

(1980) 11 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No"s. 2407, 2431, 2432, 2430, 2440, 2454 of 1960

Gulab Shankar Walve and

APPELLANT

Vs

The Special Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 24-11-1980

Acts Referred:

Citation : AIR 1982 Bom 300 : (1981) MhLj 881

Hon'ble Judges : Deshpande, Acting C.J.;Kotwal, J

Bench : Division Bench

Advocate : B.P. Abhale, V.A Thorat, J.R. Lalif and Ulhas G. Kerkar, for the Appellant; M.F. Saldhana, Asst. Govt. Pleader, for the Respondent

Judgement

Deshpande, Ag.C.J.

1. These seven petitions raise a common question of and can, therefore, be disposed of by this common judgment. The lands in dispute, notified for acquisition u/ss. 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the L. A. Act), are all situate in village Dhandarphai (BK). Taluka Sangamner, District Ahmednagar. The petitioners in these seven petitions are the owners of those different lands. It is not in dispute that these lands are sought to be acquired for the purpose of rehabilitating the displaced persons, affected by the Upper Pravara Project in Ahmednagar District. The Government of Maharashtra has issued a Notification dt 16th May 1978 u/s. 11(1) of the Maharashtra Re-settlement of Project Displaced Persons Act, 1976 (hereinafter referred to as the Act). The provisions of the Act are made applicable to the said Upper Pravara Project. The Notification also specifies the villages likely to fall in the affected or benefited zones of the said project, as required under the said S. 11(1). Dhandarphal (BK) village is one of the villages notified as being a village in the benefited zones. Ss. 4 and 6 Notifications under L. A Act have been issued thereafter in all these cases. Before S. 6 Notification was issued, objection in writing were raised by all the petitioners asserting that proper esquire under the Act was not made. Subsequently, even notification and notices under Sub-secs.

(3) and (4) of S. 9 of the L.A. Act have been issued and the urgency clause was thereafter applied, and the petitioners were called upon to deliver possession of the respective lands u/s 17(1) of the L.A. Act, The validity of the said notifications, notices and the acquisition proceedings is challenged in all these petitions.

2. Mr. Abhale, Mr. Thorat, Mr. Lalit and Mr. Kerkar, the learned Advocates appearing for the petitioners raised several points in support of these petitions. It however, appears to us to be enough to take notice of only one point as to the non-compliance with Ss. 13 to 15 of the Act. the point goes to the root of the matter and the present proceedings are liable to be quashed on that court itself.

3. It is necessary to examine the scheme of the act to deal with this contention. The Act is a special piece of legislation providing for resettlement of "certain" persons displaced from lands required for any projects of public utility. Apart from providing for cash grants. S. 10 of the Act contemplates resetting as many displaced persons as possible on the land (1) in the benefited zone, or 2 (a) in other lands forming part of the "land pool" as defined u/s. 2(ii) The "land pool" has to be worked out in accordance with Ss. 13 to 15 of the Act and secured by the modes indicated in S. 16 S. 13(I) makes it clear that even the land of the "Geothan" affected by the project is liable to be acquired for such resettlement.

4. Which "certain" persons displaced by any such project should be resettled by recourse to the provisions of the Act is left to the decision of the Government. The Government has to notify such "project" u/s. 11 (1) of the Act and also expressly apply the provisions of the Act in relation to the said project. The Government has to specify in the said notification the villages and areas which are likely to be in the affected or benefited zones of the said project. The Act would obviously have no application to the acquisition of lands for resettlement of the persons displaced by any project not so notified. S. 12 prevents alienation of any land situated by any project not so notified. S. 12 prevents alienation of any land situated in the villages specified in the notification u/s. 11 without the prior permission of the Government. S. 10 requires the Resettlement Officer to take a survey and ascertain the extent of land from which persons would be displaced and the land available for grant to such displaced persons from the sources enumerated in Class. (A) to (e) of Sec. 13(2) and to draw a list of lands (1) that may be included in the benefited zone or villages or areas which may be specified u/s 10. Sections 14 and 15 further required for the project and would be affected thereby and the area likely to be benefited and make first provisional and then final declaration in respect thereof. Then follows Sec. 16 indicating modes of acquisition of land required for the purposes of the Act. Section 17 then provides for the grant of land to the displaced persons Area of land to be acquired and granted is subject to the limitations and restrictions indicated in Section 16 and 17 Schedules "A" & "B" details of which are not relevant to the point under consideration excepting to emphasize that the Act furnishes a self-contained code in the matter of resettlement.

5. The Act contemplates acquisition of the required land either by negotiation u/s 16(1) or by compulsory acquisition u/s 16(2) thereof. The words "any" land required for carrying out the purposes of the Act" In Section 16(1) or words to that effect in Section 16(1) or words to that effect in Section 16(1) or words to that effect in Section 16(2) obviously refer to the land in respect of which assessment, as to the requirements of displaced persons and availability of land for the grants is made u/s 13, and specification whereof is made u/s 10 read with Section 13(3) or Section 15. The extent of the area affected and benefited is notified u/s 15. Thus is further made clear under sub-sec. (3) and (4) of S. 15 indicating the sources of the land in respect of which acquisition powers under sub-sec. (2) of S. 16 are intended to be exercised. Thus, the land to be acquired under sub-sec (2) of S. 16 cannot be ascertained till the steps contemplated u/ ss. 13 to 15 for its identification are taken. Any acquisition, such as in the present cases, without first complying with Ss. 13 to 15, cannot but be held to be incompetent and bad in law.

6. Mr. Saidhana, the learned Assistant Government Pleader appearing for the respondents could not draw out attention to any material indicating that assessment of the extent of the land required and available or extent of the area affected or benefited, was ever made as required u/ss. 13 to 15 of the Act. This point is specifically raised by the petitioners in their petitions and the hearing of the case was adjourned earlier to enable him to produce material to that effect. The affidavits of the respondents in all these cases do not show, if and when such assessment as required u/s. 13 and provisional and final declaration as required under S. 14 or 15, were made. As seen earlier, this was obligatory. The acquisition officer cannot decide as to how much and which area of land is required for the purposes of the Act. It is impossible to identify the land covered by sub-sec.(3) and (4) of S. 16 and liable to be acquired unless this is done, The compliance with the requirements of Ss. 13 to 15 is simply indispensable and is condition precedent for invoking the acquisition powers under the L. A. Act contemplated to be exercised 16 (2) of the Act once the Project together with affected or benefited villages are notified u/s. 11 of the Act. Any notification u/s 4 or S. 6 of the L. A. Act or further proceedings thereunder could not have been issued or taken without following the provisions of Ss. 13 to 15 to the Act. These proceedings are, therefore, not legal and are liable to be quashed.

7. Mr. Saldhana, however, contends that non-compliance with Ss. 13 to 15 of the Act may prevent accumulation of land under the Act contemplated under sub-secs. (3) and (4) of S,. 16 but not the acquisition under the Land Acquisition Act of 1894, the powers in respect to which are expressly preserved under sub-sec (2) of S. 16. Enabling the Government to acquire the required land by recourse to L. A Act "also" Mr. Saldhana strongly relied on the word "also" in sub-sec (2) as also in sub-sec (3) in support of his contention that such acquisition under the L.A. Act is independent of the acquisition powers provided under sub-secs.(3) and (4) of S. 10 of the Act. This contention assumes as if acquisition of land contemplated under sub-sec. (2) of S. 16 is not under the Act but is under the

L.A Act and is different from and independent of the powers of acquisition under sub secs. (3) and (4) of the Act and that the officer has an option to acquire the required land u/s 16(2) or Ss. 16(3) and 18(4) of the act.

8. This makes it necessary to examine contents of S. 16. It is convenient to quote the same in extensor to test the validity of this contention.

"Sec 16, (1) The State Government may enter into an agreement with any person for the purchase or exchange, of any land required for carrying out the purposes of this Act.

(2) Subject to the provisions of this section, the State Government may also for carrying out the purposes of this Act compulsorily acquire land under the Land Acquisition Act, 1894, and the acquisition of any land for the said purposes shall be deemed to be a public purpose within the meaning of that Act.

(3) The State Government may also acquire lands included in a gaathan in the affected zone as far as practicable according to the provisions of Part I of Schedule "A" hereto.

(4) For the purpose of resetting displaced persons on land, the State Government may, subject to any rules made "in this behalf, acquire land from holdings in the benefited zone or from, any village or area specified u/s 10 as far as practicable, according to the provisions of Part II of Schedule "A" hereto.

(5) All lands acquired under this section shall form part of the land pool."

The section is not very happily worded. A superficial reading thereof may give some apparent plausibility to the contention of Mr. Saldhana. A close examination of the different clauses, however, would expose the fallacy and untenability thereof.

9. To begin with, acquisition of land is an integral part of the resettlement scheme of this Act and all the provisions of the Act would apply to such acquisitions as soon as any project is notified u/s 11 of the act. S. 16 providing for such acquisition power, contemplates acquisition of the required land for the purpose either by negotiation or by recourse to statutory compulsion under the L. A. Act. The question of acquisition of any land cannot arise unless preliminary processes as to assessment of land required and available, affected and beveled, by the project as contemplated u/Ss 13 to 15 of the Act are finalized. Reference to L.A. Act in sub-sec (2) of S. 16 is intended to adopt the mechanism of acquisition evolved thereunder. Recourse thereto for this compulsory acquisition by itself does not make the acquisition otherwise than under the Act and cannot relieve the authorities of their obligation to comply with Ss. 13 to 15 of the Act.

10. Secondly, it is fallacious to assume that S. 16 contemplates two different modes of compulsory acquisitions i.e. one under this Act and the other under the L. A. Act Sub-sec (2) of S. 16 merely adopts the L. A. Act for the requirement of the land under this Act. Creating fiction of the purposes of the Act being a public

purpose is intended to remove any possible doubles as to the validity of the contemplated acquisitions. Sub-sec (3) and (4) merely indicate the course from which the lands required are to be acquired by recourse to the provision of the L. A. Act u/s. 16(2) of the Act. The wording of CL. (C) of S. 12(3) or the Act fortifies this view and demonstrates the fallacy of the contention. The extent of land liable to be acquired and covered by sub-sec. (3) and (4) or S. 18 has to be first ascertained and area thereof identified. This can be done only on preliminary assessment and enquiry u/Ss. 13 to 15 of the Act. Any assumption that sub-sec (2) is independent or unconnected with sub-secs (3) and (4) would prevent application of L. A. Act to the acquisition of lands covered by sub-secs. (3) and (4) of S. 16. The Act does not provide for any other mechanism of acquisition, and the fiction of acquisition being for public purpose would also be inapplicable in that case. All this goes a long way to show how contrary contentions are ill-founded.

11. This apart. S. 16 cannot be so interrupted as to permit option of acquiring land under this Act or under the L. A. Act without exposing it to the attack of being violative of Art. 14 of the Constitution, as it would be difficult to find out, in that case any criterion with section to determine, when and why the one should be invoked and not the other.

12. Our attention was also drawn to the wording of cls. (C) and (d) of S. 13(3) of the Act, suggesting that the basis of acquisition of land covered by cl. (C) is different from the one covered by cl. (D) in the context not, the cl. (D) shall have to be interpreted to cover only lands acquired by negotiation and the "Goathan" land covered by sub-sec (3) of S. 16 though it is wide enough to cover land referred to in cl (c) We have already seen how express reference to the L. A. Act in cl (c) herein fortifies out view that acquisition of lands covered by sub-sec (4) of S. 10 can be secured only by recourse to L. A. Act and by no other provisions of this Act and how this rather runs counter to Mr. Saldhana's arguments.

13. The reliance on the word "also" in Sec. 16(2) is equally misconceived. The word is intended to highlight the availability of one more mode of securing the required land under the Act in addition to its acquisition by negotiations provided for in sub-sec. (1) and not to emphasise any power of acquisition connected with Secs. 13 to 15, Section 16(2) contemplates recourse to the L. A. Act for the acquisition of the land "require" for the purposes of the Act. Such "requirement" can be ascertained only by the process as provided under Secs. 13 to 15 of the Act. Sub-sec. (3) and (4) only reflect the crystallisation of this process and it is for the land so required that mechanism of the L. A. Act is intended to be adopted under Sec. 16(2) of the Act. The word "also" in sub-section (5) does not have any significance excepting to emphasize that even land "affected" is liable to be acquired if needed of "gaathan" though the Act contemplates on benefited and others zones.

14. It is true that the lands in dispute are all situated in a village which is one of the villages notified as likely to be in the benefited zone u/s 11(1) of the act. Mr.

Saldhana relies on this and contends that the lands in dispute are in either case liable to be acquired. This contention is untenable. The likelihood of a land being in the benefited zone under S. 11(1) is not the same thing as its being found to be so after enquiry under Sec. 15 of the Act. As stated earlier, objections raised are fundamental and deserve to be upheld.

15. Thus once the project is notified under S. 11. The acquisition of the land from the benefited zone and other sources is liable to be governed by the provisions of this act, and the powers under sub-sec(2) of Section 16 and mechanism of the L. A. Act cannot be invoked unless first the assessment and ascertainment as contemplated under Sections 13 to 15 of the Act is finalised. Such acquisition is subject to the limitation indicated in sub-secs. (3) and (4) of Sec. 16 of the Act and Schedule thereto, Looking at from this point of 1982 Bom./20 VII G - 16 view, the notifications and the land acquisition proceedings initiated and carried on by the respondents in the present cases are liable to be quashed.

16. In this view of the matter, the petitions deserve to be allowed. We accordingly allow all the seven petitions and made the seven petitions and make the Rules absolute and quash the acquisition proceedings. The petitioners will get the costs from the respondents.

17. Petitions allowed.