
(1976) 11 GUJ CK 0010
In the Gujarat High Court

Abdul Latif Idubhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 26-11-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1978) 19 GLR 54

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is an appeal by the original plaintiff of the Civil Suit No. 1481 of 1970 of the court of the City Civil Judge,

Ahmedabad. The suit had been filed by the plaintiff against the State of Gujarat and the Special Land Acquisition Officer, Ahmedabad the

respondents Nos. 1 and 2 herein for an injunction restraining them from taking possession of the suit property described in the plaint in pursuance

of the acquisition proceedings, which according to him were vitiated on account of the mandatory notice u/s 4(1) of the Land Acquisition Act

having not been given. The learned Judge negatived the basic contention of the plaintiff and dismissed the suit.

2. Mr. Mehta for the plaintiff-appellate invited my attention to Section 45 of the Act, under Sub-section (2) of which the service of the notice has

got to be made on the person named in the notice whenever it may be practicable. He urged by reference ""to Sub-section (3) of Section 45 that

the service may be made on any male member of his family residing with him only when such person could not be found. Mr. Mehta urged that

there was nothing on record to show that the plaintiff was not found when the notice in question was sought to be served and unless that finding

was there, Section 45(2) held the field and vitiated an important and inevitable stage in the process of acquisition of the property.

3. Mr. Mehta in support of his submission invited my attention to the two reported authorities. The first is the case of *Mt. Banarasi Devi*

Jhunjhunwala Vs. The State of Bihar and Another, . In that case a notice was not served u/s 12(2) of the Land Acquisition Act on the person, but

it was served on her nephew and it was not stated that the lady was not available. The service of the notice under the said section, therefore, was

held invalid in terms of Section 45 of the Act. The second case relied upon by him is the case of *Srimathi Cheriathoppilakath Kunhibi Vs. The*

Land Acquisition Officer, Kozhikode, where also a notice u/s 12(2) of the Act served on the husband of the woman was held to be not properly

served for want of a finding that the wife, the addressee of the notice, could not be found.

4. In both the above authorities, it was held that the nephew and the husband respectively were not the authorised agents on whom the notices in

question could be served. However, these two authorities would not be applicable to the special and distinct facts of the present case because at

the relevant time this plaintiff and his two brothers were admittedly staying together and the notice in question had been served on one of them.

They were so to say tenants in common, that is co-owners. The notice in question had been received by one of the brothers for and on behalf of

all. The learned City Civil Judge in this connection observed as follows:

It is true that while receiving the notice u/s 4(1) Mohmad Hani (the brother of the plaintiff) had not stated that he was receiving it on behalf of his

two brothers also as has been mentioned by the plaintiff in the notice ex. 17.

Then the learned Judge, after dealing with the subsequent notices, concluded as follows:

All this evidence indicates that till the three brothers were joint and lived in the property under acquisition any of them received the notices for and

on behalf of all. It is not possible to hold that even though Mohmad Hanif had received the notice u/s 4(1) addressed to all the three brothers the

plaintiff was not aware of the same although they stayed together under the same roof. It is not the case of the plaintiff that his relations with

Mohmad Hanif were strained.

To me, therefore, it appears very clear that when a notice is required to be issued to more than one person as co-owners of a property, notice to one is the notice to all the co-owners, unless of course it could be shown that the co-owner who is served was having bad blood with others who are sought to be presumably served or unless it is shown that he had acted in collusion with the process serving authority or any officers concerned in the act of acquisition.

5. If any authority for a proposition that a service of notice to one of the co-owners is a notice to all is needed, we can seek help from the judgment of the Supreme Court in the case of Kanji Manji v. The Trustees of the Port of Bombay AIR 1963 Section 468. In that case, the

Supreme Court in very clear terms has observed as follows:

Once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient, and the suit for the same reason was also good.

To the same effect are the observations of the Bombay High Court as back as in the year 1934 in the case of Vaman Vithal Kuikarni v.

Khanderao Romrao Shalapurkar 37 BLR 376. The service of notice to quit served on one of several joint-tenants affords prima facie evidence

that it has reached the rest. It was, however, urged by Mr. Mehta for the appellant that these were the cases arising under the Transfer of Property

Act and the ratio laid down in these authorities would have no bearing on the case of proceedings under the Land Acquisition Act, which are

expropriator in character and which, therefore, required to be considered strictly. A notice terminating the tenancy also is a step in one way

expropriatory because thereby the civil right to the property is sought to be put an end to. Essentially, therefore, there should be no difference

between the view held in respect of the termination of the tenancies under the Transfer of Property Act and in the case of the notice u/s 4(1) of the

Land Acquisition Act. The essence of a notice u/s 4(1) is that the addressee should have clear cognizance of the things to come so that he might

place forth his view point before the authority who is required to take an unpleasant decision of depriving him of his property. If this cognizance

could be attributed to the person by a notice, served upon one of his co-owners who has the same interest in the property, the requirement of law

even if mandatory can be said to have been squarely met.

6. The question of application of Section 45(3) of the Act was raised and Mr. Mehta's submission that there is no evidence that the plaintiff could

not be traced for the purpose of effecting substituted service has no place in the picture. The service on a tenant-in-common has been held to be a

service on all the cotenants except in the case of collusion and fraud and so the notice u/s 4(1) is deemed to have been personally served on the

plaintiff as per the requirement of Section 45(2) of the Act. Section 45(3), therefore, would have no application to the facts and circumstances of

this case. Mr. Mehta called in aid one case of the Supreme Court. It is the case of State of Mysore Vs. Abdul Razak Sahib, where it has been laid

down that even though the personal notices are issued, the non-issuance of a public notice would shake the proceedings. This would be the

proposition of law indicative of the mandatory requirement of the procedure, which is no longer called in question by me in this case. All essential

steps have to be followed before the ultimate acquisition u/s 6 of the Act could be upheld. This could be the ratio of the Supreme Court judgment.

It does not go so far as to say that even if the plaintiff has got the notice of the intended acquisition and even if he, so to say, lodges his objections

against the intended acquisition, the non-service of a notice on him personally would vitiate the proceedings. What is required is the communication

of the intended acquisition to the person likely to be adversely affected by the intended act. In the case on hand, through his co-owner, who had

got as much interest as the plaintiff had, this communication had been effected and it is too late in the day now for the plaintiff after having been

served with the notices u/s 6, 9,10, and 12 personally on him to rise from slumber and take an old bogey out of the grave and try to derive benefit

out of it. To say the least, this is an unfair attempt on the part of the appellant to bring the alleged niceties of law to his succour.

6.1 Mr. Mehta had then urged that even a notice u/s 47(a) of the Act had not been served. Going to the said section as is applicable to the State of

Gujarat, no notice is contemplated under the said section and, therefore, this second ground of Mr. Mehta is without any foundation.

7. The result is that the appeal fails and is dismissed with costs. At the requests of Mr. Mehta, however, I would observe that the authorities would

adopt a human stand unto this compulsory expropriation of a citizen's right and would give him reasonable time of about three to six months to

enable him to shift his residence to some other place. This is only a recommendation with a hope that despite what has been done by the plaintiff since 1970, the authorities would not be harsh with him in enforcing the law, which otherwise they are entitled to do.