the meaning of Section 3(e) the impugned acquisition was not an acquisition for a company simpliciter but it was an acquisition for a public purpose to be executed by a company. The notification under Section 6 clearly shows that the acquisition was being made for a public purpose and not for a company simpliciter. The declaration made in the notification under Section 6 states

[3] II G.L.R.1

[4] A.I.R. 1951 S.C. 343

in clear and explicit terms that the petitioners' land was needed for a public purpose, namely, low income group housing scheme at Kotharia Road. If the Government was acquiring the land for a company, the declaration in the notification under Section 6 would have stated that the land was needed for a company, namely, the Saurashtra Housing Board. The positive statement in the declaration made in the notification under Section 6 demonstrates beyond doubt that the impugned acquisition was an acquisition for a public purpose, namely, low income group housing scheme at Kotharia Road and was not an acquisition for a company simpliciter so as to attract the applicability of the provisions of Part VII. This ground of challenge is, therefore, unsustainable and must be rejected.

5. Re. Ground (B): It was this ground which necessitated the reference of the present petition to the Full Bench. When the petition originally came up for hearing before a Division Bench of this Court, the petitioners relied on an unreported decision of a Division Bench consisting of N.G. Shelat J. and myself in *Chandulal Patel v. State of Gujarat*[5] where it has been held that the public purpose for which acquisition is sought to be made must be specified in the notifications under Sections 4 and 6 and if the public purpose Is to be executed through the instrumentality of an entity other than the State Government, such instrumentality must also be specified as part of the statement of the public purpose and if it is not so specified, the statement of the public purpose would be incomplete. Belying on this decision, the petitioners urged that though it was known to the Commissioner, Rajkot Division that the instrumentality through which the public purpose was to be executed in the present case was not the State Government but the Saurashtra Housing Board, it was not specified in the Impugned notifications that the petitioners' land was needed for execution of the public purpose by the Saurashtra Housing Board and the impugned notifications were, therefore, bad as not being in compliance with the requirements of Sections 4 and 6. The respondents of course could not dispute that the name of the Instrumentality through which the public purpose was to be executed was not set out in the impugned notifications but they contended that the decision in Chandulal Patel's case was not correct and required to be reconsidered as the reasoning on which It was based was defective and moreover it was not in consonance with certain observations of the Supreme Court in Babu Barkya's case (supra). The

respondents also pointed out that in a judgment given on *Maganlal Parshottamdas v. State of Gujarat*[6] a Division Bench of this Court consisting of Miabhoy C.J. and Mehta J. had also expressed the view, albeit tentative, that the correctness of the decision in Chandulal Patel's case might have to be tested in future in the light of the observations contained in Babu Barkya's case. We felt that there was considerable force in the criticism of the respondents and we therefore referred the present petition to a larger Bench so that the correctness of the decision in Chandulal Patel's case could be canvassed and the question could be finally laid at rest so far as this Court is concerned. That is how the petition has now come before a Full Bench.

6. The contention of the petitioners under this ground of challenge was that on a true construction of Sections 4 and 6 it is necessary to the validity of the notifications under these sections that the public purpose for which acquisition is sought to be made must be

[5] Special Civil Application No. 800 of 1961

[6]5th May 1967 in Special Civil Applications Nos. 801 to 806 of 1966

specified in the notifications and since the instrumentality through which the public purpose is to be executed is an ingredient of the public purpose, it must also be specified in the notifications: if it is not so specified the statement of the public purpose would be incomplete and the notifications would not be In compliance with the requirements of Sections 4 and 6. The State Government and the Gujarat Housing Board both of whom were joined as respondents in the petition seriously disputed the validity of this contention and they urged that all that was required to be specified In the notifications under Sections 4 and 6 was the public purpose and not the instrumentality through which the public purpose was to be executed and if we imported the latter requirement we would not only be adding words to the section but would also be placing fetters or limitations on the State's power of eminent domain which would be wholly unwarranted and unjustified. These rival contentions raise an important question of construction on which an opinion has already been expressed by the Division Bench in Chandulal Patel's case, but on a fuller consideration of the different aspects of the question, we are of the view that Chandulal Patel's case is wrongly decided and there is nothing in Sections 4 and 6 which requires as a condition of validity of the notifications issued under these sections that in addition to the actual public purpose for which acquisition is sought to be made, the notifications must also specify the instrumentality through which the public purpose is to be executed. Our reasons for saying so are as follows:

7. The determination of the question turns primarily on the true interpretation of Sections 4 and 6 and let us, therefore, look at those sections. Turning first to Section 4, it says that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette. The word used in Section 4 is "appears" and that may be contrasted with the word "satisfied" used in Section 6. What Section 4 contemplates is a prima facie opinion as distinguished from satisfaction on the part of the appropriate Government and when the appropriate Government is prima facie of the opinion that land is needed or is likely to be needed for any public purpose, Section 4 says that a notification to that effect shall be published in the

Official Gazette. The words "to that effect" define the content of Section 4 notification and they require that Section 4 notification shall specify that land is needed or is likely to be needed for a public purpose. Now what does this requirement precisely mean? One thing is clear that in view of the decision of the Supreme Court in Babu Barkya's case, it is not necessary that Section 4 notification must in terms use the words "public purpose". It is sufficient if the public purpose is described in Section 4 notification. But is it necessary that the name of the instrumentality by which the public purpose is to be executed must also be specified in Section 4 notification? We do not think so.

8. The language of Section 4 shows that there are two elements in regard to which the appropriate Government has to form an opinion before it can issue a notification under that section and they are: (1) that land is needed or is likely to be needed for a particular purpose and (2) that such purpose is a public purpose. The section does not make any reference to the instrumentality by which the public purpose is to be executed. It does not require the appropriate Government to apply its mind to the question as to who is going to execute the public purpose. The instrumentality which is going to execute the public purpose does not enter into the consideration. Whatever be the instrumentality which is going to execute the public purpose, that being immaterial if the appropriate Government is prima facie of opinion that the purpose is a public purpose and land is needed or is likely to be needed for execution of such purpose, Section 4 notification may be issued specifying that land is needed or is likely to be needed for such public purpose. Section 4 requires specification of only these two elements in the notification-they being the elements in regard to which the appropriate Government has to form a prima facie opinion-and the instrumentality by which the public purpose is to be executed is not required to be set out in the notification. To import the requirement that in addition to the public purpose, the instrumentality which is going to execute the public purpose must also be specified in Section 4 notification would be to read words in Section 4 which are not there and that would be clearly contrary to all canons of construction.

9. As a matter of fact it is difficult to see how the name of the entity which is going to execute the public purpose can be set in Section 4 notification in a case where the entity by which the public purpose is to be executed is not yet determined at the date of issue of Section 4 notification. It is clearly not necessary to the validity of Section 4 notification that at the date when it is issued, the entity which is going to execute the public purpose specified in the notification must be determined. The appropriate Government may decide that a public purpose such as construction of a hospital is necessary in a locality and must be executed and being of opinion that a particular land in the locality is best suited for construction of the hospital and the hospital should be located on that particular land, it may issue notification under Section 4 but at that stage it may not have yet decided whether it should construct the hospital itself or get it done by some other entity. How can the name of the entity which is going to execute the public purpose be specified in Section 4 notification in such a case? Even where the entity is determined at the date of Issue of Section 4 notification, there can be nothing sacrosanct about it. It can be changed subsequent

to the issue of Section 4 notification. Suppose in the example given above, the appropriate Government has decided at the date of issue of Section 4 notification that it would construct the hospital itself; can it not subsequently say that instead of putting up the hospital itself, it would rather get it done by the Municipal Corporation or some other charitable institution? So long as the public purpose remains the same, namely, construction of a hospital, it should be a matter of no consequence as to who executes it and the specification of the entity which is going to execute it can never be of the essence. Moreover it must be remembered that acquisition is an exercise of the power of eminent domain and apart from the requirement of payment of compensation, the only limitation on it is that it must be for a public purpose. The instrumentality which is going to execute the public purpose is wholly irrelevant and need not enter into the consideration. To introduce it as a relevant consideration in the exercise of the power of acquisition would be to impose unwarranted and unjustified fetter or limitation on the power of eminent domain.

10. Realizing this difficulty in their way, the petitioners urged that what they were asking the Court to do was not to add any words in Section 4 or to introduce any extraneous consideration in the exercise of the power of acquisition but to read the words "public purpose" as including within their scope and ambit the instrumentality which is going-to execute the public purpose. The petitioner contended that the instrumentality by which the public purpose is to be executed is an essential ingredient of the public purpose and the specification of the public purpose would not therefore be complete without also specifying the instrumentality which is going to execute the public purpose. The argument was that unless the instrumentality which is going to execute the public purpose is known, it would not be possible to say whether the purpose is a public purpose and the instrumentality must, therefore, be specified as part of the statement of the public purpose. This argument is in oar view unsustainable and must be rejected. It is fallacious in that it confuses between the public purpose and the instrumentality which is going to execute the public purpose. Whether a purpose is a public purpose or not does not depend upon who is going to execute it. It is the nature and quality of the purpose which determines the public character of the purpose. Public purpose is a purpose beneficial to the community, that is, a purpose in which the general interest of the community as opposed to the particular interest of the individuals is directly and vitally concerned. *Somawanti v. State of Punjab*[7] If the purpose satisfies this test, it would be a public purpose, irrespective as to who is going to execute it. The instrumentality which is going to execute the purpose has no relevance to the determination of the question whether the purpose is a public purpose. A purpose would not become a public purpose because A is going to execute it or cease to be a public purpose because B is going to carry it out. The purpose would be a public purpose if it satisfies the above test and it would be immaterial who is going to execute it, whether A or B. It is undoubtedly true that in a given case if the instrumentality is specified, it may be easier for the owner of the land to find out whether the purpose is a public purpose but the public character of the purpose does not depend upon who is going to execute it. Take for example the case where the purpose for which acquisition is sought to be made is contraction of a hospital. Now if the hospital is open to the public, it would be a public purpose and it would make no difference whether the hospital is to be constructed and run

by A or B. The terms on which the hospital is to be run would impart public character to the hospital and not the instrumentality by which the hospital is to be run. We cannot, therefore, assent to the argument that the instrumentality by which the public purpose is to be executed is a necessary ingredient of the public purpose and the statement of the public purpose cannot be complete without specification of the instrumentality.

11. It was then urged on behalf of the petitioners that Section 5A confers a valuable right on the subject whose land is sought to be acquired to raise an objection to the proposed acquisition of his land and this right would be rendered substantially ineffectual if Section 4 notification does not tell him as to which is the entity which is going to execute the public purpose set out in the notification. Unless he knows the name of the entity which is going to execute the public purpose, it would not be possible for him, so it was argued, to effectively exercise his right to object. Reliance was also placed on Rule 2 of the Rules made by the Government of Bombay in exercise of its power under Section 55 of the Act for the guidance of officers in dealing with objections lodged under Section 5A and it, was urged that some of the grounds set out in this rule would not be capable of being urged-at any rate properly and effectively-and would become for all practical purposes illusory if the name of the entity for execution of the public purpose by which land is sought to be acquired is not known. The grounds of objection set out in Rule 2, it was argued, clearly predicate that the subject whose land is being acquired must be told which is the entity which is going to execute the public purpose set out in Section 4 notification and the name of such entity must therefore be specified in Section 4 notification. This was the main argument which found favour with the Division Bench in Chandulal Paters case (supra) but we do not think it is well-founded. In the first place, it must be remembered

[7] AIR 1963 SC, 151

that Section 5A, which confers the right to object was not originally in the Act but was introduced subsequently by an amendment made as late as 1923 by Land Acquisition (Amendment) Act, 1923; and if, on a proper construction of its language, Section 4 did not require specification of the instrumentality prior to the introduction of Section 5A, its meaning cannot change by the introduction of Section 5A and Section 5A cannot be availed of for placing on Section 4 a construction which that section would not bear apart from Section 5A. We must construe Section 4 on its own language and it is only if Section 4 is reasonably capable of two interpretations that we can refer to Section 5A for preferring one interpretation to another. If Section 4 can reasonably bear the interpretation suggested on behalf of the petitioners, it might be a good ground for preferring that interpretation that it would give greater meaning and efficacy to the right to object conferred under Section 5A and invest it with a larger content. But an unnatural construction involving addition of words cannot be placed on Section 4 in order to make the right to object under Section 5A more effective. No canon of construction requires or permits that if Section 4, on a proper interpretation of its language, does not require that the instrumentality which is going to execute the public purpose must be specified in the notification, words requiring such instrumentality to be specified, must be read in Section 4 in order to make a proper and effective exercise of the right to object under Section 5A possible. We cannot add

words in Section 4 or expand the meaning of the expression "public purpose" in order to make it possible for the subject to exercise his right to object more effectively than what he can do otherwise. But quite apart from this argument, we do not think that the construction which we are placing on Section 4 stultifies in any manner the right to object conferred under Section 5A. The hardship envisaged by the petitioners is fanciful for we have found in practice that there is hardly any case where the instrumentality by which the public purpose is to be executed is not known to the owners of the land at the time when they file their objections under Section 5A. We cannot discard a cardinal rule of interpretation in order to relieve a fanciful hardship which has in practice no real or factual basis. Rule 2 of the Rules made under Section 55 also does not advance the argument of the petitioners any further for it merely sets out some illustrative grounds on which the-right to object conferred under Section 5A can be exercised. Moreover it may be noted that if this argument of the petitioners were valid, not only the instrumentality which is going to execute the public purpose but also the other particulars relating to the execution of the public purpose would have to be specified in Section 4 notification for unless these particulars are known it would not be possible for the subject to effectively exercise his right to object under Section 5A. Take for example a case where Section 4 notification is issued for putting up a garden; whether A is going to put up the garden or B would not make it a public purpose: it would be a public purpose if it is open for the benefit of the community and unless that is known it would not be possible for the subject to effectively exercise bis right to object on the ground that the purpose is not a public purpose. Can it be urged on this account that the terms on which the garden is to be put up must also be specified in Section 4 notification? What is required to be specified in Section 4 notification is the public purpose for which the land is to be used and not the particulars or details as to execution of the public purpose such as how the public purpose is to be executed, who is going to execute it, at whose cost, on what terms etc.

12. We might also consider what would be the consequences of acceptance of the construction suggested on behalf of the petitioners. If the instrumentality by which the public purpose is to be executed is a necessary ingredient of the public purpose and is therefore required to be specified as part of the statement of the public purpose, the name of the appropriate Government would have to be specified in Section 4 notification if the public purpose is to be executed by the appropriate Government. But if that be so, it would be impossible for the appropriate Government to entrust the execution of the public purpose to another entity after the issue of Section 4 notification even if Section 6 notification is not issued, as it is obvious that Section 6 notification cannot be issued for a public purpose different from that specified in Section 4 notification. If after the issue of Section 4 notification the appropriate Government wants to entrust the execution of the public purpose to another entity, the appropriate Government would have to start de novo by issuing a fresh notification under Section 4 stating that the land is needed or is likely to be needed for the execution of the public purpose by such entity. We do not see any reason on principle why the appropriate Government should be compelled to start de novo by issuing a fresh notification under Section 4 when the public purpose remains the same and merely the instrumentality by which the public purpose is to be executed is changed. It

would be sheer technicality stultifying the State's power of eminent domain without advancing the rights of the subject. We are, therefore, of the view that it is not necessary to the validity of Section 4 notification that in addition to the actual public purpose the instrumentality by which the public purpose is to be executed must also be specified in Section 4 notification.

13. If the instrumentality by which the public purpose is to be executed is not required to be specified in Section 4 notification, a fortiori, it must follow for the same reasons that it is also not required to be specified in Section 6 notification. If we look at Section 6, Sub-section (2), which sets out what shall be the contents of Section 6 notification, it is clear that what is required to be stated in Section 6 notification is only the purpose for which land is needed and if, as pointed out above, the instrumentality by which the public purpose is to be executed is not an ingredient of the public purpose but is merely a particular or detail of execution of the public purpose, it is clearly not required to be specified in Section 6 notification.

14. We are, therefore, of the view that Chandulal Patel's case was wrongly decided and it must be held that the instrumentality by which the public purpose is to be executed is not necessary to be specified either in Section 4 notification or in Section 6 notification and neither Section 4 notification nor Section 6 notification is rendered invalid if it does not specify the instrumentality which is going to execute the public purpose described in it. The challenge to the validity of the impugned notifications on this ground must, therefore, be rejected.

15. In the result, the petition fails and the rule is discharged with costs.

16. Mr. I.M. Nanavati on behalf of the petitioners applies for leave to appeal to the Supreme Court under Article 113(1)(c) of the Constitution. Leave as applied for is granted. We also grant an interim injunction restraining the respondent from taking possession of the remaining area of 16 acres 29 gunthas of land which is still In the possession of the petitioners. Such injunction shall be operative only upto the expiration of a period of fifteen days from the date when the certified copy of the judgment is ready for delivery to petitioners.
Petition dismissed.