
(2016) 05 GUJ CK 0023
In the Gujarat High Court

Case No : Special Civil Application No. 14893 of 2015 with Special Civil Application No. 14894 of 2015

Abha Osman Turq

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Citation : (2016) 164 AIC 426

Hon'ble Judges : Mr. Akil Kureshi and Mr. A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Mr Ishan Mihir Patel, Advocate, for the Appellant; Ms. Jirga Jhaveri, AGP, Mr. Mihir Thakore, Senior Advocate assisted by Mr Vinay Bairagra for M/s Trivedi and Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Akil Kureshi, J.(Oral)—These petitions arise in similar background. We may record facts from SCA No. 14893 of 2015.

2. The petitioner has prayed for quashing and setting aside acquisition proceedings concerning his agriculture land being in breach of the provisions of the Land Acquisition Act, 1894 ("the Act" for short). The petitioner is an agriculturist and owner of land bearing block/survey No. 65 of village Tunda, Tal. Mundra, Dist. Kutch measuring 28834 sq. mtr. The petitioner cultivates such land through irrigation facilities created on the land. The land of the petitioner along with other neighbouring land owners was proposed for acquisition for the respondent No. 3 - the Adani Port and Special Economic Zone ("the company" for short) for setting up Special Economic Zone known as "Adani Port and Special Economic Zone" ("APSEZ" for short). For acquiring such land, notification under Section 4 of the Act was published in the newspaper on 29.11.2006, declaration under Section 6 was published on 12.03.2008 and award under Section 11 was passed on 18.06.2009, under which, including the land of the petitioner, total area of 10.5.1984 sq. mtr. of land came to be acquired by the Government for

and on behalf of the respondent No. 3 company.

2.1 The petitioner claims to be completely unaware about such acquisition proceedings and contends that he came to know about any such acquisition only upon being served with notice dated 31.12.2014, in which the Special Land Acquisition Officer, Mundra conveyed to him that for acquiring 22834 sq. mtr. of his land of survey No. 65, as per the award of the Special Land Acquisition Officer, sum of Rs. 9,22,688/- is payable. He was earlier instructed to remain present on 08.01.2015. However, since the officer was engaged in Vibrant Gujarat Summit programme of the Government, proposed meeting of 08.01.2015 was postponed. On 05.02.2015, the Land Acquisition Officer issued another notice to the petitioner calling upon him to remain present on 19.02.2015 for receiving compensation and making representation, failing which he would proceed to take possession of the land.

2.2 The petitioner thereupon verified revenue records and found that the name of the respondent No. 3 company was mutated, which according to the petitioner was done without any notice to him.

2.3 The case of the petitioner is that contrary to what was stated in the said notice, no award was passed on 02.08.2011; that compensation offered of Rs. 9,22,688/- was abysmally low as compared to Rs. 20 lacs per acre offered to other agriculturists and most importantly, mandatory procedure provided in Land Acquisition (Companies) Rules, 1963 ("the Rules" for short) was not followed before acquiring land for a private company.

2.4 Respondent No. 2 - Deputy Collector, Mundra has filed an affidavit dated 11.01.2016 in which he has clarified that mentioning of date of award as 02.08.2011 in the notices was a typographical error. The award was actually passed on 18.06.2009. It is further stated that after passing of the award, notices under Section 12(2) of the Act were issued on 14.07.2009 and 09.03.2010 and thereafter, on 30.07.2014, 18.12.2014 and 05.02.2015, despite which the petitioner did not come forward to collect the compensation.

2.5 Another affidavit was filed by the Deputy Collector on 14.03.2016, along with which he has produced copy of the report dated 27.04.2006 given by Agriculture Branch of District Panchayat, Bhuj, recording feasibility of acquisition of the land for the company. It is stated that the Collector, Bhuj sent his report on 16.05.2006 to the State Government for approval and after State approved the report for acquisition of the land, directions were issued for acquisition.

2.6 Respondent No. 3 company has filed an affidavit dated 08.03.2016, in which it is contended that the petitioner has purchased the land in question under a sale deed dated 29.03.2007. He, thus, acquired his interest in the land after issuance of notification under Section 4 of the Act. He, therefore, has no right to challenge the acquisition. It is further stated that the revenue entries were mutated in form No. 6 on 27.04.2008, of which the notice was issued to the petitioner under Section 135D of the Bombay Land Revenue Code. The petitioner

submitted his objections, which were rejected by the authority by order dated 09.11.2009, which the petitioner did not challenge. Thus, the petitioner was aware about the acquisition proceedings right from the year 2009. Regarding legality of the acquisition, in this affidavit, it is contended that all legal formalities and procedures were followed before acquisition.

2.7 In the rejoinder filed by the petitioner on 18.03.2016, he had claimed complete ignorance about the revenue entry proceedings and contended that no notice under Section 135D of the Bombay Land Revenue Code was served on him. The Government was thereupon asked to clarify this aspect, thereupon the respondent No. 2 filed yet another affidavit dated 04.05.2016, along with which written objections raised by the Power of Attorney holder of the petitioner have been annexed.

3. On the basis of such materials on record, learned Counsel Shri I.M. Patel for the petitioners submitted that the petitioners were not aware about acquisition proceedings right till the end of year 2014 when the Land Acquisition Officer issued notices to the petitioners for collecting the compensation and for handing over possession. The petitioners thereupon made inquiries and found that mandatory requirements before acquiring the land for a company were not followed.

4. In this connection, he submitted that no reasonable efforts to get the land by negotiation on payment of reasonable price were undertaken. No inquiry as envisaged under the Rules was made. No opportunity of hearing was given to the petitioner before preparation of the report under Rule 4. Senior Agriculture Officer as envisaged under Rule 4 was also not consulted. There was no satisfaction of the Collector that no alternative, suitable site can be found so as to avoid acquisition of the land in question.

5. He further submitted that even the procedure envisaged under the Act was not followed. No opportunity of raising objections under Section 5A of the Act was given since notices for the land acquisition were not given. Compensation was offered more than five years after the date of acquisition. This gross delay in offering compensation itself would defeat the acquisition proceedings. Counsel relied on several decisions, of which reference will be made at a later stage.

6. On the other hand, learned Counsel Shri Thakore appearing for respondent No. 3 company opposed the petition contending that:-

I. The petitions suffer from gross delay and laches. The acquisition proceedings commenced with issuance of notification under Section 4 of the Act on 29.11.2006. Award was passed by the Land Acquisition Officer on 18.06.2009. Revenue entry proceedings were soon thereafter undertaken. The petitioners raised their objections in response to notice issued under Section 135D of the Revenue Code. Such objections were rejected by the authority way back in the year 2009. The petitioners were thus fully aware about the acquisition, despite which these petitions were filed in the month of August 2015. The same may,

therefore, be dismissed on the ground of delay and laches.

II. Counsel submitted that any person desirous of challenging validity of the acquisition proceedings must be vigilant and cannot wait for the outcome of the acquisition and compensation being paid before challenging the validity of the acquisition itself.

III. Regarding petitioner's contention of breach of mandatory requirements under the Rules before land could be acquired for the company, Counsel could not dispute the legal position, however, contended that such questions cannot be examined in writ petition, which suffers from gross delay and laches.

IV. He submitted that entire area is covered under the SEZ. The petitioner's land falls within the block and any relief granted to the petitioner would seriously hamper the project of the company, which should not be done at this belated stage.

V. With respect to petitioner of SCA No. 14893 of 2015, Counsel submitted that additionally on the ground that the petitioner had purchased the land after issuance of notification under Section 4 of the Act, the petition should be dismissed.

7. We have also heard learned AGP Ms. Jirga Jhaveri.

8. Having thus heard learned Counsel for the parties and having perused documents on record, we find that the said Rules provide a detailed procedure to be followed before any private land can be acquired for a company. Rule 3 envisages setting up of Land Acquisition Committee for advising appropriate Government in relation to acquisition of land. Sub-rule (2) of Rule 3 provides for the constitution of the committee. Sub-rule (5) of Rule 3 casts a duty on the committee to advise the appropriate Government on all matters relating to or arising out of acquisition of land under Part-VII of the Act. Rule 4 of the said Rules, which is of importance, pertains to appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings. The said Rule reads as under:-

"Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.

4.(1) Whether a company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:-

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable price and such efforts have failed;

- (iii) that the land proposed to be acquired is suitable for the purpose;
- (iv) that the area of land proposed to be acquired is not excessive;
- (v) that the company is in a position to utilise the land expeditiously; and
- (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall:-

- (i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;
- (ii) determine, having regard to the provisions of sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company; and
- (iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation.- For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government under section 6 of the Act unless-

- (i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under section 5A of the Act; and
- (ii) the agreement under section 41 of the Act has been executed by the company."

9. Under Rule 4 of the said Rules, thus, whenever a company makes an application to the appropriate Government for acquisition of land, the Government shall direct the Collector to submit report on the matters contained in Clauses-(i) to (vi) of sub-rule (1), which includes that the company has made best endeavour to find out lands in the locality suitable for the purpose of acquisition; that the company has made all reasonable efforts to get such lands

by negotiation by payment of reasonable price, but the efforts have failed; that the land proposed to be acquired is suitable for the purpose; that the area under acquisition is not excessive; that the company is in a position to utilise the land expeditiously. With respect to acquisition of agriculture land, it is further provided that the report would indicate that no alternative suitable site can be found so as to avoid acquisition of that land.

10. These requirements have been held to be mandatory in nature. In case of *State of Gujarat & Ors. v. Ambalal Haiderbhai & Ors.*, reported in (1976) 3 SCC page No. 495, the Supreme Court held that Rule 4 is silent on the mode and method of inquiry to be held by the Collector and the report of the Collector is recommendatory in nature, yet having regard to the legislative history and purpose of the Rule, the Collector would be required to follow principles of natural justice. Contention that the inquiry under Rule 4 is administrative in nature, was rejected.

11. In case of *Shyam Nandan Prasad & Ors. v. State of Bihar & Ors.*, reported in (1993) 4 SCC, page No. 255, the Supreme Court held that requirements of Rule 4 are mandatory in nature and the Collector is required to hold an inquiry and afford hearing to the persons concerned.

12. In case of *General Government Servants Cooperative Housing Society v. Sh. Wahab Uddin & Ors.*, reported in (1981) 2 SCC, page No. 352, it was held that Rule 4 is mandatory. Its compliance is not a idle formality and unless directions enjoined in Rule 4 are complied with, notification under Section 6 will be invalid. It was held that compliance of Rule 4 should precede notifications under Sections 4 and 6 of the Act.

13. Viewed from such judicial pronouncements, the procedure adopted by the respondents for acquiring the land would not pass the test of Rule 4. It is an admitted position that no hearing was granted to the petitioners before the Collector made his report. More significantly, there was no proper application of mind to the various requirements set out in Rule 4. We may recall, the land under acquisition was agriculture land and that, therefore, additional requirement of satisfying that no alternative suitable site can be available as to avoid acquisition of the land in question needed to be fulfilled. The Land Acquisition Officer forwarded his report to the Collector under communication dated 28.04.2006, in which he categorically relied on the report of the company that sufficient efforts were made by the company for acquiring private land. He noted that in some of the cases, the lands are in possession of persons other than the grantees and that, therefore, there would be legal complications in purchasing such lands by the company. He referred to the report of the Agricultural Officer of District Panchayat, Bhuj, in which it was recorded that some of the lands are open in which agriculture operations have been carried out whereas in rest of the lands, wild trees have grown and do not seem to be under cultivation. The lands which are tilled rely on rain water for agriculture. On the basis of this report, the Collector sent his communication dated 16.05.2006 to the Revenue Department,

Government of Gujarat and reiterated that some lands are open agriculture lands under cultivation and rest are covered by wild trees, not possible of cultivation. The lands under cultivation also rely on rain water irrigation. He conveyed that rain pattern in Kutch is erratic; that since 2 to 3 years, there is scarcity of rain, which is deficient for agriculture purpose and ground water is not conducive for agriculture operations. It was on the basis of this report of the Collector that the Government granted sanction for acquiring the land for private company. The report of the Collector did not satisfy various mandatory requirements of Rule 4. There was no satisfaction of the Collector that the company had made reasonable efforts to acquire land privately. That the proposed site was suitable. That the land under acquisition was not excessive or that the company was in a position to utilise the land expeditiously.

14. Despite such conclusions, the question is should the petitions be entertained at this belated stage? In this respect, we may revisit the relevant dates. Section 4 notification was issued on 29.11.2006. Section 6 notification was published on 12.03.2008. The Land Acquisition Officer passed his award on 18.06.2009. According to the respondents, notices were also issued to the petitioners under Section 12(2) of the Act on 14.07.2009, 09.03.2010 and thereafter on 30.07.2014, 18.12.2014 and 05.02.2015. The petitions were filed in August 2015.

15. The revenue entry was certified on 09.11.2009 after notices to the petitioners and if we go by the assertion of the respondent No. 3 company, after the Power of Attorney Holder of the petitioners raised written objections.

16. In case of *Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaria & Ors.*, reported in (1996) 4 SCC page No. 579, the Supreme Court dismissed the claim of the land owners challenging validity of the notifications under Sections 4 and 6 of the Act on the ground that they had not filed petition before the High Court promptly. It was observed that they had taken chance in award proceedings and finding that the compensation claimed by them was not given, writ petition was moved before the High Court. It was observed as under:-

"12. From the above facts which cannot be disputed as they were taken from records, it would be clear that respondents Nos. 1 to 3 (writ petitioners before the High Court) took their chance in the Award Proceedings and finding that the compensation as claimed by them was not given have moved the High Court. If really their intention was to challenge the acquisition as such they could have done immediately at least after the publication of declaration under section 6 or immediately after they received notices under section 9 of the Land Acquisition Act. This shows that the only object of the writ petitioners was to get the maximum price for the land acquired. No doubt they are entitled to the compensation as provided under the Land Acquisition Act. For that there is a separate procedure under the Act itself. As a matter of fact out of 19 individuals who are before us, represented by respondents Nos. 1 to 3, it is common ground 17 have already sought reference under section 18 of the Act claiming more compensation.

17. In case of *State of T.N. & Ors. v. L. Krishnan & Ors.*, reported in (1996) 1 SCC, page No. 250, once again belated attempt on the legality of the acquisition failed when the Supreme Court allowed the State appeal making following observations:-

"40. There is yet another and a very strong factor militating against the writ petitioners. Not only did they fail to file any objections in the enquiries held under Section 5-A, they also failed to act soon after the declarations under Section 6 were made. As stated above, the declarations under Section 6 were made in the Year 1978 and the present writ petitions were filed only sometime in the year 1982-83 when the awards were about to be passed. It has been pointed out in *Aflatoon* that laches of this nature are fatal. Having held that the public purpose specified in the notification concerned therein is not vague, Mathew, J. made the following observations:

"Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under section 9 were issued to them...

Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a *sine qua non* for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the laches and delay on the part of the petitioners (See *Tilokchand Motichand and Ors. v. H.B. Munshi and another* (1969 (2) S.C.R. 824); and *Rabindranath Bose and Others v. Union of India & Ors.* (1970 (2) S.C.R. 697).

From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to Cooperative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not

before the Court."

41. The above observations speak for themselves and are fatal to the writ petitioners."

18. In case of *Ramjas Foundation & Ors. v. Union of India & Ors.*, reported in 1993 Supp. (2) SCC page No. 20, in the context of challenge to the acquisition where notification under Section 4 of the Act was issued in the year 1959 and notification under Section 6 shortly thereafter, the Supreme Court held that the High Court rightly rejected the petitioner challenging such notifications, which was filed in the year 1973 as being grossly belated.

19. In case of *Mutha Associates & Ors. v. State of Maharashtra & Ors.*, reported in (2013) 14 SCC page No. 304, once again, in the context of belated challenge to the acquisition proceedings, relying on the decision of the Supreme Court in case of *Aflatoon & Ors. v. Lt. Governor of Delhi & Ors.*, reported in (1975) 4 SCC, page No. 285, the Court observed as under:-

"20. The legal position, as to the approach which a writ Court must adopt while examining the validity of acquisition proceedings, is settled by a long line of decisions rendered by this Court from time to time. It is not necessary to burden this judgment by referring to all those decisions, for the proposition of law is so well settled that it hardly bears repetition. We may simply refer to the Constitution Bench decision of this Court in *Aflatoon and Ors. v. Lt. Governor of Delhi and Ors.* (1975) 4 SCC 285 where this Court was dealing with a case in which the land owners had not approached the Court after the declaration under Section 6 of the Land Acquisition Act was issued by the Collector. It was only after notices under Section 9 of the Act were issued that the owners had come forward to urge that there was no public purpose supporting the proposed acquisition. This Court held that a valid notification under Section 4 is a *sine qua non* for initiation of proceedings for acquisition of property. The owners were not, therefore, justified in sitting on the fence and allowing the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and declaration under Section 6 were valid and then to attack the notification on grounds that were available to them at the time when the notification was published. The following passage is instructive in this regard....

21. The position is no different in the instant case. The appellant owners or Mutha Associates Builders did not file any objections or move their little finger till the making of the award by the Collector. Instead of filing of the objections, opposing the proposed acquisition before the Collector and seeking redress at the appropriate stage they remained content with making representations to the minister which was not a remedy recognised by the statute. It was only after the Collector had made his award and after notice for taking over possession was issued by the appellants that they rushed to the civil court with a suit in which too they did not assail the validity of the declaration under Section 26(2) of the MRTTP Act read with Section 6 of the Land Acquisition Act. The remedy by way of

a suit was clearly misconceived as indeed this Court declared it to be so in *State of Bihar v. Dhirendra Kumar and Ors.* (1995) 4 SCC 229. The appellants could and ought to have challenged the acquisition proceedings without any loss of time. Having failed to do so, they were not entitled to claim any relief in the extraordinary jurisdiction exercised by the High Court under Article 226 of the Constitution.

22. The view taken by the Constitution Bench in *Aflatoon case* (supra) has been reiterated by another Constitution Bench decision in *Indrapuri Griha Nirman Sahakari Samiti Ltd. v. The State of Rajasthan and Ors.* (1973) 4 SCC 296. To the same effect are the decisions of this Court in *Municipal Corporation of Greater Bombay v. I.D.I. Co. Pvt. Ltd. and Ors.* (1996) 11 SCC 501, *Ramjas Foundation and Ors. v. Union of India and Ors.* 1993 Supp(2) SCC 20 and *Larsen & Toubro Ltd. v. State of Gujarat & Ors.* (1998) 4 SCC 387. The common thread that runs through all these decisions is that in order to succeed in a challenge to the acquisition proceedings the interested person must remain vigilant and watchful. If instead of doing so, the interested person allows grass to grow under his feet he cannot invoke the powers of judicial review exercisable under Article 226 of the Constitution. The failure of the interested persons to seek redress at the appropriate stage and without undue delay would in such cases give rise to an inference that they have waived of their objections to the acquisitions. The bottom line is that the High Court can legitimately decline to invoke their powers of judicial review to interfere with the acquisition proceedings under Article 226 of the Constitution if the challenge to such proceedings is belated and the explanation offered a mere moon shine as is the position in the case at hand. The High Court has in the fact situation of this case rightly exercised its discretion in refusing to interfere with the acquisition proceedings."

20. It is not necessary to refer to long line of judgments relied upon by Counsel for respondent No. 3 company in this respect. Viewed from such legal position, we have no hesitation in coming to conclusion that the petitioners' challenge to the acquisition is rather belated. It is not even the case of the petitioners that necessary declarations and publications were not made at the relevant time. It would, thus, appear from the record that after publication of notification under Section 4 of the Act way back in the year 2006 and under Section 6 in the year 2008, the present petition is filed questioning the validity of such acquisition in the month of August 2015. Considering that the petitioners are agriculturists and perhaps not possessing necessary legal acumen to activate legal machinery immediately, the question of delay and laches could be viewed more liberally. Nevertheless, long period of more than 6 or 8 years cannot be ignored. Significantly, the revenue entries since the year 2009 showed name of the company and the names of the petitioners were deleted. At any rate, this should have alerted the petitioners into taking legal action. Even, therefore, not entering into the question of objections raised by the Power of Attorney of the petitioners before the revenue authorities, the petitioners cannot claim ignorance about the mutation of entries by which their names were deleted from the revenue records

and which taken place way back in the year 2009.

21. Significantly, out of large area of land acquired, covering number of land holders, only present two petitioners have challenged the acquisition proceedings. After publication of award by the Special Land Acquisition Officer, notices were issued to the petitioners from time to time.

22. Additionally, with respect to the petitioner in case of SCA No. 14893 of 2015, he had admittedly purchased the land in question after issuance of notification under Section 4 of the Act. As held and observe in case of U.P. Jal Nigam, Lucknow through its Chairman & Anr. v. Kalra Properties (P) Ltd., Lucknow & Ors., reported in (1996) 3 SCC page No. 124, such subsequent purchaser would not acquire any title against the State and cannot challenge the validity of acquisition.

23. Under the circumstances, both petitions are dismissed.