

Babu Barkya Thakur vs The State Of Bombay And Others on 8 August, 1960

Equivalent citations: 1960 AIR 1203, AIR 1960 SUPREME COURT 1203

Author: Bhuvneshwar P. Sinha

Bench: Bhuvneshwar P. Sinha, Syed Jaffer Imam, A.K. Sarkar, K.N. Wanchoo, J.C. Shah

PETITIONER:
BABU BARKYA THAKUR

Vs.

RESPONDENT:
THE STATE OF BOMBAY AND OTHERS.

DATE OF JUDGMENT:
08/08/1960

BENCH:
SINHA, BHUVNESHWAR P. (CJ)
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SINHA, BHUVNESHWAR P. (CJ)
IMAM, SYED JAFFER
SARKAR, A.K.
WANCHOO, K.N.
SHAH, J.C.

CITATION:
1960 AIR 1203
CITATOR INFO :
R 1961 SC 343 (5,7)
R 1962 SC 764 (5,21)
R 1963 SC 151 (21,34,53)
RF 1965 SC 646 (9)
RF 1965 SC 995 (6)
RF 1966 SC1593 (15)
R 1966 SC1788 (18,20)
D 1967 SC1074 (8)
O 1970 SC 564 (4)
RF 1971 SC 306 (5,10)
D 1973 SC1150 (9)
RF 1973 SC1461 (1017)
R 1978 SC 597 (128,129)
RF 1980 SC1678 (3)
R 1985 SC 736 (5,14)
D 1985 SC1622 (13,15)

RF 1992 SC1827 (2)

ACT:

Land Acquisition--Preliminary notification--Land needed for company--Non-mention of public purpose--Legality Proceedings, if violate fundamental rights--Land Acquisition Act, 1894 (1 of 1894), ss. 4, 5A, 6, 40--Constitution of India, Arts. 19(1)(f), 31.

HEADNOTE:

By a notification under s. 4 of the Land Acquisition Act, 1894, the State of Bombay (now Maharashtra) sought to acquire certain lands, including those of the petitioner, which were likely to be needed by a company, manufacturing steel bars and rods, for its factory and buildings and appointed a Special Land Acquisition Officer to function as a Collector under s. 5A of the Act. The petitioner by an objection filed before the said officer denied that the lands were required for a public purpose and prayed that the proceedings be quashed. By his petition to this Court under Art. 32 of the Constitution the petitioner challenged the legality of the notification under s. 4 of the Act on the ground that it did not in terms say that the acquisition was for a public purpose, and that the acquisition proceedings infringed Arts. 19 and 31 of the Constitution.

Held, that it is not essential that a notification under S. 4 of the Land Acquisition Act, 1894, should expressly state that

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the land sought to be acquired is needed for a public purpose. Where the land is required for a company, the requirement of the law will be sufficiently met if the appropriate Government is satisfied on a report under S. 5A(2) or by an enquiry under s. 40 of the Act that the purpose of the acquisition is the same as contemplated by s. 40 of the Act.

It is apparent from the definitions of the expressions 'company' and 'public purpose' contained in s. 3 of the Act that the former is used in a very comprehensive sense and the latter is used in its generic sense including any purpose which may benefit even a fraction of the community and such purposes as are mentioned in s. 40 of the Act must fall within its ambit.

State of Bombay v. Bhanji Munji, [1955] 1 S.C.R. 777, referred to.

A notification under s. 4 of the Act envisages a preliminary investigation and it is only under s. 6 that the Government makes a firm declaration. It is not, therefore, correct to say that a defect in the notification can be fatal to the acquisition proceedings and particularly where the

acquisition is for a company and investigation has to be made under s. 5A or s. 40 after the issue of the notification. In this view of the matter the present application must be premature.

Clause (6) of the Art. 31 has obviously no application to the Land Acquisition Act, 1894, and so it is saved by Art. 31(5)(a) of the Constitution even if it contemplates acquisition for a company which may or may not be for a public purpose.

Lilavati Bai v. State of Bombay, [1957] S.C.R. 721, referred to.

The attack under Art. 19(i)(f) of the Constitution must also fail in view of the decision of this Court in State of Bombay v. Bhanji Munji, [1955] 1 S.C.R. 777.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 134 of 1959. Petition under Art. 32 of the Constitution of India for enforcement of fundamental rights.

J. C. Bhatt, R. Ganapathy Iyer and G. Gopalakrishnan, for the petitioner.

N. S. Bindra, R. H. Dhebar and T. M. Sen, for respondents Nos. 1 and 2.

S. K. Kapur, P. M. Mukhi and B. P. Maheshwari, for respondent No. 3.

1960. August 8. The Judgment of the Court was delivered by SINHA C.J.-This petition under Art. 32 of the Constitution impugns the constitutionality of the land acquisition proceedings with particular reference to the notification under s. 4 of the Land Acquisition Act (hereinafter referred to as " the Act ") in respect of an area of land within the district of Thana in the State of Bombay, now known as the State of Maharashtra.

In order to appreciate the controversy raised in this case, it is necessary to state the following facts. By a notification dated April 3, 1959, the first respondent, the State of Bombay (now Maharashtra) under s. 4 of the Land Acquisition Act of 1894, stated that the lands specified in the schedule attached to the said notification were likely to be needed for the purposes of the third respondent, Messrs. Mukund Iron & Steel Works Ltd... a company registered under the Indian Companies Act, 1913, and having its registered office at Kurla, Bombay No. 37, in the State of Maharashtra, for its factory buildings etc. The notification further stated that under cl. (c) of s. 3 of the Act, the Government was pleased to appoint the Special Land Acquisition Officer, the second respondent, to perform the functions of the Collector under s. 5A of the said Act. The land in which the petitioner, who is a citizen of India, claims to be interested as owner is included in the schedule aforesaid. The petitioner appeared before the second respondent aforesaid and after several adjournments lodged objections on June 9, 1959 and also made oral submissions through his Advocate on that date and the day following, and requested the second respondent to quash the proceedings on the ground

that the lands contained in the notification were not required for any public purpose and that the proceedings were vexatious and malicious. It was further stated before the second respondent that the third respondent had negotiated by private treaty for the purchase of the notified area. The second respondent adjourned further hearing of the case in order to enable the petitioner and the third respondent to come to an amicable settlement. A further hearing took place before the second respondent on July 15, 1959. On that date the petitioner proposed to lead evidence of owners of several pieces of land included in the area notified for acquisition to prove that the lands included in the schedule to the notification were not as a matter of fact required by the third respondent for any public purpose and that the third respondent had even negotiated for the purchase of the said lands by private treaty, but the second respondent refused permission to lead such evidence on behalf of the petitioner.

The petitioner raises a number of questions of law attacking the constitutionality of the land acquisition proceedings and prays for orders or directions to the State Government not to give its consent to the aforesaid acquisition under s. 39 of the Act nor to enter into any agreement with the third respondent under s. 41 of the Act nor to issue a notification under s. 6 of the Act declaring that the land in question is needed for a public purpose, because after such a declaration the petitioner may be deprived of the opportunity of contending that the land was not needed for a public purpose.

The third respondent, through its Business Manager, has put in an affidavit in answer to the petitioner's case and has contended that this writ petition is premature and not maintainable, that so far, only a notification under s. 4 of the Act has been issued and objections under s. 5A on behalf of the petitioner have been heard by the second respondent, that the State Government has yet to be satisfied as to whether the acquisition is for purposes specified in s. 40 of the Act and so long as the previous consent of the appropriate Government has not been given, the provisions of ss. 6 to 37 of the Act cannot be put into operation. It is denied that the acquisition is not for a public purpose and that the proceedings are vexatious or malicious. The third respondent does not admit that the second respondent refused permission to the petitioner to lead any evidence. The averments in the petition on the merits of the controversy are denied. It is stated on behalf of the third respondent that public are vitally interested in the production of this Company, the chief products being steel bars and rods which are in great public demand and are of such vital necessity to the country that their very production, distribution, supply and price are controlled by the Government. The products of the Company are consumed directly in bulk for public utility projects like dams, hydroelectric projects, roads, railways, industrial plants and housing projects, both in the public and private sectors, which constitute the core of the several five year plans of the Government. It is further stated that the Company (respondent No. 3) has included in its proposed industrial expansion projects to be established on the land sought to be acquired, extensive provisions for housing for a large number of employees' families as also for their welfare by providing for parks, gardens, playgrounds, medical relief centre and similar other amenities for the welfare of the employees and their families. All those projects, it is claimed on behalf of the third respondent, are a "highly commendable public purpose" which is far more advantageous to the community in general than to shareholders of the Company. It is further stated that the first respondent made a detailed investigation about the usefulness to the public of the expansion project of the Company including employees' housing schemes and welfare projects and when it was satisfied about, the bona fides of

the respondent Company and the genuineness and urgency of their projects and their utility to the public that the first respondent published the notification under s. 4 of the Act on April 3, 1959. The affidavit sworn to by the second respondent, Special Land Acquisition Officer, Thana, also questions the maintainability of the writ petition and generally supports the case sought to be made out by the third respondent. It is also stated on his behalf that the petitioner or any of the other persons interested in the land sought to be acquired did not produce any evidence and that it was absolutely incorrect to say that he prevented anyone from leading any evidence as alleged. The Special Land Acquisition Officer has made the following categorical statements:-

"It is denied that the acquisition of the said lands for the purpose of the third respondent is in no way useful to the public or that the public are not entitled to the use of any of the works of the Company as alleged by the petitioner. I say that the products which are being produced and will be produced are used and intended to be used inter alia in public undertakings intended for the general industrial development of the country. It is denied that the proposed acquisition is merely for the benefit of few individuals, namely, the shareholders of the Company as alleged by the petitioner."

Further on he adds the following:-

" With reference to paragraph 13 of the said petition, it is denied that I did not permit the petitioner to lead any evidence before me as alleged by the petitioner. This allegation, I say, is absolutely dishonest and false. It is denied that the notification issued by Government under section 4 of the said Act is not bona fide or is an abuse of the powers vested in Government. It is denied that the said notification is illegal or that, it is not made in good faith ".

On these allegations and counter allegations the petitioner has moved this Court to exercise its powers under Art. 32 of the Constitution on the grounds that the notification under s. 4 of the Act is illegal, that the land acquisition proceedings are in violation of Arts. 14, 19 and 31 of the Constitution and that the acquisition is not for a public purpose and is mala fide.

In order to determine the present controversy, it will be convenient, at this stage, to examine the relevant provisions of the Act. The Act has the following preamble:-

" Whereas it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition ;..... In the definition section 3, the definitions of " Company "

and " public purpose " are particularly noteworthy. The expression " Company " has been used in a very comprehensive sense of including not only the Companies registered under several statutes, Indian and English, but also includes a society registered under the Societies Registration Act of 1860 and a registered society within the meaning of the Co-operative Societies Act. The expression "

public purpose' includes the provision of village sites in districts in which the appropriate Government shall have declared by notification in the official gazette that it is customary for the Government to make such provision. It will thus be noticed that the expression " public purpose " has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited. The proceedings begin with a Government notification under s. 4 that land in any locality is needed or is likely to be needed for any public purpose. On the issue of such a notification it is permissible for a public servant and workmen to enter upon the land to do certain acts specified therein with a view to ascertaining whether the land is adapted for the purpose for which it was proposed to be acquired as also to determine the boundaries of the land proposed to be included in the scheme of acquisition. It will be noticed that though the preamble makes reference not only to public purposes, but also to Companies, the preliminary notification under s. 4 has reference only to public purpose and not to a Company. Section 5A, which was inserted by the amending Act of 1923 and makes provision for hearing of objections by any person interested in any land notified under s. 4, makes reference not only to public purpose, but also to a Company. It is noticeable that s. 5A predicates that the notification under s. 4(1) may not only refer to land needed for a public purpose, but also to land needed for a Company and after the enquiry as contemplated by s. 5A has been made and the Collector has heard objections, if any, by interested parties he has to submit his report to the Government along with the record of the proceedings held by him and his recommendations on the objections. Thereupon, the Government has to make up its mind whether or not the objections were well-founded and the decision of the appropriate Government of those objections is to be treated as final. If the Government decides to overrule the objections and is satisfied that the land, the subject-matter of the proceedings, was needed for a public purpose or for a Company, a declaration has to be made to that effect. Such a declaration has to be published in the official gazette and has to contain the particulars of the land including its approximate area and the purpose for which it is needed. Once the declaration under s. 6 has been made, it shall be conclusive evidence that the land is needed for a public purpose or for a Company. Then follow the usual Proceedings after notice is given to the parties concerned to claim compensation in respect of any interest in the land in question ; and the award after making the necessary investigation as to claims to conflicting title, the compensation to be allowed in respect of the land, and, if necessary, apportionment of the amount of compensation amongst the persons believed to be interested in the land under acquisition. We are not concerned here with the proceedings that follow upon the award of the Collector and the matters to be agitated therein.

From the preamble as also from the provisions of ss. 5A, 6 and 7, it is obvious that the Act makes a clear distinction between acquisition of land needed for a public purpose and that for a Company, as if land needed for a Company is not also for a public purpose. The Act has gone further and has devoted Part VII to acquisition of land for Companies and in sub-s. (2) s. of 38, with which Part VII begins, provides that in the case of an acquisition for a Company, for the words " for such purpose " the words " for purposes of the Company " shall be deemed to have been substituted. It has been laid down by s. 39 that the machinery of the Land Acquisition Act, beginning with s. 6 and ending with s. 37, shall not be put into operation unless two conditions precedent are fulfilled, namely, (1) the previous consent of the appropriate Government has been obtained and (2) an agreement in terms of s. 41 has been executed by the Company.

The condition precedent to the giving of consent aforesaid by the appropriate Government is that the Government has to be satisfied on the report of the enquiry envisaged by s. 5A(2) or by enquiry held under s. 40 itself that the purpose of the acquisition is ;to obtain land for the erection of dwelling house-, for workmen employed by the Company or for the provision of amenities directly connected therewith or that such acquisition is needed for the construction of some work which is likely to prove useful to the public. When the Government is satisfied as to the purposes aforesaid of the acquisition in question, the appropriate Government shall require the Company to enter into an agreement providing for the payment to the Government (1) of the cost of the acquisition, (2) on such payment, the transfer of the land to the Company and (3) the terms on which the land shall be held by the Company. The agreement has also to make provision for the time within which the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided and in the case of a construction of any other kind of work the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work.

Such are the relevant provisions of the Act that we have to consider with reference to the question of the constitutionality of the land acquisition proceedings now impugned. The first ground of attack is based on Art. 31(2) of the Constitution. The provisions of Art. 31(2) make it clear beyond all controversy that in order that property may be compulsorily acquired, the acquisition must be for a public purpose and by authority of law. But Art. 31(5)(a) lays down that nothing in cl. (2) shall affect the provisions of any existing law other than a law to which the provisions of cl. (6) applies (and the Act is obviously a law to which the provisions of cl. (6) do not apply). Therefore even if the Act contemplated acquisition for a company which may or may not be for a public purpose, it would be saved by Art. 31(5)(a) as an existing law. (See *Lilavati Bai v. State of Bombay* (1)). Further, though it may (1) [1957] S.C.R. 721.

appear on the words of the Act contained in Part 11, which contains the operative portions of the proceedings leading up to acquisition by the Collector that acquisition for a Company may or may not be for a public purpose, the provisions of Part VII make it clear that the appropriate Government cannot permit the bringing into operation the effective machinery of the Act unless it is satisfied as aforesaid, namely, that the purpose of acquisition is to enable the Company to erect dwelling houses for workmen employed by it or for the provision of amenities directly connected with the Company or that the land is needed for construction of some work of public utility. These require- ments indicate that the acquisition for a Company also is in substance for a public purpose inasmuch as it cannot be seriously contended that constructing dwelling houses, and providing amenities for the benefit of the workmen employed by it and construction of some work of public utility do not serve a public purpose. It is not necessary for the purposes of this case to go into the question whether acquisition for a Company, even apart from the provisions of s. 40, will be for a public purpose, or justifiable under the provisions of the Act, even on the assumption that it will not serve a public purpose. The facts of the present case have not been investigated, as this Court was moved when only a notification under s. 4 of the Act had been issued; and the purpose of the acquisition in question was still at the enquiry stage. By s. 38A, which was inserted by the amending Act of 1933, it has been made clear that an industrial concern not being a Company, ordinarily employing not less than 100 workmen, may also take the advantage of land acquisition proceedings

if the purpose of the acquisition is the same as is contemplated by s. 40 in respect of Companies. It has been recognised by this Court in the case of *The State of Bombay v Bhanji Munji and Another* (1) that providing housing accommodation to the homeless is a public purpose. In an industrial concern employing a large number of workmen away (1) [1955] 1 S.C.R. 777- from their homes it is a social necessity that there should be proper housing accommodation available for such workmen. Where a large section of the community is concerned, its welfare is a matter of public concern. Similarly, if a Company is generous enough to erect a hospital or a public reading room and library or an educational institution open to the public, it cannot be doubted that the work is one of public utility and comes within the provisions of the Act. We are not in possession of all the relevant facts in the present case as to the exact purpose for which the land is sought to be acquired. That investigation was in progress when the petitioner moved this Court. Hence, the contention raised on behalf of the respondents that the application is premature is not wholly devoid of merit.

But the main attack on the constitutionality of the proceedings in question was based upon the notification under s. 4, which is in these terms " Ex. " A " .

NOTIFICATION REVENUE DEPARTMENT.

Sachivalaya, Bombay, 3rd April, 1959.

LAND ACQUISITION ACT, 1894 (1 of 1894).

District Thana.

No. LTH. 15-59/42051-H-Whereas it appears to the Government of Bombay that the lands specified in the schedule hereto are likely to be needed for the purposes of the Company, viz., for factory buildings, etc., of M/s. Mukund Iron and Steel Works Limited, Bombay. It is hereby notified under the provisions of section 4 of the Land Acquisition Act, 1894 (I of 1894), that the said lands are likely to be needed for the purpose specified above.

All persons interested in the said lands are hereby warned not to obstruct or interfere with any surveyors or other persons employed upon the said lands for the purpose of the said acquisition. Any contracts for the disposal of the said lands by sale, lease, mortgage, assignment, exchange or otherwise, or any outlay or improvements made therein, without the sanction of the Collector after the date of this notification will, under section 24 (seventhly) of the said Act, be disregarded by the officer assessing compensation for such parts of the said lands as may be finally acquired.

If the Government of Bombay is satisfied that the said lands are needed for the aforesaid purpose, a final notification to that effect under s. 6 of the said Act will be published in the Bombay Government Gazette in due course. If the acquisition is abandoned wholly or in part, the fact will be duly notified in the Bombay Government Gazette. Under clause (c) of section 3 of the Land Acquisition Act, 1894, the Government of Bombay is pleased to appoint the Special Land Acquisition Officer, Thana, to perform the functions of a Collector under section 5-A of the said Act in respect of the said lands."

It is argued that in terms the notification does not state that the land sought to be acquired was needed for a public purpose. In our opinion, it is not absolutely necessary to the validity of the land acquisition proceedings that that statement should find a place in the notification actually issued. The requirements of the law will be satisfied if, in substance, it is found on investigation, and the appropriate Government is satisfied as a result of the investigation that the land was needed for the purposes of the Company, which would amount to a public purpose under Part VII, as already indicated. See in this connection *The State of Bombay v. Bhanji Munji and Another* (1). In that case the question was whether the Bombay Land Requisition Act (Bombay Act XXXIII of 1948) was invalid inasmuch as the purpose for the requisition was not in express terms stated to be a public purpose. This Court laid it down that the statute was not invalid for that reason provided that from the whole tenor and intendment of the Act it could be gathered that the property was acquired either for the purpose of the State or for any public purpose. It is further argued that s. 4(1) of the Act had deliberately omitted the words "for a Company" and insisted upon a public purpose. The absence from the notification under s. 4 aforesaid of those words, (1) [1955] 1 S.C.R- 777.

namely, for a public purpose, are fatal to the proceedings. The purpose if the notification under s. 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under s. 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under s. 4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under s. 4 is fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose"" has to be investigated under s. 5A or s. 40 necessarily after the notification under s. 4 of the Act.

The other attack under Art. 19(1)(f) of the Constitution is equally futile in view of the decisions of this Court in *State of Bombay v. Bhanji Munji and Another* (1) and *Lilavati Bai v. State of Bombay* (2). Nothing was said with reference to the provisions of Art. 14 of the Constitution, though that Article has been referred to in the grounds in support of the writ petition.

For the reasons given above, this petition must be dismissed with costs to the contesting parties.

Petition dismissed.

(1) [1955] 1 S.C.R. 777.

(2) [1957] S.C.R. 721.