Indrajit C. Parekh Of Ahmedabad And Anr. vs State Of Gujarat And Ors. on 18 March, 1975

Equivalent citations: AIR1975SC1182, (1975)1SCC824, 1975(7)UJ330(SC), AIR 1975 SUPREME COURT 1182, 1975 (1) SCC 824

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Bench: A.C. Gupta, R.S. Sarkaria, Y.V. Chandrachud

JUDGMENT

A.C. Gupta, J.

1. This appeal on a certificate of fitness granted by the High Court of Gujarat is directed against an order of the said High Court dismissing the writ petition filed by the appellants challenging two notifications under Section 4 and Section 6 respectively of the Land Acquisition Act, 1894 (hereinafter referred to as the Act).

2. The first appellant is a director and shareholder of the second appellant, a company incorporated under the Indian Companies Act, 1930. The second appellant is the permanent lessee of a plot of land situated in Dariapur-Kazipur area of the city of Ahmedabad bearing survey Nos. 56A, 56B and 58 Respondent No. 3, the Employees State Insurance Corporation, established under the Employees State Insurance Act, 1943 forwarded nine proposal to the first respondent. State of Gujarat, for acquisition of certain plots of land, including survey No. 56P of Dariapur-Kazipur. In regard to these proposals the first respondent, State of Gujarat, passed a resolution on October 31, 1968 according sanction to the payment of nominal contribution of Re. 1/ for each proposal for the acquisition of the private plots of land required to be acquired for the construction of the necessary dispensaries for the Employees State Insurance Scheme at Ahmedabad under the Land Acquisition Act. The resolution directed that "the extra expenditure on the account should be debited to '38 Medical E S I S (3 Scheme under the Second Five Year Plan' and not from the sanctioned grants for the current year thereunder". On December 13, 1960 the first respondent notified under Section 4 of the Act that an approximate area of 3000 sq yds. out of survey No. 56A in Dariapur Kazipur was likely to be needed "for the public purpose namely, for Employees State Insurance Scheme, Ahmedabad at Dariapur-Kazipur, Taluka City' . However on March 16, 1962, this notification was withdrawn and another notification under Section 4 of the was issued stating that an approximate area of 5600 sq. yds. from that north west corner of the same Survey No. 56A was likely to be needed for the public purpose of "construction of dispensary building and other institutions connected with he E.S.I Scheme". It appears that on July 81, 1962 the State of Gujarat passed a fresh resolution in respect of plot No. 56A sanctioning a nominal contribution of Re 1/ for its acquisition for the aforesaid public

purpose and directing that the "expenditure should be debited to the Budget Head '29 L Medical Employees' State Insurance Scheme' and should be met from the grants sanctioned thereunder during the current finacial year". As already stated, the earlier resolution covered nine proposals for acquisition including plot No. 56P which seems to be a mistake for 56A. The appellant's objections to the proposed acquisition were overruled and on August 20 1962 a declaration under Section 6 of the Act were made stating that after considering the report of the Collector under tub Section (2) of Section 5A of the Act the Government of Gujarat was satisfied that 5632 sq. yds. of land from the north west corner of survey No. 56A was needed to be acquired at the public expense for construction of dispensary building and other institution connected with the E.S.I. Scheme, Ahmedabad, which was a public purpose. The declaration added that a plan of the land was available for inspection at the office of the Special Land Acquisition Officer (E.S.I) Scheme, Ahmedabad. The appellants filed a writ petition in the High Court of Gujarat challenging the said two notifications under Section 6 and Section of the Act. The High Court having dismissed the petition, the appellants have preferred this appeal.

3. The only point pressed before us on behalf of the appellants is that the sequisition of the land in question is a case of colourable exercise of power as the State Government did not apply its mind to matters in respect of which it ought to have been satisfied before the declaration under Section 6 of the Act was made. Section 6 of the Act as it stood at the relevant time WAS in these terms :

> 6 Declaration that land is quired for a public purpose.
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> (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5A, Sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a secretary to such Government or of some officer duly authorised to certify its orders :
>
> Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.
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> It was contended that the satisfaction of the Government which is a prerequisite to a declaration under Section 6 could be reached only, as counsel for the appellants put it "after the entire picture was before the Government." But the 'picture' that stage is composed of only the notification under Section 4 and the report, if any, made under Section 5A(2) of the Act. Section 4(1) of the Act reads :

4. Publication of preliminary notification and powers of officers there-upon-

> (1) When it appears to the appropriate Government that land in any locality is Deeded Or is likely to be needed for any public purpose, a notification to that effect shall be published in (he Official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said

locality."

x x x x x Therefore, it must appear to the Government that the land sought to be acquired is needed or is likely to be needed for a public purpose before a notification under Section 4 is published. Section 6 requires that before a declaration under that section is made the Government must be satisfied that the sands is needed for a public purpose after considering the report, if any, trade by the Collector under Section 5A containing his recommendations on the objections made by the persons interested in the land. It is not dispued that the stated purpose of the acquisition it a public purpose. There it also nothing on record of this case to suggest that the Government did not consider the report under Section 5A. The learned Counsel for the appellants based his submisions on an observation made in the judgment of the majority in Some Vanti & On v. State of Punjab and Ors. (1) In that Case, this Court held that the expression, "partly out of public revenues" in the provite to Section 6(1) did not necessarily meat) that the Government's contribution must be substantial but contribution of only taken amounts towards the cost of acquisition would satisfy the requirement of the proviso. Learned Counsel however relied on the following passage in the Judgment.

We would however guard ourselves against being understood to say that a token contribution by the Stair towards the cost of acquisition will be sufficient compliance with the law in each and every case. Whether such contribution meets the requirement of the law would depend upon the facts of every case. Indeed the fact that the State's contribution is nominal may well indicate in particular circumstances that the action of the Stale was a colourable exercise of power.

In view of the decision in this case that a nominal contribution out of public revenues would satisfy the requirement of the proviso to Section 6(1); the observation "Whether such contribution meet the requirements of the law would depend upon the facts of every case" must necessarily be taken to refer to the requirement of some law other than the provision to Section 9(1) No such law was pointed out to us; and it is not necessary for the purposes of appeal to ewer on a discussion as to what such other law could be. Clearly, a taken contribution by the State does not ipso facto validate the acquisition, and it was contended that there are certain circumstances in this case which together with the fact that the State's contribution was only One Rupee indicated that the Government did not really apply its mind to the proposal for acquisition, and the acquisition was thus a colourable exercise of power. The circumstances pointed out in support of this contention are these. In the notification under Section 4 of the Act issued on December 13, 1960 the are a of the land proposed to be acquired was stated as part of a Survey No. 56A measuring about 3000 sq yds. As mentioned already, this notification was withdrawn & a fresh notification under Section 4 was published on March 16, 1962 whereto the area was described as 5600 sq. yds. from the corn west corner of Survey No 56A In the declaretion under Section 6 the area was stated as 5632 sq yds. from the north west corner of Survey No. 56A. It was argued that the fact that the area was differently stated in the two notifications under Section 4 and in the declaration under Section 6 as 3000 sq yds., 5600 sq. yds and 5632 sq. yds respectively showed that the Government did not apply its mind to the extent of the requirement which again suggested lack of serious application of the mind as to the purpose of the acquisition. We do not agree; on the contrary, the difference in the area as stated in the notifications under Section 4 and in the declaration under Section 6 indi cases that the State

Government was careful about the exact area that was likely to be needed for the purpose for which it was being acquired. It was also sought to be argued that the description of the land in the declaration under Section 6 as 6632 sq yds. from the north-west corner of the land was vague But this objection was never raised at any stage; further, the declaration under Section 6 stated that a plan of the land was open for inspection at the office of the Special Land Acquisition Officer and in the plan the area proposed to be acquired must have been clearly demarcated.

4. We do not find any merit in the appeal which is accordingly dismissed with costs.