

(1978) 07 GUJ CK 0008
In the Gujarat High Court
Case No : First Appeal No. 391 of 1974

Hakim A. Shah S. Shah

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-07-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Land Acquisition Act, 1894 — Section 47

Citation : AIR 1979 Guj 194 : (1979) 20 GLR 692

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Advocate : K.G. Sheth, for C.C. Patel, for the Appellant; M.B. Shah, Asstt. Govt. Pleader and G.N. Desai, for the Respondent

Judgement

1. The principal question urged in this appeal, at the instance of the original plaintiff of Civil Suit No. 1858 of 1970 on the file of City Civil Court, Ahmedabad, relates to the vires of the provisions of S. 47-A inserted by S. 21 of the Land Acquisition (Gujarat) Unification and Amendment Act, 1963 precluding the right to challenge the action of District Magistrate or the Police Commissioner for enforcing surrender of land from a person opposing or impeding in taking possession under the Land Acquisition Act. The question arises in the following circumstances: -

The land in question is of S. No. 1331 situate opposite Danapith Fire-Brigade building of the Ahmedabad Municipal Corporation in the city of Ahmedabad. The plaintiff claims himself to be the occupant of the said land, It appears that a Notification under S. 4 of the Land Acquisition Act was issued on Aug. 30, 1955, and Notification under S. 6 of the said Act was issued on June 25, 1956 for purposes of extension of the office building of the Corporation. An award in that behalf appears to have been made in the month of Dec. 1960. A notice as required under S. 12(2) of the Land Acquisition Act intimating the award in respect of the land in question was issued on Dec. 14, 1960. The land acquired

belonged to Sunni Muslim Wakf Committee from which the plaintiff claims himself to be the tenant. Though it is not clear from the record, presumably for some intervening legal proceedings in nature of suits etc. the possession of the land could not be taken over from the aforesaid Committee in spite of the notice of Dec 14, 1960 purported to be under S. 12(2) of the Land Acquisition Act. After the suits were disposed of somewhere in June, 1969, the impugned notice of Jan. 21, 1970 was served on the plaintiff, calling upon him to hand over quiet and peaceful possession of the land acquired.

2. Being aggrieved by this notice, the plaintiff filed the present suit in the City Civil Court at Ahmedabad seeking declaration that the Special Land Acquisition officer had no authority to issue the notice and it was bad in law, void and ineffective, inasmuch as the acquisition proceedings were taken behind his back and also because S. 47-A under which the action was purported to have been taken is ultra vires the Constitution as violating Arts. 14 and 19(1)(f) of the Constitution.

3. The State Government, as well as the Commissioner of the Municipal Corporation, who were original defendants Nos. 1 and 2 respectively, resisted the suit contending, inter alia, that the Government was satisfied on the inquiry being held under S. 5A of the Land Acquisition Act that the land was required for public purposes of the extension of the Municipal Office building. Requisite notices were served on the persons interested and the prescribed notification under S. 6 was also made accordingly. The Special Land Acquisition Officer made the award on 4th Dec., 1960 and the notice under S. 16 of the Land Acquisition Act was issued to the persons interested to hand over possession on 31st Jan., 1961. Since the possession was not delivered, the Taluka Magistrate was moved to enforce possession under S. 47 of the Land Acquisition Act. The aggrieved persons had obtained injunctions restraining the defendants from enforcing the possession. The impugned notice of 31st January, 1970 was issued when these injunctions were discharged. They also joined issue that S. 47-A of the Land Acquisition Act was violative of Arts. 14 and 19(1)(f) of the Constitution, and they denied that the remedy of compensation was illusory.

4. The learned City Civil Judge raised necessary issues and rejected all the contentions of the plaintiff, particularly that the plaintiff was a person interested at the time of the issuance of the notice under Ss. 4 and 6 of the Act. The contention about the vires of the provision contained in S. 47-A was also negatived, because the learned Judge did not agree, on consideration of the Scheme of the Land Acquisition Act, and particularly the provision contained in S. 47-A of the Land Acquisition Act, that it discriminated the people of the State of Gujarat by denying them the right to challenge the action of the District Magistrate or the Police Commissioner for enforcing the surrender of possession in a Court of law by a regular civil suit and obtaining in-terim relief's restraining them from taking over the possession. The learned Judge also could not agree that the provision in question was unreasonable restriction on the right to hold

and enjoy the property. In that view of the matter, he, by his order of 31st Jan., 1974 dismissed the suit. It is this judgment and order, which have been challenged in this appeal before me.

5. The first contention urged on behalf of the appellant is that the entire acquisition proceedings were bad in law and void, inasmuch as no notices as required under Ss. 4 and 5A and S. 6 were served on the plaintiff. I have, therefore, to consider, whether the plaintiff was entitled to a notice as claimed by him. In other words, whether he was a person interested on the relevant date of those notices. It is an admitted position in the evidence of the plaintiff, which is recorded at Ex. 52 on the record of the trial Court, that his brother Abdul Rehman Sultansha was the tenant of the land in question. The plaintiff claimed that he was a partner with his brother. In support of this statement he has produced partnership deed at Ex. 67. It is also admitted that the partnership was dissolved somewhere in the year 1960 and the plaintiff claimed to be in exclusive possession of the land in question pursuant to the dissolution of the partnership. What has weighed with the trial Court, in rejecting the contention of the plaintiff that he is an interested person, were a few circumstances, which have been brought out in his evidence, They are,-

(1) That the rent was said to have been paid by the plaintiff to the Wakf Committee on behalf of his brother. In other words, all the rent receipts were in the name of his brother;

(2) That the Municipal records did not reveal that the plaintiff was the tenant of the land in question;

(3) That the plaintiff admitted that he did not make any application to the Wakf Committee for transferring the tenancy of the land to his name after the dissolution;

(4) That the plaintiff failed to examine his brother in support of his case that he was in exclusive possession in pursuance of the dissolution of the partnership;

(5) That absence in the partnership deed, which is to be found at Ex. 67 on the record of the suit, of a clause indicating that the tenancy rights were to be treated as the estate of the firm, though there was a clear agreement expressed in clause 9 that medicines, drugs and other articles of the dispensary were of the co-ownership of both the parties.

In the circumstances, therefore, I do not think that there are any justifying grounds for me to interfere with this finding of the learned Judge that the plaintiff was not an interested person at the relevant time.

6. The learned Judge, following a decision of this Court in *Isabhai Musabhai Patel v. Ahmedabad Municipal Corporation* (1971) 12 G LR 338, held that the plaintiff was not entitled to file the suit challenging the acquisition proceedings as he was not an interested person. The learned advocate, appearing on behalf of the appellant, made a grievance that the decision in question was not applicable in

the facts of the present case, because the plaintiff has been found to be in possession of the land since the dissolution of the partnership somewhere in the year 1960. Now, it is not clear as to actually on what date the partnership was dissolved since the award in the present case has been made in the month of Dec. 1960. It was urged on behalf of the appellant that the plaintiff was entitled to challenge the impugned notice, which has been issued under S. 47-A, since he is in possession of the land in question. Assuming without admitting, it was so urged on behalf of the appellant, that the plaintiff was not a tenant on the land in question and, therefore, not an interested person entitled to various notices as prescribed under the Land Acquisition Act, he is certainly entitled to challenge the impugned notice since it seeks to deprive him of the possession. According to the learned Advocate it is this notice that furnishes a cause of action to him since he is challenging the vires of the provision of S. 47-A under which the notice has been issued. It was contended that if the provision contained in S. 47-A of the Act is ultra vires the Constitution, the impugned notice, which is issued in exercise of the powers conferred by that section, would also be void and ineffective, and the person aggrieved by such a notice is always entitled to file suit and claim interim relief's, if he is so entitled. I am of the opinion that this aspect of the question has been overlooked by the learned trial Judge. The validity and legality of the notice has been challenged on the ground, inter alia, that S. 47-A is ultra vires the Constitution, inasmuch as it violates Arts. 14 and 19(1)(f) of the Constitution. It is in that context that I have to examine and decide about the vires of S. 47-A of the Land Acquisition Act.

7. Three intermediate contentions have been urged in support of the challenge to the constitutional validity of S. 47-A of the Land Acquisition Act, viz.:-

(a) That the power granted to the District Magistrate or the Police Commissioner, as the case may be, under S. 47-A (2) offends Art. 14 of the Constitution, inasmuch as it is arbitrary, unanalyzed and without any guideline and, therefore, ultra vires the Constitution;

(b) That S. 47-A (2) in effect and substance is discriminatory since it vests in the authority concerned unregulated official discretion and also because it deprives the people of this State to have a right to challenge and agitate the question of the legality and validity of the action under the said section in a Court of law and obtain necessary relief's in that behalf;

(c) That S. 47-A (3), in so far as it deprives the people of this State from questioning, in any court of law, any action taken by District Magistrate or the Police Commissioner under sub-section (2) of S. 47-A and from obtaining interim relief's restraining the authorities from taking over the possession, constitutes an unreasonable restriction on the right to hold and enjoy property and, therefore, violative of Art. 19(1)(f) of the Constitution and, therefore, ultra vires, bad in law and void.

8. It would be profitable to set out the relevant provisions contained in sub-

sections (2) and (3) of S. 47-A, which substitute the provisions contained in subsections (2) and (3) in place of S. 47 of the parent Act. They read as under:

"(2) If the Collector is opposed or impeded in taking possession under this Act of any land or in preventing enjoyment of any easement extinguished under this Act, he shall, if a District Magistrate, enforce the surrender of the land to himself, or the closure of such easement and, if not such magistrate, he shall apply in any area for which a Commissioner of Police has been appointed to the Commissioner of Police and elsewhere to any Executive Magistrate and such Commissioner or Magistrate shall enforce the surrender of the land to the Collector, or as the case may be, the closure of such easement.

(3) Any action taken by a Collector, Magistrate or Commissioner of Police under sub-section (2) shall not be questioned in any Civil Court and no injunction shall be issued by such Court for restraining such action, but the aggrieved party shall be entitled in such Court to reasonable compensation for any damage suffered by him by reason of the powers under this section being exercised by any such officer wrongfully or without authority."

9. In *Ameerunnissa Begum and Others Vs. Mahboob Begum and Others*, , the validity of Waliuddowala Succession Act, 1950, which was put on the statute book, was challenged as offending Article 14 of the Constitution as it sought to deprive two ladies and their children claiming themselves to be the heirs and successors to Nawab Waliuddowala of Hyderabad on the ground of ending protracted litigation by denying them the right to agitate the question of succession to the estate of the deceased Nawab in the Civil Court. The Supreme Court struck down the legislation as it sought to discriminate the two ladies of Nawab from his other heirs by denying them the right to agitate the question of succession in Civil Court. In that context, the Supreme Court said that to attract the operation of Art. 14 of the Constitution, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object, which the legislation has in view. The Supreme Court posed a problem in these terms that on what principle then the disability was imposed upon the two ladies alone while the claim of the other claimants to vindicate their right to agitate in court of law was accepted. On the contrary, the legislation went further and deprived the two specified individuals of their right to enforce their claim in a Court of law in accordance with the present law which governed the community to which they belonged and, therefore, they have been discriminated against from the rest of the community in respect of their valuable right which the law secures to them. The Supreme Court did not find that the disability was for serving the public purpose or securing some advantages to the community as a whole that the Legislature chose in the case before it to interfere with the private rights. The only purpose of the legislation, as appeared from the Preamble was to end certain private disputes. The object stated in the preamble to put an end to a dispute of long standing by denying the aggrieved parties to vindicate their rights in a court of

law appeared to be arbitrary and unreasonable. The dispute regarding succession to the estate of Nawab was a legal dispute and without determining the point at issue by a properly constituted judicial tribunal, a legislation based upon the report of a non-judicial authority and made applicable to specific individuals who were deprived of their valuable right to agitate the question, appeared to be action within the constitutional inhibition of Art. 14 of the Constitution.

10. Again, when the validity of Vexatious Litigation (Prevention) Act, 1949 of Madras was challenged in Prabhakar Rao N. Mawle Vs. State of Andhra Pradesh, on the ground of violation of Arts. 14 and 19, the Court found that since the Act was designed to control vexatious litigations often resorted to habitually and without reasonable cause in Civil Courts and Criminal Courts and did not deprive any person of his right to go to Court the object of the Act was the public good. The challenge on the ground of violation of Art. 14 was rejected in the following terms when it was sought to be urged that it created an unreasonable distinction between litigant and litigant :

"..... This argument is also not acceptable to us because the litigants who are to be prevented from approaching the Court without the sanction of the High Court etc. are a class by themselves. They are described in the Act as persons who "habitually and without reasonable cause" file vexatious actions, civil or criminal. The Act is not intended to deprive such a person of his right to go to a Court. It only creates a check so that the Court may examine the bona fides of any claim before the opposite party harassed. The Act sub serves public interest and the restraint that it creates is designed to promote public good. The Act does not prevent a person declared to be habitual litigant from bringing genuine and bona fide actions. It only seeks to cut short attempts to be vexatious. In our judgment, the Act cannot be described as unconstitutional or offending either Article 19 or Art. 14."

11. In Kamala Mills Ltd. Vs. State of Bombay, of the Bombay Sales Tax Act, 1946, which prohibited the challenge to the assessment made under the Act or the Rules made there under in any civil Court (sic). The Supreme Court referred to a decision of the Privy Council in Commr. For Motor Transport v. Antill Ranger & Co. Pvt. Ltd. (1956) 3 All ER 106 while posing the crucial question whether the impugned statutory provision purported to extinguish absolutely a cause of action or not. If it extinguished a cause of action absolutely, it would be unconstitutional. The Supreme Court examined the scheme of the Act to find out whether an assessee is entitled to refund of the tax illegally recovered from him, and found that the Act did provide machinery for determining whether the assessment was legal or illegal and also for refunding the amount of tax illegally collected. Having found that the alternative remedy was prescribed by the Act for recovery of illegally collected tax, the provision contained in Section 20 of the said Act, even if it is widely construed so as to constitute an absolute bar against the institution of a suit challenging the illegal assessment orders, was constitutionally valid: because, it did not extinguish the cause of action to obtain

the refund of illegally recovered tax.

12. It is in the light of the above principles that I have to examine whether the impugned provision is violative of Article 14 and/or 19 of the Constitution. It cannot be said that there is unanalyzed arbitrary power invested in the District Magistrate or Police Commissioner, because no guideline is prescribed under the section. The guideline is apparent in the provision contained in sub-section (2) of S.47-A. The District Magistrate or the Police Commissioner has to enforce the surrender of possession if the Collector is opposed or impeded in taking possession of any land under the Act. In other words, the action is contemplated only if there is opposition or impediment in taking over possession by the Collector under the Land Acquisition Act. The Act enables the authorities to take over possession when an award is made under S. 11 and the amount of compensation as awarded is deposited in the Collectorate under S. 12 read with S. 16 of the Land Acquisition Act or in cases where the urgency clause is applied under S. 17 of the said Act by issuing the prescribed notices in respect of the special classes of property specified therein. It cannot be said that the classification, which has been made by sub-section (2) is unreasonable or unintelligible and has no nexus with the object of the Act. Forcible action of surrendering possession is envisaged in case of those persons who meet out opposition or impediment in taking over of the possession as permitted under the Land Acquisition Act. The object of the Land Acquisition Act is to acquire property for public purpose. If any impediment or opposition is created in carrying out this avowed object of the legislation, it must be forcibly and speedily removed. The provision is essentially for public good. It cannot, therefore, be urged successfully that there is no intelligible classification having reasonable nexus with the object and, therefore, the power is arbitrary or unanalyzed. I do not think that any discretion is vested in the authority to pick and choose if the District Magistrate or the Police Commissioner is moved by the Collector when he is opposed or impeded in taking over the possession; the authority has to act. He would have no discretion in the matter. In that view of the provision, the challenge under Art. 14 must fail.

13. The challenge to sub-section (3) is twofold; in the first place, it discriminates and, therefore, amounts to breach of rule of law under Article 14, and also constitutes unreasonable restriction on the right to hold and enjoy property. I do not think that the challenge on the ground of discrimination is well founded. No discrimination has been made between groups or persons amongst the people of the State of Gujarat. The provision has been inserted in the Land Acquisition Act for the entire State of Gujarat. The contention that it discriminates the people of Gujarat from the people of other parts of the country is entirely misconceived. A special provision of a statute for a particular State is not unknown and it cannot be challenged on the ground that it discriminates since that provision is not applicable to the entire country.

14. The second limb of the challenge is on the ground that it amounts to

unreasonable restriction on the right to hold and enjoy property. I am unable to accede to this submission for the following reasons: It cannot be said that any person aggrieved by the acquisition is deprived of his right to agitate the question of the legality or validity of acquisition proceedings in a Court of law. S. 52 of the Land Acquisition Act contemplates such a suit or other proceedings against any person for anything done in pursuance of the Land Acquisition Act after giving statutory notice in writing of the intended action and cause thereof. If a person successfully challenges the validity or legality of the acquisition proceedings, he is entitled to necessary relief's including the restoration of the possession of the property, if it is taken over by the Government or the acquiring body. What sub-section (3) of S. 47-A prohibits is that the action of the Collector or the Magistrate or the Commissioner of Police under sub-section (2) for enforcing the surrender of possession from a person in occupation of the property acquired cannot be questioned in a Civil Court, and no injunction could be issued by the Court for restraining such an action of taking over of possession. In other words, the person aggrieved by the acquisition proceedings cannot merely challenge the action of taking over of possession and obtain any interim relief of injunction etc. in that behalf. Nonetheless, sub-section (3) further provides that the aggrieved party would be entitled to move such Court for reasonable compensation for any damage suffered by him by the reason of the exercise of the powers under sub-section (2). The aggrieved party is, therefore, entitled to claim compensation in the Court for wrongful exercise of such powers or exercise of powers without authority. The authority for exercise of the power is authority of law. If the acquisition proceedings are ultimately held to be bad in law, or void, the action of the Magistrate or the District Magistrate or the Police Commissioner, as the case may be, of enforcing the surrender of possession in pursuance of such acquisition proceedings, would be clearly without authority, In that event also, the aggrieved person is entitled to compensation. It cannot, therefore, be said that the cause of action or a part, there of is extinguished by sub-sec. (3). It is merely a remedy to resist the action of the District Magistrate or the Police Commissioner, as the case may be, to obtain the possession by forcible means, by filing a suit and obtaining an injunction at the interim stage. The right to get compensation besides whatever relief a successful party would be entitled to in case of acquisition being held illegal or void is assured under sub-section (3). If a District Magistrate or a Police Commissioner enforces the surrender of possession wrongfully or without authority of law he would expose the Government to the consequences of compensation. It cannot, therefore, be urged that this restriction is in any way unreasonable so as to infringe the right to hold and enjoy the property as guaranteed under Article 19(1)(f) of the Constitution. The challenge on that count should also fail and is rejected.

15. The result is that there is no substance in this appeal, which fails and is dismissed, but having regard to the facts of this case, there should be no order as to costs. The impugned notice should not be enforced till 30th Sept., 1978 on

the plaintiff furnishing an undertaking to this Court by 5th August, 1978 that he would not part with the possession in favour of any other person and would hand over quiet and vacant possession of the land in question to the State Government on the expiry of the aforesaid period.

16. Appeal dismissed.