

Farid Ahmed Abdul Samad & Anr vs Municipal Corporation Of The City Of ... on 29 July, 1976

Equivalent citations: 1976 AIR 2095, 1977 SCR (1) 71, AIR 1976 SUPREME COURT 2095, 1976 3 SCC 7 9, 1977 (1) SCR 71, 1976 2 SCWR 172, 1976 MCC 247, 1977 REV LR 163, 1976 PUN LR 462, 1976 UJ (SC) 706

Author: P.K. Goswami

Bench: P.K. Goswami, Y.V. Chandrachud, P.N. Shingal

PETITIONER:

FARID AHMED ABDUL SAMAD & ANR.

Vs.

RESPONDENT:

MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD & ANR.

DATE OF JUDGMENT 29/07/1976

BENCH:

GOSWAMI, P.K.

BENCH:

GOSWAMI, P.K.

CHANDRACHUD, Y.V.

SHINGAL, P.N.

CITATION:

1976 AIR 2095

1977 SCR (1) 71

1976 SCC (3) 719

ACT:

Bombay Provincial Municipal Corporations Act, as applied
in Gujarat (Bom-59 of 1949), s. 284N--Applicability of s.
A, Land Acquisition Act.

Land Acquisition Act (1 of 1894), s. 5A--If
mandatory--Effect of non compliance in case of beneficial
schemes.

HEADNOTE:

Section 284 (1) of Chapter VI of the Bombay Provincial
Municipal Corporations Act, 1949, as applied in Gujarat,
provides that if the Corporation is satisfied that within
any area in any part of a city under the Act it is expedient
to provide housing accommodation for the poorer classes, it

B to the Bombay Act have effect with respect to the validity and date of operation of the compulsory acquisition order. Clause 2, Schedule C, provides that before submitting the order to the State Government the Commissioner has to publish the order in the Official Gazette and in three or more newspapers. The Commissioner has also to serve on persons specified in el. 2(b) notices calling for objections etc. Clause 3 provides that upon compliance with the provisions of cls. 1 and 2 the Commissioner shall submit to the Standing Committee any objections received under el. 2 and any suggestions he may wish to make in that respect. Under cl. 4, the Standing Committee shall, after consideration of any such objections and suggestions, make such modification in respect of such order as it may think fit and the Commissioner shall thereafter submit the order, as modified by the Standing Committee, to the State Government for confirmation. Clause 2 of Schedule B provides for an appeal to a Judge of the City Civil Court in Ahmedabad and elsewhere to a Judge of the District Court against the order of acquisition confirmed by the State Government. Section 284N referentially incorporates Bombay Act certain provisions of the Land Acquisition Act, 1894, as detailed in Appendix I to the Bombay Act. Accordingly all the sections of the Land Acquisition Act s. 4(1), s. 6 and s. 17(2) are bodily incorporated Bombay Act. Hence, s.

A of the Land Acquisition Act, which provides for personal hearing of the objectors to an acquisition, forms part of Bombay Act.

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satisfied, and the High Court confirmed the order of the City Civil Court.

Allowing the appeal to this Court,

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Section 5A, Land Acquisition Act, is applicable in the present case. It is not a case of failure of the rules of natural justice but one of noncompliance with the mandatory provision in s. 5A; and since no personal hearing had been given to the appellants by the Commissioner, the order of acquisition, and the confirmation by the State Government are invalid. [78 G-H]

(1) The incorporated provisions of the Land Acquisition Act are subject to the provisions of Chap. XVI of the Bombay Act; that is, if there is any inconsistency between a provision in Chap. XVI of the Bombay Act, and that of the Land Acquisition Act, the former will prevail. But there is no express provision of the Chapter ousting the application of A of the Land Acquisition Act. [76 D-E]

(2) Schedule C does not, even by necessary implication, rule out the right to personal hearing. On the other hand, since the Standing Committee is entitled to have the Commissioner's properly considered suggestions which may enable it even to modify the order of acquisition, it is necessary that the Commissioner gives a personal hearing to the objectors before he makes his suggestions worthy in the context of the objections lodged, for otherwise, his suggestions will be devoid of much practical utility to Committee. [77 C-D]

(3) The appeal provided for under Schedule B is not a substitute for the right to personal hearing. The applicability of s. 5A is therefore not impliedly ousted by the provision for appeal. [78 D]

The appeal contemplated under Schedule B is only with regard to the, examination of two aspects, namely, whether the order or approval of the plan is within the powers of the Bombay Act; and whether the interests of the appellant have been substantially prejudiced by any requirement of the Bombay Act not having been complied with. But there may be other relevant objections which a person may be entitled to take before the Commissioner when the whole matter is at large, such as, that the land is not suitable for the particular purpose, that he himself belongs to a poor class and would suffer disadvantage by the acquisition, or that there is a good alternative land available which can be acquired without causing inconvenience to the occupants of land sought to be acquired. Hence, a personal hearing is necessary. The appellate court is not required to entertain such objections in view of its truncated scope and, even assuming that all such objections could be entertained by it, the duty of hearing objections under the Bombay Act is of the Commissioner and he alone can hear them and not a Judge of the Civil Court. The acquisition order must be a valid order and the question of appeal arises only after, confir-

mation of such an order by the State Government. [77 G-H; 78 A-D]

Shri Mandir Sita Ramji v. Lt. Governor of Delhi, [1975] 1 SCR 597 referred to.

(4) Merely because s. 284J(4) of the Bombay Act, the acquisition is treated to be s. 17(1), Land Acquisition Act, and s. 17(4) is also applicable it could not be said that s. 5A is excluded by necessary implication; because, even s. 17(4) of the Land Acquisition Act the appropriate Government has to direct, in a case of urgency, that the provisions of s. 5A shall not apply. There is no automatic exclusion of the section even under the Acquisition Act. [78 A-E]

(5) If the order of acquisition is, at inception invalid, its invalidity cannot be cured by its approval by the Standing Committee or by its confirmation by the State Government. [79 A]

(6) The end does not always justify the means, and even beneficial schemes under welfare legislation have to be executed in accordance with the appropriate law. It is no answer that the object of the scheme is such that it justifies the implementer of the law to be absolutely oblivious of the manner of enforcement even though the manner is an integral part of the scheme, imposing under law, restrictions on the rights of individuals. [79 C]

[Beneficial laws have to be simple and self-contained. The introduction of provisions of another Act referentially in vital matters creates avoidable difficulties and Irrigation. [79 D]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 431 of 1976.

(Appeal by Special Leave from the judgment and order dated 31-3-1975 of the Gujarat High Court in Special Civil Application No. 2355 of 1974). G.L. Sanghi, K.J. John, S.R. Kureshi and D. N, Mishra, for the appellants.

I. N. Shroff and H.S. Parihar, for Respondent No.

1. M.N. Shroff, for Respondent No. 2.

The Judgment of the Court was delivered by GOSWAMI, J. The only question that arises in this appeal by special leave is whether the order of acquisition passed by the Municipal Commissioner under section 284J of the Bombay Provincial Municipal Corporations Act, 1949, as applicable to Gujarat, is invalid and void for non-compliance with section 5A of the Land Acquisition Act, 1894. The Municipal Corporation of the city of Ahmedabad (briefly the Corporation) by its resolution of

December 15, 1966, authorised its Commissioner under section 284I of the Bombay Provincial Municipal Corporations Act 1949 (briefly the Bombay Act) to provide housing accommodation for the poorer classes. In pursuance of this authority of the Corporation the Commissioner passed the impugned order of compulsory acquisition on October 9, 1967, under section 284J of the Bombay Act in respect of 33,357 sq. yds. of land final plots Nos. 11 to 25 of Town Planning Scheme No. V of Dariapur, Kazipur Ward.

Out of this area the land belonging to the appellants measures about 1694 sq. yds. It is averred by the appellants that this area is "predominantly a commercial area and is almost fully built upon".

The aforesaid order of compulsory acquisition was published in the official gazette of January 25, 1968 and in the local newspapers of February 10/11, 1968. Individual notices were also served on the concerned parties in accordance with law inviting objections from the owners including the appellants which were lodged in due course. These objections were submitted to the Standing Committee by the Commissioner with his suggestions and the Committee by its resolution No. 1942 of January 21, 1969, approved the said order of compulsory acquisition. The State Government thereafter confirmed the said order on January 6, 1972. The appellants had requested for a personal hearing with regard to their objections and their grievance is that the same was denied to them. It is common ground that no personal hearing was given to the appellants with regard to their objections by the Commissioner. Even so a period of nearly five years was taken in the process of finalising the order.

After confirmation of the order of acquisition by the Government there is a provision for appeal under Schedule B to the Bombay Act.

7--1003 Sc1176 The appellants preferred an appeal to the City Civil Court at Ahmedabad and amongst several other grounds raised the question of the denial of personal hearing to them. The learned Judge of the City Civil Court did not accede to the contention and by his order of April 10, 1974, held that the principles of natural justice were satisfied in this case inasmuch as they had been given an opportunity to submit their objections to the acquisition. The appellants then took the matter to the High Court of Gujarat under article 227 of the Constitution where the same grievance as to the denial of personal hearing was reiterated. The High Court by its order of March 31, 1975 refused to interfere with the order holding that section 5A of the Land Acquisition Act was duly complied with. The High Court also held that the City Civil Court Judge was right in rejecting the submission since "no oral hearing was ever claimed in the objection". Hence this appeal, by special leave, which was ordered by this Court to be expedited. From a perusal of the judgment of the City Civil Court as well as that of the High Court we are of opinion that there was no proper appraisal of the real issue in the matter. It appears that both the City Civil Judge and the High Court were only concerned with whether the rules of natural justice were complied with in the matter of acquisition of the land in question. We think, as will be shown below, that the City Civil Court and the High Court are not right in their approach.

We find that there is reference to section 5A of the Land Acquisition Act in the order of the High Court and it is apparently assumed by the High Court that the said section is applicable. All the

same the High Court erroneously thinks that no personal hearing was necessary and the section is fully completed with by mere submission. of the written objection particularly because "no oral bearing was ever claimed".

Mr. Sanghi submits that so far as the appellants are concerned they did request for a personal hearing and that there is no denial by the respondents of their averment to that effect in their special leave petition. The City Civil Judge also noted in his judgment that "some of the appellants had in terms demanded a personal hearing in their objections memorandum". Be that as it may section 5A of the Land Acquisition Act does not rest on a person's demand for personal hearing. The matter may be different if a person whose property is acquired abandons the right to a personal hearing with which aspect we are not concerned in this appeal.

Although the judgment of the High Court, as stated earlier apparently rests on the assumption that section 5A of the Land Acquisition Act is applicable Mr. Shroff appearing on behalf of the respondents submits that that section is unavailable in the case of acquisition under the Bombay Act, Mr. Sanghi also, fairly enough, has not taken advantage of the assumption in the judgment and has submitted by drawing our attention to the various provisions of the Act that section 5A is clearly attracted in a matter of acquisition under the Bombay Act.

We will, now, examine the rival contentions with regard to the applicability of section 5A of the Land Acquisition Act.

The title of Chapter XVI of the Act is "Improvement Schemes" and opens with section 270. There are various sub-headings in this Chapter and we are concerned in this appeal with only a few sections under the sub-title "Provision of housing accommodation for the poorer classes", This sub-title in the Chapter opens with section 284I:

284I (1) "If the Corporation, upon consideration of a representation from the Commissioner or other information in its possession, is satisfied that within any area in any part of the City it is expedient to provide housing accommodation for the poorer classes and that such accommodation can be conveniently provided without making an improvement scheme, it shall cause such area to be defined on a plan and pass a resolution authorising the Commission and the Commissioner shall thereupon be empowered to provide such accommodation--"

* * * * * Section 284J provides that "the Commissioner may for the purposes of the foregoing section on behalf of the Corporation (a) acquire any land including any-buildings thereon as a site for the erection of buildings for the poorer classes".

* * * * Section 284K provides as follows :-- 284K. (1) "Land for the purposes of the foregoing section may be acquired by the Commissioner by agreement upon obtaining the requisite sanction under section 77, or he may, with the sanction of the Standing Committee, be authorised to acquire land for those purposes by means of a compulsory acquisition order made and submitted to the State Government and

confirmed by it in accordance with the provisions of Schedule C to this Act.

* * * * *

(3) The provisions of Schedule B to this Act shall have effect with respect to the validity and date of operation of a compulsory acquisition order made under this section".

* * * * *

The next important section is section 284N which reads as under :--

284N. "The Land Acquisition Act, 1894 (in this and the next succeeding sections referred to as 'the Land Acquisition Act') shall to the extent set forth in Appendix I regulate and apply to the acquisition of land under this Chapter, otherwise than by agreement, and shall for that purpose be deemed to form part of this Chapter in the same manner as if enacted in the body thereof, subject to the provisions of this Chapter and to the provisions following namely :--"

* * * * *

Thus, section 284N referentially incorporates in the Bombay Act certain provisions of the Land Acquisition Act as detailed in Appendix I to the Bombay Act. Out of those provisions we are only concerned with Part 1I (Acquisition) of the Land Acquisition Act containing sections 4 to 17 including section 5A. According to Appendix I all the sections in Part II of the Land Acquisition Act except subsection (1) of section 4, section 6 and sub-section (2) of section 17 are bodily incorporated in the Bombay Act. Those provisions are deemed to be part and parcel of the Bombay Act. Hence section 5A is clearly a part of the Bombay Act in terms of Appendix I. It is true section 284 N provides that the incorporated provisions of the Land Acquisition Act are subject to the provisions of Chapter XVI and to those contained in section 284N itself. That is to say, if there is any inconsistency between a provision in Chapter XVI of the Bombay Act or in section 284N itself and that in the Land Acquisition Act, the former will prevail over the grafted provisions of the Land Acquisition Act. This is, however, not to say that where section 5A is deemed to be part of the Bombay Act, there is a further requirement to show in the Bombay Act an express provision for affording an opportunity of personal hearing. This is the error into which, earlier, the City Civil Judge fell. The heart of section 5A of the Land Acquisition Act is the hearing of objections and under sub-section (2) of that section a personal hearing is mandatorily provided for. When, therefore, section 5A of the Land Acquisition Act is applicable under Appendix I of the Bombay Act and there is nothing to show expressly or by necessary implication that the said section or any part of it is excluded

under section 284N or under any other provision in Chapter XVI as a whole the right to personal hearing under the Bombay Act cannot vanish or be defeated. Mr. Shroff fairly and, in our opinion, rightly concedes that there is no express ouster of section 5A of the Land Acquisition Act under the provisions of Chapter XVI of the Bombay Act. He, however, submits that there is a special machinery under section 284K of the Act disclosed in Schedule C and in Schedule B attached to the Bombay Act and since section 284N is subject to the provisions of Chapter XVI these Schedules form part of the Chapter. Assuming that Schedule C and Schedule B are part of Chapter XVI we are unable to read in the provisions contained in these two Schedules any exemption from the right to personal hearing mandatorily required under section 5A of the Land Acquisition Act.

It is true that the mode of acquisition of land for housing accommodation is provided for under section 284K and that the order of compulsory acquisition made by the Commissioner has to be confirmed by the State Government in accordance with the provisions of Schedule C to the Bombay Act. Broadly, clause 2 of Schedule C provides that before submitting the order to the State Government the Commissioner, inter alia, has to publish the order in the official gazette and in three or more newspapers. The Commissioner has also to serve on persons specified in clause 2(b) notices calling for objections, etc. Clause 3 provides that upon compliance with the provisions of clauses 1 and 2 the Commissioner shall submit to the Standing Committee any objections received under clause 2 and any suggestions he may wish to make in that respect. Under clause 4 the Standing Committee shall after consideration of any such objections and suggestions make such modification in respect of such order as it may think fit and the Commissioner shall thereafter submit the order as modified by the Standing Committee to the State Government for confirmation. It is manifest that the procedure under the scheme of Schedule C will be breached if the Commissioner does not afford a personal hearing to the objectors even in order to be able to fortify his suggestions which he has to submit to the Standing Committee along with the objections. Since the Standing Committee is entitled to have his properly considered suggestions which may enable it even to modify the order of acquisition it is necessary that the Commissioner gives a personal hearing to the objectors before he is able to make his suggestions worthy in the context of the objections lodged. Otherwise it will be only an empty formality and the suggestions will be devoid of much of practical utility to the Committee. Schedule C, therefore, does not even by necessary implication rule out a right to personal hearing.

Clause 2 of Schedule B provides for an appeal to a Judge of the City Civil Court in Ahmedabad and elsewhere to a Judge of the District Court whose decision shall be final. Mr. Shroff submits that provision for an appeal against the acquisition order after confirmation by the State Government provides for appropriate remedy before a judicial Tribunal. This also, says Mr. Shroff, goes to indicate, by necessary implication, that personal hearing required under section 5A of the Land Acquisition

Act is dispensed with and the remedy provided for under the provisions of the Bombay Act read with the two Schedules is exhaustive and necessarily excludes the application of section 5A of the Land Acquisition Act and with it the right of personal hearing provided thereunder.

We should make it clear that provision for appeal is not a complete substitute for a personal hearing which is provided for under section 5A of the Land Acquisition Act. This will be evident from a perusal of clause 3 of Schedule B itself. The character of the appeal contemplated under clause 3(ii) of Schedule B is only with regard to the examination of the following aspects :--

(1) whether the order or approval of the plan is within the powers of the Bombay Act, and (2) whether the interests of the appellant have been substantially prejudiced by any requirement of this Act not having been complied with.

The appeal is confined under clause 3 of Schedule B to the examination of only the twin aspects referred to above. There is no provision for entertainment of any other relevant objection to the acquisition of land. For example a person whose land is acquired may object to the suitability of the land for the particular purpose acquired. He may again show that he will be at an equal disadvantage if his land and house have to be acquired in order to provide accommodation for the poorer people as he himself belongs to the same class of the indigent. He may further show that there is a good alternative land available and can be acquired without causing inconvenience to the occupants of the houses whose lands and houses are sought to be acquired. There may be other relevant objections which a person may be entitled to take before the Commissioner when the whole matter is at large. The Commissioner will be in a better position to examine those objections and consider their weight from all aspects and may even visit the locality before submitting his report to the Standing Committee with his suggestions. For this purpose also a personal hearing is necessary. The appeal court under the Schedule B to the Bombay Act, on the other hand, is not required under clause 3 to entertain all kinds of objections and it may even refuse to consider the objections mentioned earlier in view of the truncated scope of the hearing under clause 3(ii) as noted above. We are, therefore, unable to accept the submission that the appeal provided for under Schedule B is a complete substitute for a right to personal hearing and as such by necessary implication ousts the applicability of Section 5A of the Land Acquisition Act. Mr. Shroff further submits that under the Appendix I, inter alia, section 17(4) of the Land Acquisition Act is made applicable in an acquisition proceeding under the Bombay Act. It is, therefore, submitted that under section 284N, sub-section (4) any acquisition under the Bombay Act is treated as an acquisition under section 17(1) of the Land Acquisition Act and since section 17(4) of the Land Acquisition Act is also brought in under the said Appendix, section 5A of the Land Acquisition Act, by necessary implication, should be held as excluded from the purview of the Bombay Act. We are unable to accept this submission. Even under section 17(4) of the Land Acquisition Act the appropriate Government has to direct, in a case of urgency, that the provisions of section 5A shall not apply. There is no automatic exclusion of section 5A even under the Land Acquisition Act. That being the position there is no substance in the contention that because of subsection (4) of section 284N, section 5A should be held inapplicable in the case of an acquisition proceeding under the Bombay

Act.

We are clearly of opinion that section 5A of the Land Acquisition Act is applicable in the matter of acquisition of land in this case and since no personal hearing had been given to the appellants by the Commissioner with regard to their written objections the order of acquisition and the resultant confirmation order of the State Government with respect to the land of the appellants are invalid under the law and the same are quashed. It should be pointed out, it is not a case of failure of the rules of natural justice as such as appeared to be the only concern of the High Court and also of the City Civil Court. It is a case of absolute non-compliance with a mandatory provision under section 5A of the Land Acquisition Act which is clearly applicable in the matter of acquisition under the Bombay Act.

We should also point out that the acquisition order must be an order valid under the law and the question of appeal arises only after confirmation of the order by the State Government. If the order is, at inception, invalid, its invalidity cannot be cured by its approval of the Standing Committee or by its confirmation of the State Government. Besides, hearing of objections under section 5A of the Land Acquisition Act to be given by the Commissioner under the Bombay Act cannot be replaced by a kind of appeal hearing by the City Civil Judge. The Bombay Act having assigned the duty of hearing objections to the Commissioner, he alone can hear them and not the City Civil Judge even assuming that all objections could be entertained by him in appeal. (See *Shri Mandir Sita Ramji v. Lt. Governor of Delhi & Ors.*(1)].

Beneficial schemes under welfare legislation have to be executed in accordance with law which creates the schemes. The end does not always justify the means and it is no answer that the object of the scheme is such that it justifies the implementer of the law to be absolutely oblivious of the manner of enforcement even though the manner is an integral part of the scheme, imposing under the law, restrictions on the rights of individuals. Beneficial laws have to be simple and self-contained. To introduce provisions of another Act referentially in vital matters creates avoidable difficulties and litigation highlighted by the case in hand.

It is refreshing that this Court disposed of this matter within about four months of granting of special leave.

In the result the appeal is allowed and the judgment of the High Court is set aside and with it the appellate order of the City Civil Judge also falls. The Commissioner shall give a personal hearing to the appellants as required under sub-section (2) of section 5A of the Land Acquisition Act and, thereafter, dispose of the matter in accordance with law. In the circumstances of the case we will, however, make no order as to costs in this appeal.

V. P. S.
Allowed.
S. C. R. 597.

Appeal allowed.