Supreme Court of India
Ramgir Uttamgir Goswami vs State Of Gujarat & Anr on 20 January, 1988
Equivalent citations: 1988 SCR (2) 776, JT 1988 (1) 167
Author: M Kania
Bench: Kania, M.H.

PETITIONER:
RAMGIR UTTAMGIR GOSWAMI

Vs.

RESPONDENT:
STATE OF GUJARAT & ANR.

DATE OF JUDGMENT20/01/1988

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
OZA, G.L. (J)

CITATION:
1988 SCR (2) 776 JT 1988 (1) 167
1988 SCALE (1)123

ACT:
Land Acquisition Act, 1894: Sections 4 and Intra vires Constitution of India 1950 Land-Acquisition of-Enlargement of village site to house families rendered homeless by floods Collector/Survey officer/Revenue Authority-Whether must first decide on question regarding enlargement of site-Suitability of land Assessment of To be decided by Land Acquisition officer - Whether plea of exhaustion of 'public purpose' on account of delay in acquisition tenable.

Bombay Land Revenue Code, 1879: Section 126 Limits of sites of villages, towns and cities-Collector/Survey officer-Not necessarily to first decide question to enlarge or vary, site before resorting to acquisition.

HEADNOTE:
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The lands of the appellant were situated on the banks of the river Tapti known for its frequent floods. They were sought to be acquired under the Land Acquisition Act, 1894. The preliminary notification declaring the intention to acquire the said land was issued under s. 4 of the act and published in the Government Gazette on April 30, 1970. It was notified that the proposed acquisition was for the public purpose for extension of the village site for the

purpose of housing 12 families who had been rendered homeless because of floods in the Tapti river. An individual notice under s. 4 of the Act was served on the Appellant on May 2, 1970. He filed his objections against the proposed acquisition on May 12, 1970 and filed additional objections on June 20, 1970 and July 6, 1970 respectively. After the consideration and rejection of the said objections, the notification of the lands under s. 6 was issued on December 8, 1970. Notices under s. 9 were issued on January 8, 1971.

The appellant challenged the aforesaid acquisition in a writ petition in the High Court on various grounds, the main ground being that the provisions of ss. 4 and 6 of the Act were ultra vires the Constitution. The High Court dismissed the petition, but granted a certificate of fitness under Article 133(t)(c) of the Constitution.

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In the appeal to this Court on behalf of the appellant it was conceded: (1) that the vires of sections 4 and 6 could no longer be called in question, but it was submitted that (t) under the provisions of the Bombay Land Revenue Code, 1879 it must be established that the lands in the existing village site are insufficient for the extension of the village site before any acquisition can be resorted to, (2) the land acquisition authorities had failed to consider what were the other lands available which could have been more conveniently acquired, and (3) since several years have passed from the date of the Notification under s. 4, the victims of the floods must have been housed and rehabilitated elsewhere and hence the public purpose for which the lands were sought to be acquired does not survive.

Dismissing the Appeal the Court,

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HELD: t. The challenge to the vires of sections 4 and 6 of the Land Acquisition Act, 1894 no longer survive in view of the validity of the sections having been upheld by this Court in Manubhai Jehtalal Patel and Anr. v. State of Gujarat and others, ]983 4 SCC 553. [778F]

2. Section 126 of the Bombay Land Revenue Code merely deals with the limits of the site of any village, town or city and prescribes the procedure for fixing the limits of such sites. There is nothing in the Bombay Land Revenue Code or the Land Acquisition Act which would suggest that before acquisition can be resorted to for enlarging a village site, the Collector or a Survey officer or Revenue Authority must decide upon such enlargement. [781E-F]

Chandrabhagabai Udhaorao and others v. Commissioner, Nagpur Division, Nagpur Ors., [1962] Nagpur Law Journal, Vol. XLV at p. 466 and Sitaram Maroti v. State of Maharashtra, [1963] 65 Bombay Law Reporter, 241 distinguished.

3. The assessment of suitability of the land proposed to be acquired for the concerned public purpose is primarily for the Land Acquisition officer to consider, and no good

reason has been shown on behalf of the appellant which could warrant interference with his decision. Moreover, the appellant had not even given proper particulars of the other lands which, according to him, were available and were more suitable for acquisition and hence he can make no grievance on the score of proper consideration not having been given to the question of acquiring such lands. [782BC-D]

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4. The delay in the acquisition has taken place on account of the legal proceedings adopted by the Appellant himself and by reason of the interim orders obtained by him. He cannot take advantage of this delay and claim that the public purpose no longer survives. Moreover, the public purpose stated in the Notification is the extension of a village site or goathan of the village Bhairav and there is nothing to show that the public purpose has exhausted itself. In fact, on account of increasing population, it would be more necessary today that the village site should be extended even then it was at the time when the notification was issued.[782E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2720 of 1972.

From the Judgment and order dated 29/30-8-72 of the Gujarat High Court in Special Civil Appeal No. 315 of 1971.

T.U. Mehta and M.N. Goswami for the Appellant. Vimal Dave, M.N. Shroff and KMM Khan for the Respondents.

The Judgment of the Court was delivered by KANIA, J. This is an Appeal against the judgment of a Division Bench of the Gujarat High Court dismissing a writ petition filed by the Appellant herein. The Appeal has been filed on a certificate of fitness granted by the Gujarat High Court under Article 133(1)(c) of the Constitution.

The main challenge in the writ petition was to the vires of sections 4 and 6 respectively of the Land Acquisition Act, 1894. That challenge no longer survives in view of the validity of the sections having been upheld by this Court in Manubhai Jehtalal Patel and Anr. v. State of Gujarat and others, [1983] 4 S.C.C. 553. The lands in question are situated at village Bhairav, Taluka Kamrege, District Surat, Gujarat. The said lands are situated on the bank of the river Tapti which is known for its frequent floods and the lands are covered in Survey No. 2. The said lands admeasure 1 acre and 39 gunthas. We propose to refer to the said lands in the aggregate as "the said land". The said land is also known as the "Maksheshwar Mahadev Land". The Appellant claims to be the occupant and owner of the entire land comprising in Survey No. 2 which includes the said land. It may be mentioned that the claim of the Appellant to be the owner and Occupier of the said land is based on his being the senior

member of his family but we are not concerned with that question as we propose to proceed on the footing that he is in actual occupation of the said land. The preliminary notification declaring the intention to acquire the said land was issued under section 4 of the Land Acquisition Act, 1894 and published in the Government Gazette of the State of Gujarat on April 30, 1970. It was notified that the proposed acquisition was for a public purpose, namely, for extension of the village site of the village Bhairav. It is common ground that the extension of the village site was required for the purpose of housing 12 families who had been rendered homeless because of floods in Tapti river. An individual notice under section 4 of the Land Acquisition Act was served on the Appellant on May 2, 1970. The Appellant filed his objections against the proposed acquisition on May 12, 1970 and filed additional objections on June 20, 1970 and July 6, 1970 respectively. After consideration and rejection of the said objections, the notification for acquisition of the lands under section 6 of the Land Acquisition Act was issued on December 8, 1970. Notices under section 9 of the Land Acquisition Act were issued on January 8, 1971. The said acquisition was challenged by the Appellant in the writ petition on various grounds.

The main ground on which the said acquisition was challenged in the writ petition was that the provisions of sections 4 and 6 respectively of the Land Acquisition Act were ultra vires the Constitution of India. That challenge, as we have already pointed out, has been finally negatived by this Court. In view of this, Mr. Mehta fairly conceded that the vires of sections 4 and 6 of the Land Acquisition Act could no longer be called in question before us. It was, however, pointed out by him that the said notification was also challenged on some other grounds.

It was contended by Mr. Mehta that under the provisions of the Bombay Land Revenue Code, 1879, it must be established that the lands in the existing village site are insufficient for the extension of the village site before any acquisition can be resorted to. It was submitted by Mr. Mehta that before the said land could be acquired for the afforested public purpose, the revenue authorities should have satisfied themselves that there were no unoccupied lands in the village which were suitable, appropriate and available for the extension of the village site or abadi and since that has not been done, the acquisition could not said to be for a public purpose. Mr. Mehta sought support for these submissions from the decision of a Division Bench of the Nagpur Bench of the Bombay High Court in Chandrabhagabai Undha-

orao and others v. Commissioner, Nagpur Division, Nagpur & Ors.,[1962] Nagpur Law Journal, Vol. XLV at p. 466. It was held in that case that the provisions of section 226 of the Madhya Pradesh Land Revenue Code require that the Deputy Commissioner of the District or any other person authorised under law by him must record a finding that the village abadi is insufficient and that there is no other unoccupied land suitable for the purpose of extension of the village abadi before land could be compulsorily acquired for that purpose. The decision as to the sufficiency or otherwise of the land in the abadi must be taken by the Deputy Commissioner. The Land Acquisition officer cannot substitute his opinion for that of the Deputy Commissioner in purporting to comply with the provisions of section 226. Reliance was also placed by Mr. Mehta on the decision of a Division Bench (Nagpur) of the Bombay High Court, in Sitaram Maroti v. State of Maharashtra, [1963] 65 Bombay Law Reporter, 241 which is to the same effect as the aforesaid decision and, in fact, follows it. It was submitted by Mr. Mehta that the provisions of section 226 of the Madhya Pradesh Land Revenue

Code were substantially similar to the provisions of section 126 of the Bombay Land Revenue Code which is really the provision applicable to the lands in question before us. We are totally unable to accept the submission of Mr Mehta that the provisions referred to above are in pari materia.

Section 226 of the Madhya Pradesh Land Revenue Code provides as follows:

> "226. (1) Where the area reserved for abadi is in the opinion of the Deputy Commissioner insufficient, he may reserve such further area from the unoccupied land in the village as he may think fit.
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> (2) Where unoccupied land for purposes of abadi is not available, the State Government may acquire any land for the extension of abadi and the Deputy Commissioner shall dispose of such land on such terms and conditions as may be prescribed. (3) The provisions of the Land Acquisition Act, 1894 shall apply to such acquisition and compensation shall be payable for the acquisition of such land in accordance with the provisions in that Act."

A perusal of the said section shows that before the State Government acquires any land for extension of abadi, the Deputy Commissioner has to give his opinion that the area reserved for abadi in the village in question in insufficient. A reading of sub-section (2) of the said section shows that it is only where unoccupied land for the purpose of abadi is not available, that the State can acquire any land for extension of abadi. Sub-section (3) merely makes the provisions of the Land Acquisition Act applicable to the procedure for acquisition and for determining the compensation. The provisions of section 126 of the Bombay Land Revenue Code, 1879 read altogether differently. The said section runs as follows:

> "126. Limits of sites of villages, towns and cities how to be fixed.
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> It shall be lawful for the Collector or for a survey officer, acting under the general or special orders of the State Government, to determine what lands are included within the site of any village, town, or city, and to fix, and from time to time to vary the limits of the same, respect being had to all subsisting rights of landholders."

A perusal of section 126 of the Bombay Land Revenue Code shows that unlike section 226 of the Madhya Pradesh Land Revenue Code, there is nothing in section 126 which indicates that the Collector or a Survey officer acting under his orders has to first decide to enlarge or vary the site of any village, town or city before acquisition is resorted to for enlarging or varying such site under the Act. Section 126 merely deals with the limits of the site of any village, town or city and prescribes the procedure for fixing the limits of such sites. There is nothing in the Bombay Land Revenue Code or the Land Acquisition Act which would suggest that before acquisition can be resorted to for enlarging a village site, the Collector or a Survey officer or Revenue Authority must decide upon such enlargement. Great emphasis was laid by Mr. Mehta on the last part of section 126 which shows that the enlargement of the site has to be made, keeping in mind the rights of the landholders. However, in our opinion, this factor is of no relevance in the present case as there is nothing on

record to establish that such rights have not been taken into account.

The next submission of Mr. Mehta was that the land acquisition authorities have failed to consider what were the other lands available which could have been more conveniently acquired for the public purpose referred to earlier. It was pointed out by him that in the writ petition, the Appellant (petitioner) has alleged that he could have pointed out certain other lands and open spaces where the twelve families rendered homeless by the floods of Tapti river could have been housed. With reference to these allegations, the Respondents in their counter-affidavit filed before the Gujarat High Court have rightly pointed out that the Appellant had not given any details regarding other more suitable lands available for acquisition and hence it was not open to him to make a grievance on that score. Moreover, in paragraph 29 of the counter-affidavit, the Respondents have pointed out that the lands referred to by the Appellant in his petition were not suitable for housing the victims of the floods because they were lowlying lands lands and not suitable for residential purposes. The assessment of suitability of the land proposed to be acquired for the concerned public purpose is primarily for the Land Acquisition officer consider and no good reason has been shown to us which could warrant interference with his decision. Moreover, we are satisfied that the Appellant had not even given proper particulars of the other lands which, according to him, were available for acquisition and were more suitable for acquisition and hence he can make no grievance on the score of proper consideration not having been given to the question of acquiring such lands.

It was lastly submitted by Mr. Mehta that since several years had passed from the date of the Notification under section 4, the victims of the floods must have been housed and rehabilitated elsewhere and hence the public purpose for which the lands were sought to be acquired does not survive. We are a little surprised at this argument. The delay has taken place on account of the legal proceedings adopted by the Appellant himself and by reason of the interim orders obtained by him. He cannot take advantage of this delay and claim that the public purpose no longer survives. Moreover, the public purpose stated in the Notification is the extension of a village site or goathan of the village Bhairav and there is nothing to show that this public purpose has exhausted itself. In fact, we presume, on account of the increasing population, it will be more necessary today that the village site should be extended even then it was the time when the notification was issued. This submission must also fail.

The other controversies sought to be raised by the Appellant are factual in nature and we do not consider it necessary to go into the same.

In the result, the Appeal fails and is dismissed with costs.

N.V.K Appeal dismissed.