

(1968) 08 GUJ CK 0009
In the Gujarat High Court

Baldevbhai Nathabhai and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 02-08-1968

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 4, 4, 6, 6

Citation : (1970) 11 GLR 297

Hon'ble Judges : P.N. Bhagwati, C.J;N.K. Vakil, J

Bench : Division Bench

Judgement

P.N. Bhagwati, C.J.—The petitioners are owners of lands bearing survey Nos. 520, 521 and 522/1 situate in village Naroda, Taluka City, Ahmedabad District. By a notification dated 7th December 1961 issued u/s 4 of the Land Acquisition Act, 1894, the State Government notified that different lands admeasuring about 9000 acres were likely to be needed for a public purpose, namely, establishing an industrial town for heavy and medium industries. The petitioners' lands were amongst those covered by the said notification and the petitioners therefore filed a petition, being Special Civil Application No. 545 of 1962, challenging the validity of the said notification on the ground that the purpose for which the acquisition was sought to be made was not a public purpose. The petition was, however, dismissed by this Court by a judgment given on 21st February 1963 and the State Government thereafter proceeded to issue a notification dated 6th March 1963 u/s 6 of the Act declaring that out of the lands notified in Section 4 notification, certain lands described in the Schedule were needed for the public purpose, namely, establishing an industrial town for heavy and medium industries. The petitioners' lands were not included in the Schedule to this notification and the petition is therefore not directly concerned with the validity of this notification. Suffice it to state that pursuant to this notification, possession of the lands comprised in the Schedule to this notification was taken by the State Government on 16th April 1963. The State Government thereafter issued another notification dated 4th September 1963 u/s 6 of the Act declaring that certain further lands out of the lands notified u/s 4 notification including the

petitioners" lands were needed for the public purpose, namely, establishing an industrial town for heavy and medium industries. The State Government also gave a direction u/s 17 Sub-section (1) that as the acquisition of the said lands was urgently necessary, the Collector should on the expiration of fifteen days from the publication of the notice u/s 9 Sub-section (1) take possession of all arable lands specified in the Schedule to the said notification. The notice u/s 9 Sub-section (1) was thereafter published and an individual notice was also served on the petitioners calling upon the petitioners to hand over possession of their lands on 8th October 1963. The petitioners thereupon filed the present petition challenging the validity of the second Section 6 notification which affected them and the petition was admitted on 5th October 1963. No order as to interim relief was however passed with the result that possession of the petitioners' lands was taken over by the State Government on 19th November 1963. Certain amendments were thereafter made in the petition with leave of the Court and the real controversy between the parties before us turns on the points raised in the amendments to the petition.

2. There were three grounds on which the petitioners challenged the validity of the impugned notification u/s 6 and they were:

A. Though the acquisition under the impugned Section 6 notification was an acquisition for a public purpose, no part of the cost of acquisition was to come out of public revenues and there was therefore noncompliance with the proviso to Section 6 Sub-section (1) and the impugned Section 6 notification issued by the State Government without complying with the proviso to Section 6 Sub-section (1) was bad.

B. The impugned Section 6 notification was issued by the State Government for acquisition of lands for a public purpose to be carried out by the Gujarat Industrial Development Corporation (hereinafter referred to as the Corporation) constituted under the Gujarat Industrial Development Corporation Act, 1962 (hereinafter referred to as the Corporations Act) and the need of the lands for the public purpose which was considered by the State Government before issuing the impugned Section 6 notification was the need from the point of view that the Corporation was going to carry out the public purpose but the Corporation had no legal existence since the Corporations Act was outside the Legislative competence of the State Legislature and the satisfaction of the State Government that the lands were needed for the public purpose to be carried out by a non-existent body was, therefore, colourable and could not form the basis of the impugned notification u/s 6.

C. When the first Section 6 notification was issued on 6th March 1963, the purpose of Section 4 notification was exhausted and it could not thereafter be used to support the impugned notification which was a second notification u/s 6 and, since the impugned notification u/s 6 was not supported by any notification u/s 4, it was null and void.

We shall deal with these grounds in the order in which they were pressed before us.

3. Re: Ground A. In order to arrive at a proper determination of this contention, it is necessary to understand the true import of the requirement of the proviso to Section 6(1). The proviso in so far as is material says that no declaration for a public purpose u/s 6 shall be made "unless the compensation to be awarded for the property is to be paid wholly or partly out of public revenues". On a plain grammatical construction of its language, this injunction involves two requirements. One is that prior to the issue of the notification u/s 6, the State Government must make up its mind from what fund compensation is to be paid: it must reach a decision that the compensation is to be paid wholly out of public revenues. And the other is that this decision must be implemented: compensation must in fact be paid wholly or partly out of public revenues. Since at the stage of issue of Section 6 notification payment of compensation is yet to be made, the words used in the proviso are "to be paid" but when the proviso says to the State Government: "You shall not make a declaration for a public purpose unless compensation is going to be paid wholly or partly out of public revenues", it means that compensation must in fact come wholly or partly out of public revenues. The object of the enactment clearly is that where acquisition is for a public purpose, the State Government must back-up the acquisition by contributing from public revenues. It is in recognition of the fact that no part of the public revenues can be spent except for a public purpose that this requirement is prescribed and even a rupee contribution is held sufficient compliance with this requirement. This object would be defeated if it were open to the State Government to change its mind after issue of Section 6 notification and contribute nothing out of public revenues. It would make a mockery of the obligation imposed by the proviso and render it wholly meaningless. There can be no charm in insisting upon a mere decision at the stage of issue of Section 6 notification which may not be subsequently implemented. What is necessary to constitute compliance with the proviso is that before Section 6 notification is issued, there must be a decision of the State Government that compensation is to be paid wholly or partly out of public revenues and that decision must continue to operate throughout right upto the stage of implementation and in accordance with that decision compensation must in fact be borne wholly or in part by public revenues. Let us see whether this requirement of the proviso is satisfied in the present case.

4. Now the first question which arises for consideration is whether at the date of issue of the impugned Section 6 notification, there was a decision of the State Government that compensation is to be paid wholly or partly out of public revenues. The impugned notification u/s 6 was issued on 4th September 1963 and it recites the satisfaction of the State Government that the petitioners' lands are needed to be acquired "at the public expense" for the public purpose specified in column 4 of the Schedule. As pointed out by the Supreme Court in *Somawanti v. The State of Punjab* AIR 1963 S.C. 1167, the declaration that the

petitioners" lands are needed to be acquired "at the public expense" would prima facie indicate that the State Government has decided to contribute out of public revenues and it would be for the petitioners to establish the contrary by showing that the State Government has in fact not decided to contribute any fund out of public revenues. Mr. C.T. Daru on behalf of the petitioners tried to discharge this burden by relying on a statement made in the affidavit filed by one Malek on behalf of the Government in Special Civil Application No. 545 of 1962. This special civil application was filed by the petitioner challenging the validity of Section 4 notification at a point of time when no Section 6 notification was yet issued and in the affidavit in reply filed by Malek on behalf of the State Government it was stated: "It is true that the Government intends to entrust the development of the industrial township to the said Corporation but the manner in which such development will be entrusted to the said Corporation has not been decided upon". On the basis of this statement it was argued by Mr. C.T. Daru that prior to the issue of the impugned Section 6 notification, the State Government had decided to entrust the petitioners' lands to the Corporation for development but the manner in which such entrustment shall be made was not decided and it was, therefore, quite possible that as a condition of entrustment the State Government might decide that the entire cost of acquisition should be paid by the Corporation instead of its coming out of public revenues and consequently it could not be posited definitely at the date of issue of the impugned Section 6 notification that the State Government had decided that compensation should come wholly or partly out of public revenues. Now it is no doubt true that if at the date of issue of Section 6 notification, the position in regard to the source from which compensation is to be paid is nebulous and uncertain and it is not decided that compensation shall be paid wholly or partly out of public revenues, Section 6 notification cannot be issued. Vide paragraph 81 of the judgment of the Bombay High Court in *Sadrudin Suleman Jhaveri Vs. J.H. Patwardhan and Others*, . But we are not satisfied that such was the position in the present case. It must be noted that when acquisition was initiated in the present case by the issue of Section 4 notification on 7th December 1961, even the Corporations Act was not enacted, much less was the Corporation constituted. The Corporations Act came into force on 9th August 1962 and it was, therefore, not until that date that the Corporation was constituted. There could accordingly be no question at the stage of issue of Section 4 notification of compensation coming out of any fund other than public revenues. Thereafter the Corporation was constituted and it appears from the statement in the affidavit of Malek that the State Government did contemplate entrustment of the petitioners' lands to the Corporation for establishing industrial township but there is nothing to show that the State Government at any time entertained the idea that the full cost of acquisition may be paid by the Corporation instead of its coming out of public revenues. On the contrary, the words "at the public expense" in the recital in the impugned Section 6 notification clearly indicate that the decision of the State Government was that compensation shall come wholly or in part out of public revenues. There is no material produced by the petitioners to counteract or offset

the effect of these words. There is nothing to show that these words were wrongly used and that in fact the State Government had not made up its mind that compensation shall come out wholly or partly out of public revenues but had left the question to be decided according as conditions for entrustment of the lands to the Corporation were determined. It must therefore be held that prior to the issue of the impugned Section 6 notification, there was a decision of the State Government that compensation is to be paid wholly or partly out of public revenues and the first limb of the requirement of the proviso was satisfied.

5. Turning to the second limb of the requirement, the question arises whether this decision of the State Government continued to operate right up to the date of payment or it was changed at any subsequent point of time, so that compensation when paid would not be wholly or even partly out of public revenues. Mr. C.T. Dam on behalf of the petitioners urged that whatever might have been the position when the impugned Section 6 notification was issued, there was a clear and distinct change brought about by the Government Resolution dated 19th August 1964 and after this Resolution it was not possible to say that compensation is to come wholly or partly out of public revenues. The genesis of this Resolution is set out in detail in the judgment delivered by my brother Vakil J. in Special Civil Application No. 903 of 1964 Ashokkumar v. State 10 G.L.R. 503 and Ors. allied petitions and it is, therefore, not necessary for us to rehearse the same over again in this judgment. We will, however, briefly refer to some relevant facts and documents so that the discussion of this point becomes intelligible and makes coherent reading.

(A) Prior to February 1964, the Corporation had applied to the State Government for acquisition of lands in various industrial areas including Vallabh Vidyanagar industrial area on its behalf u/s 30 of the Corporations Act and pursuant to those applications, the State Government had issued notifications u/s 4 in some cases, particularly in regard to lands in Vallabh Vidyanagar industrial area. The Corporation however apprehended that the process of acquisition u/s 30 of the Corporations Act which had been adopted was time consuming and was likely to raise various other difficulties and the Chief Executive Officer of the Corporation, therefore, addressed a letter dated 19th February 1964 pointing out these various difficulties to the State Government and requesting the State Government that, in the circumstances, it would be desirable "to get lands acquired for the Government for which payment would be made from Government funds and the lands would ultimately be transferred to the Corporation for development." This policy, suggested the Chief Executive Officer, should be followed "for acquiring lands on behalf of the Corporation" not only in Vallabh Vidyanagar industrial area but "in other areas also".

(B) Following upon this letter, there were discussions between Government Officials and the Chief Executive Officer on different occasions and advice of the Remembrancer of Legal Affairs was also obtained. The suggestion made on behalf of the State Government in the course of the discussions was that the

Government would acquire lands and place them at the disposal of the Corporation. The Chairman of the Corporation was consulted in regard to this suggestion and he agreed that the lands for which proposals for acquisition had already been sent by the Corporation to the State Government and which would be sent thereafter may be acquired by the State Government and placed at the disposal of the Corporation. So far as payment of costs of acquisition was concerned, it was implicitly understood that the Corporation would bear the costs of acquisition just as it was going to do when the acquisition was u/s 30 of the Corporations Act and since the Corporation had difficulty in regard to "payment of acquisition price for sometime" the Chief Executive Officer in his letter dated 6th May 1964, while requesting the State Government to go ahead on the aforesaid lines, pointed out to the State Government that: "As regards finances it is envisaged that there would be some difficulty regarding payment of acquisition price for sometime" and that the "question of providing funds under Capital Outlay" would also have to be considered.

(C) The State Government thereafter passed a Resolution dated 30th June 1964 accepting in principle "the proposal of the Corporation to acquire the lands required for the implementation of the Scheme for Industrial Areas and satellite Townships by Government from public revenues and then to place the lands so acquired at the disposal of the Corporation u/s 32 read with Section 13(ii)(c) of the Corporations Act for the purpose of development and subsequently leasing out to the industrial undertakings". A tentative programme of acquisition of lands prepared by the Corporation was appended to this Resolution and the State Government accorded general approval to the said tentative programme. The State Government however desired that detailed and definite proposals for acquisition of lands for each area should be submitted by the Corporation in consultation with the State Government.

(D) The decision to acquire lands at the instance of the Corporation and to place them at the disposal of the Corporation u/s 32 of the Corporations Act was, as stated above, embodied in the Resolution dated 30th June 1969 but the conditions on which the lands would be placed at the disposal of the Corporation were not then settled. They were settled subsequently and incorporated in the Resolution dated 19th August 1964 to which we have already made a reference. The material part of this Resolution was in the following terms:

Government is pleased to direct that the lands acquired by Government from the public revenues shall be placed at the disposal of the Gujarat Industrial Development Corporation, Ahmedabad u/s 32 read with Section 13(ii)(c) on the following terms and conditions:

(i) The market value of the lands that may be paid as compensation for the lands acquired plus the actual cost of establishment charges incurred by Government for acquisition of lands including joint measurement charges shall be treated as a loan to the Gujarat Industrial Development Corporation, Ahmedabad.

(ii) The loan shall bear interest at the rate of 6% per annum and the loan amount together with interest thereon shall be repaid to Government within 15 years in half yearly instalments.

It was common ground between the parties that the petitioners' lands were placed at the disposal of the Corporation pursuant to this Resolution and this was confirmed in a Resolution dated 16th March 1965 passed by the State Government sanctioning the amount for payment of compensation in which it was stated: "The work of development of industrial areas is being done by the Gujarat State Industrial Development Corporation. The above lands have been placed at the disposal of the said Corporation u/s 32 of the Act, on the terms and conditions mentioned in G.R. Health and Industries Department, No. IND. 1664-G. II., dated 19th August 1964. The argument of the petitioners was that by virtue of their lands being placed at the disposal of the Corporation in accordance with the terms of the Resolution dated 19th August 1964, the arrangement between the State Government and the Corporation was and this arrangement was confirmed in the subsequent Resolution dated 16th March 1965 that the amount "that may be paid as compensation shall be treated as a loan" to the Corporation repayable within fifteen years in half yearly instalments with interest at the rate of six per cent per annum. The net effect of this arrangement according to the petitioners was that the State Government would give a loan out of public revenues to the Corporation, the Corporation would hand over the amount to the Special Land Acquisition Officer and the Special Land Acquisition Officer would pay the same as compensation on behalf of the Corporation. The amount of compensation would therefore come out from the funds of the Corporation and not from public revenues. The petitioners urged that in considering whether the requirement of the proviso is complied with or not, regard must be had to the substance of the transaction and not to the form and if the substance was examined, it was clear that though apparently the amount of compensation was to be paid by the Special Land Acquisition Officer out of moneys drawn from the public revenues, in reality and substance, the payment was to come out of the funds of the Corporation, the amount paid being treated as a loan augmenting the funds of the Corporation. This contention, plausible though it may seem, is in our opinion not well-founded and must be rejected.

6. We entirely agree with the petitioners that in determining whether the requirement of the proviso is complied with or not, we must look to the substance of the transaction and not to the form. What is required by law is real compliance-compliance in reality and substance-and not mere literal or apparent compliance. The question which we must ask ourselves is: who is really going to bear the cost of acquisition? Is any part of the cost of acquisition really coming out of public revenues? And to answer this question, we must penetrate the garb or wave in which the transaction may be shrouded and analyse the real nature or character of the transaction. We must not allow ourselves to be duped by the apparent form of the transaction but we must scrutinise the transaction closely and see whether in reality and substance any part of the cost of acquisition-even

a rupee-is to come out of public revenues. To illustrate, take for example a case where the acquisition is for a company and the cost of acquisition is initially paid by the State Government out of public revenues under a stipulation made in the agreement u/s 41 that as soon as land is transferred and possession given to the company, the company shall pay up the entire cost of acquisition. Can it be said in such a case with any semblance of justification that the compensation is not coming out of the fund of the company but is coming out of public revenues and the acquisition for the company is therefore bad? The test of literal or formal compliance would clearly break down in such a case. Moreover, adoption of such a test would leave it open to the State Government to so arrange a transaction that it can effectively evade the obligation imposed by the proviso. The State Government when moved by the Corporation for acquisition of land for a purpose Which is a public purpose within the meaning of the Act may, in order apparently to comply with the proviso, stipulate with the Corporation that the cost of acquisition will be initially paid out of public revenues but the Corporation would have to reimburse the same as soon as possession of the land is given to the Corporation. The effect of such a stipulation would be as if the State Government said to the Corporation: "You are asking us to acquire the land. Well, we will do so since the purpose is a public purpose and having acquired the land, we will place it at your disposal. But we do not propose to pay the cost of acquisition. Of course, since the law requires that compensation must come wholly or partly out of public revenues, we will initially pay the cost of acquisition out of public revenues but you will have to make it good to us for you are really going to bear the cost of acquisition". In such a case, there would undoubtedly be literal or formal compliance with the proviso but there would be no real compliance, for in reality and substance the compensation would be borne by the Corporation and not by the public revenues. If such an acquisition were upheld, the proviso would become an empty formula: it would be robbed of all force and efficacy. This was the line of reasoning which prevailed with us in Special Civil Application No. 903 of 1964 and other allied petitions disposed of by us by a judgment delivered on 31st July 1968 (Ashokkumar v. State 10 G.L.R. 503) where, by reason of a prior scheme or arrangement for acquisition between the State Government and the Corporation, we held that the compensation was really to come out of the funds of the Corporation and not out of public revenues. As a matter of fact, those cases were stronger than the illustration given above, for there the scheme or arrangement was that the cost of acquisition shall be paid by the State Government but when paid it shall be treated as a loan to the Corporation so that under the scheme or arrangement, the amount of compensation was really to be paid out of the loan advanced by the State Government which would form part of the funds of the Corporation. The present case, however, stands on an entirely different footing: it belongs to a different class of cases.

7. Here there was no prior scheme or arrangement between the State Government and the Corporation that the cost of acquisition shall be paid by the Corporation. The impugned notification u/s 6 was issued on 4th September 1963

and; as already discussed, the decision then was that the compensation shall come out of public revenues. Since the urgency clause was applied u/s 17 Sub-section (1), the State Government immediately proceeded to take possession of the petitioners' lands without waiting for the award of the Special Land Acquisition Officer and possession of the petitioners' lands was actually taken on 9th November 1963. On possession being taken, the petitioners' lands vested in the State Government and the process of acquisition was complete. All that remained to be done thereafter was to determine the amount of compensation payable for the petitioners' lands and to pay the same to the persons interested. The State Government had then two courses open to it either it could establish the industrial township for itself or it could get it done through the agency of another body. The State Government chose the latter course and pursuant to the Resolutions dated 30th June 1964 and 19th August 1964 placed the lands at the disposal of the Corporation for establishing an industrial township for heavy and medium industries. This was clearly a subsequent arrangement made after the acquisition was complete and it was under this arrangement as a condition of placing the lands at the disposal of the Corporation that the Corporation was to pay the cost of acquisition to the State Government. Unlike Special Civil Application No. 903 of 1964 and other allied petitions, the acquisition here was not an acquisition at the instance of the Corporation. The Corporation was not even in existence at the date when Section 4 notification was issued by the State Government. The acquisition was also not pursuant to any prior scheme or arrangement between the State Government and the Corporation under which the cost of acquisition would be really paid by the Corporation. It was after the acquisition was complete that the State Government decided to place the lands at the disposal of the Corporation for the purpose of carrying out the public purpose for which the acquisition was made and with a view to recouping the cost of acquisition it insisted as a condition of placing the lands at the disposal of the Corporation that the Corporation shall pay the cost of acquisition. The arrangement that the lands shall be placed at the disposal of the Corporation and the Corporation shall pay the cost of acquisition to the State Government was not a part of the scheme or transaction of acquisition but it was an arrangement made subsequent to the acquisition and the recovery of the cost of acquisition from the Corporation was therefore in the nature of recoupment. It is no doubt true that under the Resolution dated 19th August 1964 the cost of acquisition when paid by the State Government out of public revenues was to be treated as a loan to the Corporation, but this provision was made, for the Corporation was obviously not in a position to pay the cost of acquisition and the State Government had, therefore, to give a long term loan to the Corporation with a view to enabling it to pay the cost of acquisition. The case was clearly one of recoupment of the cost of acquisition by the State Government while disposing of the lands subsequent to acquisition and it stands on the same footing as the case in *Secretary of State v. N. GopalaAiyar* AIR 1930 Madras 798. It is therefore not possible to say that by reason of the Resolution dated 19th August 1964, the compensation was to be borne wholly by the Corporation and no part of it was to

come out of public revenues and the validity of the notification u/s 6 cannot be assailed on the ground that it was issued without complying with the requirement of the proviso to Section 6(1).

8. Re: Ground B. This ground in the form in which it is formulated before us has not been taken in the petition and we cannot therefore allow it to be raised for the first time at the Rearing of the petition. Whether the satisfaction arrived at by the State Government is colourable or not is essentially a mixed question of law and fact and unless the factual basis for raising this question is laid in the petition, we cannot permit this question to be raised in the arguments. We have therefore not allowed Mr. Daru to advance any argument on this point.

9. Re: Ground C. This contention is undoubtedly supported by the decision of the Supreme Court in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, , but it can no longer be upheld in view of the Land Acquisition (Amendment and Validation) Act, 1967. Section 4(1)(a) of that Act provides that notwithstanding any judgment, decree or order of any Court to the contrary, no acquisition of land made or purporting to have been made under the Land Acquisition Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, and no action taken or thing done (including any order made, agreement entered into, or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground that one or more declarations have been made u/s 6 of the Land Acquisition Act in respect of different parcels of the land covered by the same notification under Sub-section (1) of Section 4 of the Land Acquisition Act. The acquisition under the impugned Section 6 notification cannot therefore be held to be invalid on the ground that a prior notification u/s 6 was already issued on 6th March 1963 in respect of a different parcel of land covered by the same Section 4 notification. This contention must also therefore be rejected.

These were all the contentions urged in support of the petition and since there is no substance in them, the petition fails and the rule is discharged with costs.