

# GUJARAT HIGH COURT

Vasudev Chunilal Pancholi

Vs.

State of Gujarat

Special Civil Application No. 6325 of 1983 with Spl.Civil Application Nos. 6351, 6353, 6361, 6352, 6354, 6360, 6356 and 6345 of 1983

(P.S. Poti, C.J. and S.B. Majmudar, J.)

27.01.1984

## JUDGMENT

### **P.S. Poti, C.J.**

1. In these cases challenge is made by the petitioners to land acquisition proceedings in regard to acquisition of land for expansion of industrial estate by the Gujarat Industrial Development Corporation at Surendranagar. Two notifications for this purpose were published in the Gujarat Government Gazette one dated November 8, 1979 and another dated April 10, 1980. Pursuant to the notification dated November 8, 1979 notifications under Section 6 were issued, one without the urgency clause on 22nd of October 1982 and another applying the urgency clause on November 4, 1982. Pursuant to the second notification dated April 10, 1980 under Section 4 of the Act similarly two notifications under Section 6 were published, one with the urgency clause on 5th March, 1983 and another without the urgency clause earlier on 27th of January, 1983. The petitioners in these cases have come to this Court very much later, the earliest being on 29th December, 1983. They challenge the acquisition proceedings on the ground mainly that individual notices were not given to the petitioners who were the owners under Section 4(1) of the Land Acquisition Act, 1894 and no enquiry under Section 5A was held pursuant to such notice so much so that the declarations under Section 6 are invalid and the proceedings are liable to be quashed. We would not have been inclined to issue notices on these petitions for reason of the inordinate delay in coming to this Court. Section 4 notices were published many years earlier and Section 6 declarations are several months old and the challenge at this late hour need not in the exercise of discretion by this Court, be entertained but it was mentioned in Court by counsel for the petitioners that there was no service of notice under Section 4(1) and no enquiry was held under Section 5A of the Land Acquisition Act, 1894 and this alone persuaded us to issue notice.' Therefore in issuing such notice we made it clear that we are doing so because we are told by Counsel for the petitioners in the cases that there was no notice under Section 4(1) and there was

no enquiry under Section 5A and we are unable to verify this fact with reference to file which we attempted to call for from the Government, but we are told that it was not available on that day. We also made it clear that we need not be taken to have spoken on the question whether individual notices under Section 4(1) of the Act were called for, a matter on which the Court might have to deliberate. We directed status quo to be maintained pursuant to which we are told that status quo has been maintained. Mr. Jadeja for the State of Gujarat and Officer on Special Duty (Land Acquisition), Ahmadabad and Mr. Mehta for the Gujarat Industrial Development Corporation waived service of notice. Direct service was permitted on the other respondents.

2. We have found from the file produced before us and the affidavits filed in reply that the statement that in none of these cases notice under Section 4(1) of the Land Acquisition Act had been served is not true nor is it true that no enquiry under Section 5A of the Act was conducted. By reason of this development the petitioners in Sp. C. A. Nos. 6325, 6351, 6353, 6355 and 6361 of 1983 filed affidavits apologising for making statements which were not correct and on which the Court acted to grant them interim relief. They prayed that they may be excused for making such statements. We have gone through these affidavits and though it is unfortunate that such statements should have been made we are not taking any further action in view of the apologies tendered to us. We see from the files that the notices were issued in these cases, objections under Section 5A were considered and therefore, there is no scope for any challenge by the petitioners apart from the fact that the challenge would be highly belated in that a considerable time has passed after Section 4(1) notice and even after Section 6 declaration. No scope for interference in the above cases.

3. The petitioner in Sp. C.A. No. 6345 of 1983 can have no scope for complaint that notice under Section 4(1) was not served on him because it is seen that he had purchased the property which is the subject-matter of the acquisition proceedings after the notification under Section 4(1) of the Land Acquisition Act. He purchased the land only on 22nd November, 1979, after the Section 4(1) notification. This is not disputed. There could, therefore, be no notice to him. In regard to the petitioners in the other petitions it is said that notices were issued to some others whose names also appeared on the revenue records and it is, therefore, contended that inasmuch as the notices were not issued to the petitioners themselves there would be non-compliance with the provisions of the Land Acquisition Act sufficient to vitiate the proceedings. Section 4(1) of the Land Acquisition Act contemplates the issue of a notification to the effect that it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose. The section also provides that the notification :

"shall be published in the Official Gazette, and the Collector shall cause notice of the substance of such notification to be given at convenient places in the said locality."

It is to be noted that the section does not contemplate issue of any individual notice to any person interested in the land, but only contemplates publication in the Official Gazette and also substance of such notification at convenient places in the locality. The Act envisages this as

sufficient to enable any person interested in the land which has been notified as above to object to the acquisition of land which objection is to be duly considered before declaration is to be made under Section 6.

4. Our attention has been drawn to Instructions 30A and 30B in the Manual of Land Acquisition for the State of Gujarat. 30A instructs that as soon as the notification under Section 4(1) has appeared in the gazette a notice should be issued in the form shown in the above said Instructions. That form is titled "Form of Notice under Section 4(1) of the Land Acquisition Act, 1894". The form itself does not recite that any notice should be personally served on the person mentioned therein. While it is open to the authorities to address the notice which is to be published to the person interested it may also be generally to all persons interested in the land concerned. The note to the instructions contained at page 79 of the Manual that under Section 4(1) of the Land Acquisition Act, the Collector has to give public notice of the substance of the gazette notification to convenient places in the locality shows that individual notices are not specifically prescribed in the Act, but they are issued as a matter of practise and in order to ensure that all concerned are informed. 30B purports to be rules issued under Section 5A. Clause I thereof reads:

"1. Whenever any notification under Section 4 has been published but the provisions of Section 17 have not been applied; and Collector has under Section 4(1) issued notices to the parties interested; and on or before the last day fixed by Collector in those notices in this behalf any objection is lodged under Section 5-A (2); firstly, Collector shall record the objection in his proceedings; secondly Collector shall consider whether the objection is admissible according to these rules.

5. The situation is, therefore, that the Statute does not prescribe the need for any individual notice to any person, but only contemplates a public notice. A question about the necessity of issuing individual notice under Section 4(1) arose for consideration by this Court in *Ashok kumar Gordhanbhai v. State of Gujarat and Ors*<sup>1</sup>.. In that case the Advocate-General contended that none of the provisions of the Act requires such notice being given and any rule if it implies any such notice cannot be understood as providing for any matter that conflicts with the provisions of the Act. Dealing with this contention this Court observed at page 514:

"18. We are not impressed by this submission of the learned Advocate-General. It is true that neither Section 4(1) nor Section 5A provides for any such personal notice but the State Government itself under the powers vested under Section 55 of the Act has framed rules for the guidance of the officers in dealing with objections lodged under Section 5A and Rule No. 1 itself contemplated the giving of such a notice. The learned Advocate-General contended that the rule is framed on an obvious wrong construction of Section 4(1) because it says, "and the Collector has under the provisions of Section 4(1) issued notices to the parties interested" and as Section 4(1) does not provide for giving of any

such persona] notice.

That rule reads:

"1. Whenever any notification under Section 4 of the Act has been published but the provisions of Section 17 have not been applied and the Collector has under the provisions of Section 4(1) issued notices to the parties interested : and on or before the last day fixed by the Collector in these notices in this behalf any objection is lodged under Section 5A(2), firstly, the Collector shall record the objection in his

<sup>1</sup>1960 G.L.R. 50

proceedings secondly the Collector shall consider whether the objection is admissible according to these rules.

The Court observed:

"True it is that the words : "under the provisions of Section 4(1)" are incongruous and inapt as Section 4(1) provides for no such notice. But we are satisfied that the rule making authority has intended and such an intention can be culled out by necessary implication that personal notice be given to persons interested. We are placing this interpretation under a conviction that the rule making authority could not have intended that if Section 4(1) does not provide for giving of personal notice, no such persona] notice should be given.

Rule 30B is analogous to Rule 1 and in a case before the Supreme Court that Court had occasion to consider the need for the issue of any personal notice under Section 4(1) of the Act. Particular reference was made in that case to the requirement of Rule 30B of the Gujarat Rules which was said to contemplate issue of notices to parties interested. This was in the decision in *Bai Malimabu v. State of Gujarat*<sup>2</sup>,

"5. Mr. Nagarsheth then submitted that no special notice was given to the appellants of the notification under Section 4(1) as required by the Gujarat Rules, the objections filed by the appellants under Section 5A were not properly enquired into and heard, the State Government did not give any opportunity to them to make their submissions vis-a-vis the report submitted by the Collector, and the aforesaid infirmities vitiated the declaration under Section 6 of the Act. The High Court has rightly held that no special notice was necessary to be given to the appellants in regard to the notification under Section 4(1). Our attention was drawn to the alleged Rule 30B of the Gujarat Rules in support of the contention that such notice was necessary to be issued to the parties interested. There is no such requirement in the said Rule. It merely presupposes that the Collector has issued notices to the parties interested under Section 4(1). The requirement of the section is giving of a general notice and by two methods - (1) by the publication of the notification

in the Official Gazette and (2) causing public notice of the substance of such notification to be given at convenient places in the locality. The appellants do not contend that there was no compliance with the requirements aforesaid. Proper inquiry was held under Section 5-A of the Act and full opportunity was given to the appellants. It was not the requirement of the law to give any further opportunity after a report was made to the State Government. It is the function of the State Government to consider the report of the Collector and proceed further in the matter as they think fit and proper to do.

We find that the question has been categorically considered by the Supreme Court which has held that the requirement is only that of a general notice by two of the methods, one by publication in the gazette and the other by publication in the locality concerned.

6. In view of this there is no substance in the plea that in the other cases individual notices under Section 4(1) had not been given to the petitioners. Even assuming that such notices

<sup>2</sup>(A.I.R. 1978 S.C. 515)

had not been given that would not vitiate the proceedings.

7. Even assuming that in the cases which we have mentioned other than the five in which the statements made have not been found to be correct notice under Section 4(1) have not been issued and that would normally be a vitiating factor we would not have interfered, for the discretionary remedy would not have called for exercise in view of the delay in coming to this Court and the absence of a proper explanation for such delay. In Sp.C.A. No. 6356 of 1983 the petitioner sought to make out another point, viz. that in respect of one of the plots notified for acquisition for the same purpose subsequently acquisition proceedings were dropped. This is disputed and it is submitted that in respect of that plot the concerned party voluntarily surrendered the property to the Gujarat Industrial Development Corporation and that is reason why there was no need to proceed further with the acquisition proceedings in that case. In these circumstances we see no reason to interfere with the acquisition proceedings.

8. The counsel for the petitioners also relied on a decision of a Division Bench of this Court in *Maganbhai Vanarshibhai v. State of Gujarat*<sup>3</sup>, in support of his case urged before us that there was a Government policy decision not to acquire the land on which construction had been raised for personal use or the lands surrounding whereof construction activities were carried on by individuals or by cooperative societies for erecting residential premises. This Court observed that having laid down a definite policy the Government will not be right in irrationally picking and choosing and that would amount to arbitrary conduct on the part of the acquiring authority. This is urged in this case to show that the area sought to be acquired is one in the vicinity of which there are buildings and other constructions, some residential, some industrial and so far as the area is one such, acquisition for an industrial purpose ought not to be permitted. In other words, it would contravene the policy of the Government referred to in the above said judgment. Looking to the facts of that case particularly para 5 of the judgment it would be evident that it was a case

where the Gujarat Housing Board wanted to acquire lands on which residential constructions were raised by owners for their personal use. The purpose of acquisition by the Housing Board was one of erecting buildings to solve the housing problem in the State and that would evidently be not promoted by acquiring a land in which there were in existence buildings used for residential purpose by the occupants. It was in that context that this Court observed that it will be violative of Article 14 to permit such acquisition to proceed. That has no application here in the circumstances of this case. It was also contended by the petitioners that there are other lands available in the locality though not touching the existing industrial estate, but a little bit away from it. With reference to the plan produced it was contended that there are some Government land which could be thought of for the purpose of expansion of the industrial estate. It is not for us to sit in judgment over the decision of the Govt. on this question as it is essentially a question to be determined on facts as to which lands are needed or suited for the acquisition purpose. The acquired land is contiguous to the existing industrial estate area and the purpose being to extend the present estate the land contiguous would certainly be more suitable.

9. In the circumstances we see no reason to interfere. The applications are dismissed. Notices discharged. Interim relief vacated. No costs. 27th January, 1984.

<sup>3</sup> XVI 1975 G.L.R. 839

10. An oral application is made by the petitioners in all the petitions under Article 134A of the Constitution of India for leave to appeal to the Supreme Court. We see no substantial question of law of general importance which needs to be decided by the Supreme Court arising in these cases. Leave declined. 27th January, 1984.

Applications dismissed.