

State Of Gujarat vs Musamiyan Imam Haider Bux Razvi And Anr. ... on 14 April, 1976

Equivalent citations: 1977 AIR 594, 1976 SCR 28, AIR 1977 SUPREME COURT 594, 1976 3 SCC 536 18 GUJLR 405, 18 GUJLR 405, 18 GUJLR 405 1976 3 SCC 536, 1976 3 SCC 536

Author: Jaswant Singh

Bench: Jaswant Singh, A.N. Ray, M. Hameedullah Beg

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
MUSAMIYAN IMAM HAIDER BUX RAZVI AND ANR. ETC. ETC.

DATE OF JUDGMENT 14/04/1976

BENCH:
SINGH, JASWANT
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SINGH, JASWANT
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH

CITATION:
1977 AIR 594 1976 SCR 28
1976 SCC (3) 536
CITATOR INFO :
C 1980 SC 367 (11)
F 1988 SC 1615 (7)

ACT:

Land Acquisition Acts. 1894-Secs. 4, 6 and 48-Whether cancelling Sec. 6 notification amounts to withdrawal from acquisition-On cancellation of Sec. 6 notification whether Sec. 4 notification gets exhausted-Whether second Sec. 6 notification can be issued-Acquisition for a cooperative society if for a public purpose.

HEADNOTE:

The Government of Gujarat issued a notification under section 4 of the Land Acquisition Act, 1894. The validity of

the said notification was challenged by the owners of the land. The Government later issued a notification under section 6 of the Land Acquisition Act after holding enquiry under section 5A. The owners of the land challenged the said notification under section 6 by filing another Writ Petition. Thereafter the award was made by the Land Acquisition Officer. The Government sanctioned a sum of Re. 1/- towards cost of acquisition. The acquisition was for the purpose of a Cooperative Housing Society. Later on, the Government passed a resolution in supersession of the earlier resolution and sanctioned a sum of Rs. 500/- toward cost of acquisition. The Government considered section 6 notification to be illegal and invalid and cancelled the same and issued a fresh notification under section 6 in respect of the same land. The owner of the land filed a further Writ Petition challenging the notification by which the earlier section 6 notification was cancelled and a fresh section 6 notification was issued. The High Court dismissed the Writ Petition against the first section 6 notification as infructuous. The High Court allowed the other Writ Petition against the second section 6 notification and quashed it on the ground that the cancellation of the first section 6 notification would in any event, tantamount to withdrawal from acquisition and secondly since section 4 notification was exhausted by the first section 6 notification no subsequent notification under section 6 of the Act could thereafter be issued.

Allowing the appeal by certificate

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HELD: 1. Acquisition of land for Cooperative Housing Society is for public purpose as laid down by this Court in *Ratilal Shankarbhai and Ors. v. State of Gujarat* A.I.R. 1970 SC 984. [31-C]

2. The contention that the cancellation of the first section 6 notification amounts to withdrawal from acquisition and no subsequent notification under section 6 of the Act can thereafter be issued without a fresh notification under section 4 of the Act cannot be countenanced in view of the decision of this Court in *Girdhari Lal Amratlal Shodan and Ors. v. State of Gujarat* reported in [1966] 3 SCR 437, when a notification under section 6 of the Act is invalid the Government may treat it as ineffective and issue in its place a fresh notification under section 6 and that nothing in section 48 of the Act precludes the Government from doing so. The cancellation of the earlier notification is only a recognition of the invalidity of that notification and does not amount to withdrawal from acquisition. [31 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1870 and 1871 of 1970 and 1445 of 1971.

Appeal from the Judgment and Order dated 25-4-1969 of the Gujarat High Court in Special Civil Appeals Nos. 218/68 and 1441/66 respectively and D. V. Patel and M. N. Shroff, for the appellants in all the appeals.

S. T. Desai (In CA 1871), P. H. Parekh & Manju Jetley for Respondents.

S. M. Jain, S. K. Jain and Inder Makwana for Respondent 1 in CAs. 1871 and 1445.

P. K. Pillai for Respondent 2 and 3 in CA 1871. The Judgment of the Court was delivered by JASWANT SINGH, J. These three appeals Nos. 1870 of 1970, 1871 of 1970 and 1445 of 1971 by certificate granted by the High Court of Gujarat at Ahmedabad under Article 133(1)(b) & (c) of the Constitution of India against its common judgment and order dated April 25, 1969 shall be disposed of by this judgment.

The facts giving rise to these appeals are: On May 20, 1961, the Government of Gujarat issued a notification under section 4 of the Land Acquisition Act 1894 (hereinafter referred to as 'the Act') declaring that certain pieces of land in village Vasana, Taluka City, District Ahmedabad specified in Schedule thereto were likely to be needed for a public purpose viz. for construction of houses for members of Yogeshwarnagar Co-operative Housing Society Limited, Ahmedabad. On June 18, 1962, respondent No. 1 in Civil Appeal No. 1445 of 1971, owners of some pieces of the aforesaid land filed Special Civil Application No. 564 of 1962 in the High Court of Gujarat under Article 226 of the Constitution challenging the validity of the aforesaid notification dated May 20, 1961 made under section 4 of the Act and seeking to restrain the Government from proceeding further with the acquisition proceedings contending inter alia that the land could not be acquired for the benefit of the Company in which the public was not directly interested. Interim injunction sought by the petitioner in that petition having been refused, the Additional Special Land Acquisition Officer, Ahmedabad, appellant No. 2 in these appeals proceeded to hold the requisite enquiry under section 5A of the Act and submitted report to the Government on a consideration whereof the latter issued a notification under section 6 of the Act on April 29, 1963. The notification inter alia stated that the lands mentioned in the Schedule thereto were needed to be acquired at the public expense for the public purpose specified in column 4 of the Schedule to the notification viz., the scheme undertaken by Shri Yogeshwarnagar Co-operative Housing Society Limited with the sanction of the Government. Notices under section 9(i) of the Act were served and the Special Land Acquisition Officer after holding the requisite enquiry made an award on December 21, 1963 determining the amount of compensation payable by the Government to the owners of the land. On demand being made for possession of land, respondent No. 1 in Civil Appeal No. 1870 of 1970, who is the owner of some pieces of land sought to be acquired brought another Special Civil Application No. 1100 of 1963 under Article 226 of the Constitution in the High Court challenging the aforesaid notification under sections 4 and 6 of the Act and on his application, the High Court passed an interim order restraining the Government from taking possession of the lands. On April 15, 1966, the Government of Gujarat in supersession of the earlier resolution dated December 21, 1962 whereby it had sanctioned rupee one towards the cost of acquisition, passed another resolution sanctioning

contribution of Rs. 500/- towards the cost of acquisition. Considering that the notification dated April 29, 1963, issued by it under section 6 of the Act was illegal and invalid, the Government of Gujarat by notification dated April 28, 1966, cancelled its earlier notification dated April 29, 1963 issued under section 6 of the Act and issued a fresh notification in respect of the same pieces of land under section 6 of the Act on June 6, 1966. Respondent No. 1 in Civil Appeal No. 1445 of 1971 and petitioner in Special Civil Application No. 564 of 1962 thereupon amended its application with the leave of the Court so as to include a challenge to the validity of the fresh notification under section 6 of the Act. The petitioner in the aforesaid Special Civil Application No. 1100 of 1963 did not amend his application but filed a fresh petition under Article 226 of the Constitution being Special Civil Application No. 218 of 1968 challenging the fresh notification under section 6 of the Act. Yet another petition under Article 226 of the Constitution being Special Civil Application No. 1441 of 1966 was filed in the High Court on November 20, 1966 by respondent No. 1 in Civil Appeal No. 1871 of 1970 challenging the validity of the fresh notification dated June 6, 1966 issued under section 5 of the Act. All these petitions were heard together. While the High Court by common judgment dated April 25, 1969 dismissed petition No. 1100 of 1963 as infructuous in view of the fresh notification under section 6 of the Act, it allowed the other three aforesaid petitions following its earlier decision in Special Civil Application Nos. 316, 625 and 811 of 1965 and quashed the fresh notification dated June 6, 1966 issued by the Government of Gujarat under section 6 of the Act holding inter alia that the "cancellation of the first section 6 notification would, in any event, tantamount to withdrawal from acquisition and no subsequent notification under section 6 of the Act could, thereafter be issued without a fresh notification under section 4 of the Act." The appellants thereupon applied for and obtained certificate referred to above. It is how these appeals are before us.

Although two important points were raised in the aforesaid writ petitions viz. (1) whether the acquisition of land for Co-operative Housing Society is a public purpose and (2) whether the Government could cancel the notification dated April 29, 1963 issued by it under section 6 of the Act and issue a fresh notification dated April 28, 1966 under the said section of the Act, the first point does not survive and has rightly not been canvassed before us in view of the decisions of this Court in *Ratilal Shankerbhai & Ors. v. State of Gujarat & Ors.*(1) *Pandit Jhandu Lal & Ors. v. The State of Punjab*(2) and *Ram Swarup v. The District Land Acquisition Officer, Aligarh & Ors.*(1) In these cases, it has been made clear that ordinarily the Government is the best authority to determine whether the purpose in question is a public purpose or not; it cannot be contended that a housing scheme for a limited number of persons cannot be considered as a public purpose; and the need of a section of the public may be a public purpose.

The second contention raised on behalf of the contesting respondents that the cancellation of the first section 6 notification amounts to withdrawal from acquisition and no subsequent notification under section 6 of the Act can thereafter be issued without a fresh notification under section 4 of the Act cannot be countenanced in view of the decision of this Court in *Girdharilal Amratlal Shodan and Ors. v. State of Gujarat and Ors.*(2) where it was categorically held that when a notification under section 6 of the Act is invalid, the Government may treat it as ineffective and issue in its place a fresh notification under section 6 and that nothing in section 48 of the Act precludes the Government from doing so and that the cancellation of the earlier notification is only a recognition of the invalidity of that notification. The following observations made therein are apposite:

"Counsel for the appellants next submitted that on issuing the notification dated July 18, 1961 (under section 6), the power of the State Government to issue a notification under section 6 was exhausted and the Government could not issue a fresh notification under section 6. There is no substance in this contention. The notification dated July 18, 1961 was invalid. By the issue of this notification, the Government had not effectively exercised its power under section 6. In the circumstances, the Government could well issue the fresh notification under section 6 dated August 14, 1964."

No help can be derived by the contesting respondents from the decision of this Court in *State of Madhya Pradesh and Ors. v. Vishnu Prasad Sharma and Ors.*(3) which turned on another point. In that case after the issue of the notification under section 4(1) of the Act, a number notifications in respect of different items of land included in the locality specified in the notification under section 4(1) of the Act were issued under section 6. The following observations made in that case are pertinent:-

"But as we read these sections (viz. sections 4, 5A and 6) together we can only find that the scheme is that section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the Government that what particular land out of that locality it needs. This is followed by a declaration under section specifying the particular land needed and that in our opinion completes the process..... At the stage of section 4 the land is not particularised but only the locality is mentioned at the stage of section 6 the land in the locality is particularised The sequence of events from a notification of the intention to acquire [section 4(1)] to the declaration under section 6 unmistakably leads one to the reasonable conclusion that when once a declaration under section 6 particularising the area out of the area in the locality specified in the notification under section 4(1) is issued, the remaining non-particularised area stands automatically released".

Thus in view of the decision of this Court in *Girdharilal Amartlal Shodan's* case (supra), the impugned judgment of the Gujarat High Court cannot be allowed to stand. In the result, the appeals are allowed and the said judgment of the High Court is quashed. The parties are left to bear and pay their own costs in these appeals.

P.H.P.

Appeals allowed.