

(2014) 01 GUJ CK 0033

In the Gujarat High Court

Case No : Special Civil Application No. 4855 of 2009

Dahyabhai Vasantji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (2014) 2 GLR 1117

Hon'ble Judges : R.R. Tripathi, J; Mohinder Pal, J

Bench : Division Bench

Advocate : Rashesh S. Sanjanwala, Senior Advocate, Advocate for the Appellant; Rashesh Rindani, A.G.P. for Respondent Nos. 1 and 2, H.S. Munshaw for Respondent No. 3, Rituraj M. Meena for Respondent No. 4 and C.L. Sonil for Respondent Nos. 5 and 6, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.R. Tripathi, J.—Learned Senior Advocate for the petitioners, Mr. Rashesh S. Sanjanwala for the petitioners invited attention of the Court to the fact that respondent Nos. 5 and 6 were earlier represented by learned Advocate Mr. C.L. Soni, who is now elevated to the Bench of this Court, but as the matter is pertaining to legality and validity of acquisition proceedings, and issuance of Notifications under Secs. 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), the fact that reply filed by respondent Nos. 5 and 6 is already on record, the Court did not deem it necessary to adjourn the matter to enable respondent Nos. 5 and 6 to engage an Advocate to represent their case. Dahyabhai Vasantji and Lalitaben Vasantji along with one Farukh Poonawala are before this Court as petitioners.

In Para 4 of the petition it is stated that,-

That the predecessors-in-title of the petitioner Nos. 1 and 2, Vasantji Fakirji Patel, owned land bearing Block No. 181, Survey No. 131/1-2 and 3 of Mouje

Unn, Dist Surat. After his death, the petitioner Nos. 1 and 2 became owners thereof and by virtue of a registered sale-deed executed in favour of the respondent No. 3, the petitioner No. 3 has become the owner thereof.

(Emphasis supplied)

It was inquired from the learned Senior Advocate for the petitioners as to where are the details of the said registered sale-deed by which petitioner Nos. 1 and 2 have sold the land to petitioner No. 3. The learned Senior Advocate for the petitioners candidly admitted that those details are not on record.

1.1. It remains a question to be examined as to what rights respondent No. 3 has derived by that so-called sale-deed which is claimed to be registered sale-deed executed by petitioner Nos. 1 and 2 in favour of petitioner No. 3, in light of the fact that petitioner Nos. 1 and 2 never had any right in the property as their predecessor-in-title has already executed a possession receipt after receiving 85 % of the compensation and also entered into an agreement (Kararnamu) for the land in question.

1.2. The irony is that the main contention of the learned Advocate for the petitioners is that the land of which 85% compensation was accepted by said Vasantji Fakirji Patel, father of Dahyabhai Vasantji and as name suggests, husband of petitioner No. 2-Lalitaben Vasantji (may be, Lalitaben is daughter of Vasantji, again details are not on record) and possession of the land was handed over to G.I.D.C., viz. respondent No. 4 on 12-6-1980 by a consent award and the document showing the payment of 75 % of the compensation is on Page 174; document showing payment of 10% of compensation is on Page 175; possession receipt is on Page 173; and consent agreement, viz. "Kararnamu" is on Page 176. G.I.D.C.-respondent No. 4 sold this land in the year 2000 to respondent No. 5, it cannot be put to acquisition by Notification dated 19-7-2007 (under Sec. 4 of the Act and by Notification dated 15-10-2008 (Page 198) under Sec. 5A of the Act.

1.3. In possession receipt it is specifically mentioned that the amount of compensation is accepted and the only compensation for well, trees and construction, if any, will be determined by the Land Acquisition Officer. This has to be construed to mean that so far as "the land" is concerned the amount of compensation was not at all in dispute, and therefore, respondent No. 4-G.I.D.C. may examine its legal implications while deciding the amount of compensation to be paid for the land in question though Notification under Sec. 4 of the Act is issued in the year 2007.

2. This Court is of the opinion that the present litigation is a sponsored litigation, because it is mentioned in Para 4 itself that petitioner Nos. 1 and 2 have already sold this land to petitioner No. 3 by registered sale-deed.

Details of that registered sale-deed are kept back from this Court only to see that the Court does not come to know that petitioner Nos. 1 and 2-the real land

owners have any surviving interest in the land in question.

3. The learned Senior Advocate for the petitioners could not give any satisfactory reply as to what was the status of these original land owners including that of Vasantji Fakirji Patel right from 12-6-1980 when possession of the land was already handed over under the consent award.

It is also not convenient to the learned Senior Advocate for the petitioners to answer as to what did petitioner Nos. 1 and 2 and his predecessor-in-title do when they came to know about the land being sold to respondent No. 5-G.I.D.C. in the year 2000. This assumes significance, more particularly, in light of the fact that there was a Caveat application filed by one Prakash M. Raiyani, partner on behalf of Radhika Group-respondent No. 5 herein and predecessor-in-title of respondent Nos. 1 and 2-Vasantji Fakirji Patel was impleaded as opponent No. 1 and G.I.D.C., Surat was opponent No. 2. Despite service of that Caveat application, petitioner Nos. 1 and 2 or their predecessor-in-title did not do anything until the present Notification which is under challenge came to be issued on 19-7-2007 under Sec. 4 of the Act.

4. The learned Senior Advocate for the petitioners with all vehemence at his command submitted that how come there be acquisition of land which was already sold by G.I.D.C. to respondent No. 5.

This Court is of the opinion that taking into consideration the facts of the case, viz. there was a consent award, 75% of the compensation was paid on 16-10-1980 (Page 174), 10% of the compensation was paid on 18-2-1982 (Page 175), possession was taken on 12-6-1980 (Page 173), consent agreement was executed on 12-6-1984 (Page 176) and though there was Notification under Sec. 4 of the Act as back as on 13-6-1985, neither petitioner Nos. 1 and 2 nor their predecessor-in-title did anything in the matter. As if this is not enough, even after service of Caveat application in the year 2000, the petitioners did not do anything until they filed this petition on 14-5-2009.

5. This Court is of the opinion that keeping aside all the technicalities whether a person, who has conducted himself in the aforesaid manner should be heard by this Court, that too under discretionary jurisdiction under Art. 226 of the Constitution of India, in the considered opinion of this Court, the answer is emphatically "No". A person, who pockets 85% of compensation before three decades and executes an agreement in the year 1984, hands over possession in the year 1980, whether he can be heard saying that the acquisition is not for the public purpose. This Court is of the opinion that the petition is vitiated by presence of petitioner No. 3, who has purchased this land by registered sale-deed (as claimed by the petitioners in Para 4), details of registered sale-deed which are kept back from this Court, gives a definite reason to this Court to infer that this litigation is nothing but an attempt and if the Court uses the term "an unholy attempt" to twist the arm of respondent No. 4-G.I.D.C. to get acquisition proceedings quashed and make fortune out of the skyrocketing prices of the land

in the close vicinity of Surat.

6. The intentions and the motive and if permissible mens rea of petitioner No. 3 are seen from the offer made by him which is recorded by this Court in order dated 16-9-2009. The order reads as under:

Mr. Sanjanwala, learned Advocate for the petitioners states that the petitioners are prepared to refund the amounts received from G.I.D.C. in the past along with interest and also to pay G.I.D.C., the amounts which the G.I.D.C. had received from respondent No. 5 in the past along with interest.

(Emphasis supplied)

7. Meaning thereby petitioner No. 3 is purchasing fortune by paying 85% of the compensation paid to the predecessor-in-title of petitioner Nos. 1 and 2 in the years 1980 and 1982 and the amount paid by respondent No. 5 to respondent No. 4, viz., by Radhika Group to G.I.D.C. in the year 2000. He is ready to refund all these amounts with interest and a gesture is made of being generous to the public body like G.I.D.C.

In fact, the learned Senior Advocate for the petitioners did submit during the course of his arguments that in the event the Court does not quash these acquisition proceedings, the petitioners-original land owners (certainly petitioner No. 3 cannot be said to be the original land owner and he is the one, who has purchased the land, must be after having come to know the technical flaw in the acquisition proceedings-the consent award of the year 1980-details are already set out hereinabove) that G.I.D.C. will have to pay more amount by way of compensation, because Notification issued under Sec. 4 of the Act is of the year 2000 (19-7-2007-Page 196), than the amount received by G.I.D.C. from respondent No. 5.

This Court is not able to accept even this reasoning for setting aside the acquisition proceedings.

There is something like credibility of individuals and similarly that of public bodies. If G.I.D.C. has sold the land in the year 2000 to respondent No. 5 and later it came to know that there is some defect in the title and if that defect is sought to be corrected by issuing Notification under Sec. 4 of the Act in the year 2007, this Court is of the opinion that cost is not material. The G.I.D.C. must honour its registered sale-deed executed in favour of respondent No. 5 and must see that technical flaw, if any, is taken care of and respondent No. 5 gets clear title of the land which was sold to it by respondent No. 4-G.I.D.C. in the year 2000.

8. Learned Advocate Mr. Rituraj M. Meena appearing for G.I.D.C. submitted that technical flaw has crept in because when Notification under Sec. 4 of the Act was issued on 13-6-1985 it was learnt that the very land, viz., Block No. 601 was reserved in development plan for Surat Urban Development Authority (S.U.D.A.) and because of that this land was not included in Notification issued under Sec. 6

of the Act on 25-2-1986.

The learned Senior Advocate for the petitioners submitted that in fact, there was earlier Notification dated 6-3-1986 issued under Sec. 4 of the Act, wherein the land was sought to be acquired for S.U.D.A. Be that as it may. The fact remains that this Court is not convinced that discretionary power under Art. 226 of the Constitution of India is required to be exercised for the benefit of the petitioners, more particularly, petitioner No. 3, who has purchased the land in question by registered sale-deed dated 20-10-2005 (the learned Senior Advocate for the petitioners furnished this date after perusing the papers saying that this date is found in one of the representations made by petitioner No. 3 to the Special Duty Officer-Page 131).

9. In view of the aforesaid facts this Court deems it proper not to go into all the minute details in this case. This Court is of the opinion that this petition deserves to be dismissed with exemplary cost so that a definite message goes to persons like petitioner No. 3, who purchased (the land with litigation) the property with a hope that he will be able to strike a fortune out of it. The very fact that he is ready to repay the amount paid (85 % of the compensation in the years 1980 and 1982 along with interest) and is also ready to pay the amount paid by respondent No. 5-Radhika Group to G.I.D.C., again with interest, shows that he is to strike fortune out of this land. The petition is dismissed with cost of Rs. 7,500/- (Rupees seven thousand and five hundred only). Rule is discharged. Interim relief granted earlier is vacated.

At this juncture, the learned Senior Advocate for the petitioners requested that the stay granted by this Court earlier may continue for some reasonable time so as to enable the petitioners to approach higher forum.

This Court is of the opinion that continuing the stay order will amount to continuing the ill-designs of the petitioners. Therefore, this request is not granted.