
(1973) 06 BOM CK 0016

In the Bombay High Court

Case No : Spl. Civil Application No. 2509 of 1972

Bhogilal Laherchand

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-06-1973

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(f), 19(5), 31, 31(2)

Land Acquisition Act, 1894 — Section 4, 5A, 6

Maharashtra Regional and Town Planning Act, 1966 — Section 113, 126, 15, 16, 164

Citation : (1975) MhLj 533

Hon'ble Judges : G.N. Vaidya, J;C.L. Dudhia, J

Bench : Division Bench

Advocate : P.R. Mridul with A.H. Desai and N.D. Vyas in Special Civil application No. 2509 of 1972 and in Special Civil application No. 576 of 1973, for the Appellant; T.R. Andhyarujina with R.P. Bhat instructed by Little and Co. in Special Civil Application No. 2509 of 1972 and in Special Civil Application No. 576 of 1973, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Vaidya, J.—[His Lordship, after quoting extensively from the grounds in reply made in the affidavit on behalf of the State, proceeded.] It is not necessary to deal at length with the facts leading to this petition as all the grounds except the last one raise merely questions relating to the interpretation of law and the relevant facts can be conveniently discussed while dealing with these grounds. There is no merit whatsoever in the first ground in support of the petition. Mr. Mridul, the learned counsel appearing for the petitioner, fairly conceded that there was no express provision in the Maharashtra Regional and Town Planning Act, 1966, which lays down that on the coming into force of that Act, the pending land acquisition proceedings would automatically come to an end. Relying on the preamble and the scheme of the Act, however, he contended that the Maharashtra Regional and Town Planning Act, 1966, is a State Act while the Land Acquisition Act, 1894, was a general Act and once the special machinery was set

up u/s 113, all pending proceedings like the impugned proceedings that had to be taken by the State for acquiring the developing lands must be governed only by the Maharashtra Regional and Town Planning Act, 1966. He referred to the decision of the Privy Council in AIR 1931 149 (Privy Council) and contended that where the Legislature created special rights and obligations and also created a special machinery for enforcing the special rights and obligations under a special enactment, such special procedure must be followed notwithstanding anything in the general enactment on the basis of the principle of *generalia specialibus non derogant*.

2. There can be no dispute about the principles stated by Mr. Mridul but the principles will be applicable only when there is some repugnancy or inconsistency between the special Act and the general Act. After having carefully gone through the provisions of both the Acts, we do not find any provisions in the two Acts which are inconsistent or repugnant to each other. Mr. Mridul has also not been able to point out any provision of the Maharashtra Regional and Town Planning Act which is inconsistent with the Land Acquisition Act. On the contrary, the provisions of section 126 clearly show that Maharashtra Legislature in enacting Maharashtra Regional and Town Planning Act never intended to override any provisions of the Land Acquisition Act, 1894. The officers or the authorities appointed u/s 113 had to apply u/s 126 for acquisition under the Land Acquisition Act, 1894. If the Legislature intended that the land acquisition proceedings had to be automatically dropped, it would have indicated expressly either in section 164 or by some other provisions that such would be the result.. In the absence of any such express repugnant or inconsistent provisions it must be held that the proceedings could be taken by the State Government under the Land Acquisition Act and there was nothing in the Maharashtra Regional and Town Planning Act which barred those proceedings or which put an end to those proceedings.

3. In this connection reference may be made to Shri Ramtanu Co-operative Housing Society Ltd. and Another Vs. State of Maharashtra and Others, where the Supreme Court had to consider the argument that there was procedural discrimination between the Maharashtra Industrial Development Act and the Land Acquisition Act and the Supreme Court laid down that the two Acts were dissimilar in circumstances and situations. Mr. Mridul, relying on the decision of the Privy Council in Nazir Ahmad Vs. Emperor (No. 2), contended that as the Maharashtra Regional and Town Planning Act created special officers and special procedures for preparing draft plan and putting them into practice after a public hearing, it must be presumed that the Legislature in enacting that Act intended that the land acquisition proceedings should come to an end in area where the Act was put into operation. He relied for this purpose on section 126 of the Maharashtra Regional and Town Planning Act, which, however, gives discretion to the Planning Authority or Development Authority to apply to the State Government for acquiring the land under the Land Acquisition Act, 1894. It has not made it compulsory for the authorities. It clearly shows that where the land

acquisition proceedings were already pending, it was not necessary for the authorities once again to apply for acquisition. In the absence of express provisions terminating the pending land acquisition proceedings, it must be held that there is nothing in the Maharashtra Regional and Town Planning Act to support the first contention of the petitioner.

4. So far as the second contention of the petitioner, Mr. Mridul relied on the admission made by the respondents in the affidavit in reply and contended that the respondents themselves admitted that the detailed plans were not ready with regard to the development of the area as "New Bombay" and in the absence of those detailed plans, it was impossible for the petitioner to show cause in a reasonable way before the Land Acquisition Officer. He submitted that the purposes mentioned in the notification were so vague that it was not possible for the petitioner to show that the area or any part thereof that was sought to be acquired was more than necessary or that the lands were not suitable for acquisition or for any of the purposes of acquisition. In support of his argument, he relied on the decision of the Supreme Court in *Munshi Singh and Others Vs. Union of India (UOI)*, . He submitted that this case strongly supports his contention that in the absence of a plan for development, it was impossible for the petitioner to satisfy the Land Acquisition Authority reasonably that the lands were not acquired for public purposes or that the lands were not the best adapted for the purpose intended or that its area was greater than was actually required for the purpose or that it was not desirable or expedient to acquire them. There is no merit in this contention.

5. Mr. Andhayrujina, the learned counsel for the respondents, submitted that there is a mistake in mentioning the date of the draft plans in para. 6 (g) of the affidavit in reply where it is stated that the Regional Planning Board submitted its draft plan on December 19, 1970. The correct date was prior to January 27, 1970. In support of this contention he produced before us a notice published in the Maharashtra Government Gazette dated January 29, 1970 which runs as follows :

"Notice is hereby given that the above draft Regional Plan has been prepared and now published in the manner laid down in section 16.

A copy of the report of the survey, the existing land use map and the Draft Regional Plan are available for inspection to the Public at the Head Office of the Board at "Insa Quarters" Azad Maidan, Opposite Bombay Municipal Corporation, Mahapalika Marg, Bombay-1, between office hours.

Copies of the Draft Regional Plan are also available for inspection to the public at the Offices of Collectors of (1) Thana and (2) Kolaba, Tahsildars of (3) Bassein, (4) Bhiwandi, (5) Kalyan, (6) Panvel, (7) Karjat, (8) Khalapur, (9) Uran, (10) Ulhasnagar, (11) Bombay, Municipal Corporation, (12) Municipal Council Thana, (13) Khopoli Group Gram Panchayat, (14) Mira Gram Panchayat, (15) Bhayandar Gram Panchayat between office hours on working days.

Any objection or suggestion with respect to the draft Regional Plan may be sent to the Board before the 27th day of May 1970, and any such objection, or suggestion should state the grounds on which it is made, and whether the applicant desires to be heard by the Regional Planning Committee before it submits its report to the Board."

Moreover, it is clear from *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, that the Supreme Court has come to the conclusion that the acquisition is for public purpose relying on the recommendations made by the Study Group. It would be too naive on the part of the landlord like the petitioner owning lands in the area of the proposed twin city or "New Bombay" to pretend that he was not aware of the proposed development of the area into a planned and developed city. It is clear from the notification referred to above that copies of the Draft Regional Plan were available for inspection at various public offices. If the petitioner does not care to look into them and wants further particulars to make submissions, all that can be said is that he just wants somehow to challenge the notification without seriously taking into consideration facts staring in the face of everybody who knows something about the city of Bombay.

6. It is well settled that natural justice is not an embodied doctrine. Whether the principles of natural justice are complied with in a particular case depends on all the facts of that case. It must depend to a great extent on the facts and circumstances regarding the nature of the case, about the constitution of the tribunal or authority which has to decide and the rules under which it functions. There can be no doubt, having regard to the facts and circumstances relating to the congestion in Bombay and the proposed scheme for development of the ""New Bombay" City, that the inquiry held by the Land Acquisition Officer was quite fair, reasonable and just and the objections which are being raised by the petitioner are most unreasonable and unnatural. The second ground in support of the petition must, therefore, be rejected.

7. Mr. Mridul, however, referred to the decision of the Supreme Court in the well-known privy purse case, *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another*, , wherein it is observed (p. 578):

" It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

He vigorously urged relying on the observation that in the *Arnold Rodricks*" case no question u/s 5A of the Land Acquisition Act arose and the observations made by the majority of the Bench in that case occurring at p. 1799, that there is no law that requires a scheme to be prepared before issuing a notification u/s 4 or u/s 6 of the Act cannot bind this Court on the basis of obiter dictum. According to Mr. Mridul these are merely casual observations made with reference to the

contention made by the learned counsel in that case that the Government had not, before issuing notification, prepared any scheme. The observations are as follows:-

" This is true that the Government has not up-till now prepared any scheme for the utilisation of the developed sites. But the notification itself shows that the sites would be used as residential and industrial sites. There is no law that requires a scheme to be prepared before issuing a notification u/s 4 or section 6 of the Act."

Mr. Mridul distinguished these observations on the ground that the "scheme" is different from a "plan". In our judgment, this distinction is without any difference. Mr. Mridul also contended that the observations made by the Supreme Court in *Munshi Singh v. Union of India* by reference to *Arnold Rodrick's Case* that in the notification in *Arnold Rodrick's case* public purpose was stated with sufficient particularity was a casual observation and as such could not be relied upon by the respondents.

8. This contention must be rejected. A serious argument was made before the Supreme Court in *Munshi Singh v. Union of India* relying on the decision of the *Arnold Rodricks v. State of Maharashtra* and it has with respect dealt with precisely and pointedly in para. 9 of the judgment as follows (p. 1155):

"Learned counsel for the State next contended that the proposed acquisition was in pursuance of the activity under the Regulation Act. Moreover planned development is one of the public purposes as defined in section 3 (f) as amended by the U. P. Amending Act 1954. Mere mention of such a public purpose was sufficient to satisfy the requirements of law. Reliance has been placed on a decision of this Court in *Arnold Rodricks v. State of Maharashtra*, in which in the notification u/s 4 it was stated that the land was needed "for a public purpose, viz. for development and utilisation of the said lands as an industrial and residential area." It was said that the purpose specified was a public purpose within the acquisition Act. The points which arose for determination in that case were entirely different. At any rate, the public purpose was stated with sufficient particularity, namely, for development and utilisation of the land as an industrial and residential area. Once it was stated that the land will be utilised for the aforesaid purpose the persons interested could certainly object effectively. But the mere words, as are to be found in the notifications here "planned development of the area" were wholly insufficient and conveyed no idea as to the specific purpose for which the lands were to be utilised. It must be remembered that the Acquisition Act is silent as to the nature of objections that could be raised. In some of the States executive instructions have been issued or rules have been framed which indicate the classes of objections which are contemplated."

We do not think that Mr. Mridul is right in his submission that the remarks of the Supreme Court are casual remarks or remarks which are not binding on this

Court.

9. Apart from this, the real question in the context of which the particulars of the notification have to be considered" by us, is, as to whether the principles of natural justice and the provisions of section 5A of the Land Acquisition Act which entitles a land owner to reasonable opportunity are fulfilled in this case. As stated above, they are amply fulfilled. The rules of natural justice cannot remain the same doctrinaire, pedantic, rigid and sacrosanct rituals applicable to all conditions. Whatever the standard adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case (See *Hira Nath v. Rajendra Medical College, Ranchi* (1900) 18 CLJ 244). Having regard to the fact that the lands in the present case along with many other lands are required by the State for developing the highly congested city of Bombay and also having regard to the fact that the plans were made available to any one who wanted to know the plans as referred to above, it does not lie in the mouth of the petitioner to contend that he had no fair hearing or reasonable opportunity as required by section 5A of the Land Acquisition Act, 1894.

10. Turning to the third contention on behalf of the petitioner, we find nothing in the Land Acquisition Act which would vitiate acquisition for public purpose when the State wants the lands for one purpose and uses it for another public purpose. Mr. Mridul strongly relied on the decision of Calcutta High Court in *Guru Das v. The Secretary of State for India in Council*⁸ where it seems that the Calcutta High Court thought that the diversion of the purpose was prima facie objectionable in the facts and circumstances relating to that case. In the matter of local authorities, however, it has been laid down by the Privy Council in *Luchmeswar Singh v. Chairman, Dharbhanga Municipality* (1890) 1 LR 18 Cal. 99, PC that if the statutory power conferred on local authority included diverting the purpose, the diversion was permissible. We are besides, bound by the Division Bench decision of this Court in *Parshottam Jethalal Soni Vs. The Secretary of State for India*, where Broomfield J, has observed at p. 1264:

" The Act nowhere postulates identity in the scheme by means of which the public object is to be carried out. All that is legally necessary is that the lands which it is intended to acquire for a public purpose should be notified first u/s 4 and then u/s 6 of the Land Acquisition Act."

This view of this Court has been accepted by the Division Bench of the Madras High Court in *S. Sivaprakasa Mudaliar Vs. The State of Madras and Another*, . We do not think that a diversion by the State of the lands acquired from one public purpose to another public purpose is prohibited by any provisions of the Land Acquisition Act. In any event, in view of the aforesaid Privy Council decision and the decision of this Court, it must be held that the State has powers to use the lands for public, such as development of the city of Bombay in any way it likes.

11. Further, Mr. Andhyarujina is quite right in his submission that the diversion relied upon by Mr. Mridul is by the notification dated March 20, 1971 which is a

notification u/s 113 of the Maharashtra Regional and Town Planning Act, 1966, declaring the areas comprised in the villages specified in the schedule to the said notification to be designated as a site for new town in the draft regional plan for Bombay Metropolitan Region submitted to the State Government u/s 15 of the Maharashtra Regional and Town Planning Act, 1966. That notification comprises the area of 24 villages in Thana taluka of Thana district including 2 villages in which the lands of the petitioner are situated, 34 villages of Panvel taluka in Kolaba district as well as 28 villages in Uran taluka in Kolaba district with which we are not concerned. The development of a large city like "New Bombay", is a long drawn out procedure. It will take many decades to complete. The plans may change from time to time but the substance and the contents of the plans are the same and they are for public purpose. The grievance of the petitioner that as a result of this notification the State has diverted the purpose of acquisition is, therefore, not justified.

12. The fourth contention of the petitioner is that the acquisition of the lands by the impugned notification is in violation of Article 19 (1) (f) of the Constitution and hence the notification being pre-emergency notification, must be struck down. Mr. Mridul firstly submitted that the petitioner may himself make use of the lands for industrial and residential purposes and there was no reason why he could not be allowed to so use the lands. Secondly, in the absence of detailed plan it was not possible to say whether the restraint on property by way of acquisition was excessive or not. Thirdly he argued that on the face of the proposed acquisition it was clear that the restraints were unnecessarily and excessively made and not reasonably or in the public interest. Although there were certain other allegations made in the petition about the violation of the rights under Article 19 (1) (f) of the Constitution, they were not referred to in the course of the hearing. An award has been passed in favour of the petitioner and the petitioner has filed an appeal in the District Court at Thana with respect to the acquisition and compensation.

13. Mr. Andhyarujina, the learned counsel appearing for the respondents, submitted that having regard to the recent judgment in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , the petitioner cannot invoke Article 19 (1) (f) of the Constitution when the land is acquired for public purpose under Article 31 of the Constitution. He also referred to allegations made by the petitioner regarding unnecessary and excessive restraint on the petitioner's right to property and contended that the only way of making it possible for the teeming and growing population of the city of Bombay to live decently was to extent the limits of the city on the main-land and this requires thousands of acres of land. He, therefore, submitted that the acquisition was reasonable and in the interest of the general public. Mr. Andhyarujina also relied on the decision of Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others, where it is laid down that:

"Where any land is properly notified and acquired for a public purpose, subject to

payment of compensation, under the Act, the plea of infringement of fundamental rights under Articles 19 and 31 (2) is wholly unsubstantial."

We have no hesitation in accepting the contention of Mr. Andhyarujina that the acquisition in the facts and circumstances of the case is eminently reasonable, in the interest of the general public and hence fully protected by Article 19 (5) of the Constitution of India.

14. The right to acquire, hold and dispose of the property under Article 19 (1) (f) must be always exercised subject to clause (5) of Article 19. It is frivolous on the part of the petitioner to contend that the extension of the city of Bombay which is necessitated by the growing population and industrial and commercial complex of the city which is some times described as *urbs prima indis* can be stopped to protect the so called fundamental rights in respect of properties belonging to the petitioner. All civilised countries in the twentieth century have laid down limits on the liberties of the citizens. Those limits are the liberties of other citizens or public good or public interest. A few landlords cannot make use of their speculative investments made some decades ago and exploit and oppress the rest of the citizens. The liberty of such exploitation must be restrained by the liberties of other citizens to have social and economic justice. There is no civilised country in the world which has not tried to regulate and control rents which are some times described as unearned incomes and also to control the planned development of cities in the interest of the general public and ecology. The facts leading to the acquisition have been set out in detail in the affidavit filed by the Commissioner in this case and quoted above in extenso. Having regard to those facts, it is clear that the so-called rights of the petitioner cannot be a stumbling block to the development of the city. In these circumstances, it cannot be said that the petitioner's fundamental rights under Article 19 (1) (f) are violated by the land acquisition.

15. The fifth and the last contention is based on the allegations in the petition about the mala fides of the officers concerned with the issuing of the impugned notifications. In para. 14 (f) it is alleged that because of the remarks of the High Court which have been already quoted above and because of the animus of the officers concerned and also because of political clamourings of the tenants of the petitioner, the land acquisition notifications were issued. These allegations are stoutly denied by the Commissioner in his reply. It should be noted that the lands acquired under the notification challenged in Special Civil Application No. 2509/72 are said to measure 72 acres and 35 gunthas and the lands in Special Civil Application No. 576/73 are said to measure 195 acres, 15 gunthas. These are insignificant portions of the entire scheme of acquisition the area of which is about 1500 sq. miles which is the proposed periphery of the new town. It is also stated by the Commissioner that the delay in the apportionment of the compensation between the landlord and the tenants was due to the disputes between the tenants and the landlord. Moreover, no personal malice is alleged individually against any of the officers. We do not find any substance,

whatsoever, in the allegations made against the officers who are only trying to implement Bombay City Development Plan made to meet the urgently felt necessity of the population of the city of Bombay as officers of the State of Maharashtra, The officers concerned are themselves transferred either during the pendency of the petitions or during the pendency of the notification. In these circumstances, we are inclined to hold that the allegations of mala fides made in the petitions are frivolous. No other ground is urged in support of the petitions.

16. The petitions are, therefore, dismissed. Costs quantified at Rs. 1,000 in Special Application No. 2509/72. No order as to costs in the other petition.