

(1971) 09 GUJ CK 0001
In the Gujarat High Court
Case No : First Appeal No. 34 of 1968

Jethalal Motilal

APPELLANT

Vs

The State of Gujarat and Another

RESPONDENT

Date of Decision : 27-09-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 25
Evidence Act, 1872 — Section 101
Land Acquisition Act, 1894 — Section 4

Citation : AIR 1972 Guj 131

Hon'ble Judges : J.M. Sheth, J;A.A. Dave, J

Bench : Division Bench

Advocate : V.S. Parikh, for the Appellant; G.T. Nanavaty, Asst. Govt. Pleader, for the Respondent

Judgement

Dave, J.—This appeal is directed against the judgment and decree of the learned Civil Judge, Senior Division, Narol dismissing the plaintiff's suit with costs.

2. The facts giving rise to this appeal briefly stated are as under:--

The land bearing survey number 13 belonging to one Bai Kashi, widow of Nandlal Dalpatram situated in village Dani Limda beyond the municipal limits of the Ahemdabad city was acquired for the purpose of slums clearance under a notification, Ex. 26, published on 2-1-1958 in the Government Gazette u/s 4 of the Land Acquisition Act. The present plaintiff who asserted to be a lessee of about 3150 sq., yds., of land out of total area of 7502 sq., yds., comprised in the said survey number 13, was served with a notice, under Sections 9 and 10 of the Act. The plaintiff appeared before the special land acquisition officer and submitted that as he was a lessee of the land under acquisition and as he was not served with a notice u/s 4 of the Act individually, the notification u/s 6 of the Act was ultra vires and therefore, the land acquisition officer cannot proceed with the acquisition proceedings. Subject to his objections, however, the land acquisition officer awarded compensation to the owner as well as to the present

plaintiff in certain proportion mentioned in the award. The present plaintiff, therefore, filed a suit for a declaration that the land acquisition proceedings were illegal and ultra vires and that his interest was not affected as no notice u/s 4 of the Act was individually served on him. This suit ultimately came to be registered as jurisdiction suit No.53 of 1957 and was heard and decided by the learned civil Judge. Senior Division, Narol. The State of Gujarat and the special land acquisition officer who were impleaded as defendants filed a written statement at Ex.18 and denied various averments made by the plaintiff in his suit. They denied that the plaintiff was in occupation of 3150 sq., yds., out of survey number 13 and that he had any interest therein. They also denied that the plaintiff was in occupation of the land as a lessee on the date of the notification published under S. 4 of the Act. They therefore contended that the inquiry held u/s 5-A was quite legal and that the notifications issued under Sections 4 and 6 of the Act were valid in law as the land was acquired for the purpose of slums clearance scheme. From the pleadings of the parties, the learned Judge framed issues at Ex 57 wherein issue No.1 was whether the notifications issued under Ss. 4 and 6 of the Land Acquisition Act are illegal and ultra vires. The learned Judge gave his finding on all the issues against the plaintiff. He particularly negated the contention that the notifications u/s 4 and 6 of the Act were illegal and ultra vires. He therefore, dismissed the suit of the plaintiff with costs. Against the said judgment and decree of the trial court, the original plaintiff has preferred the present appeal to this court.

3. Mr. V.S. Parikh, learned Advocate for the appellant-plaintiff has raised several questions of law before us. He submitted that this court has already held in the case reported in (1969) 10 GLR 503 that in view of the rules framed under the Land Acquisition Act, it was mandatory for the Government to issue a notice individually on all persons interested in the land, u/s 4 of the Act and as no notice was individually served on the present plaintiff, the notification published u/s 6 of the Act was ultra vires. He therefore, urged that in view of the decision of this court. It cannot now be urged by the Government that the notification was intra vires. Secondly, he urged that the land acquisition officer had already accepted the status of the plaintiff as a tenant of the land and had awarded compensation to him accordingly. It was not, therefore, open to the Government to urge that the plaintiff was not a tenant of the suit land on the date of the notification. Lastly, he urged that the land under acquisition was included in the proposed town planning scheme and therefore, it cannot be acquired by the Government for the purpose of slums clearance scheme.

4. It may be noted at the outset that the State had clearly controverted the plea of the plaintiff that he was a lessee of the suit land on the date of the notification u/s 4 of the Act. Barring the bare word of the plaintiff, there is nothing to show that the plaintiff was in fact occupying certain portion of the land bearing survey number 13 as a lessee on the date of the notification as alleged by him. On the contrary, the extract of village form 7, 7-A and 12 with regard to the survey number 13 of Dani Limda which is produced at Ex. 24/1 shows that one Baf

Kashi wife of Nandal Dalpatram was the Kabjedar of the suit land. In the column of "other rights", the name of Bai Mani, widow of Keshava Nathalal is shown as mortgagee. The rights of the present plaintiff have not been shown in this column of "other rights". Apparently, therefore, the plaintiff did not seem to possess right in the land as noted in the Government record. The say of the plaintiff however, is that he had taken an oral lease from Bai Kashi prior to the issue of notification sometime in 1956. The plaintiff has been unable to show by leading any satisfactory evidence in support of his say that he was in occupation of the land in 1956 as per the oral lease granted in his favour by Bai Kashi. It may be noted that some huts and a lime-kin were found on the land in question when notice u/s 9 and 10 was issued on the claimant. This shows that the land was converted to non-agricultural use. The claimant, however, has not produced any document to show when N.A. permission was obtained by him. If the claimant had produced N.A. permission that would clearly have shown the exact period when he entered into possession of the land. His omission to do so raises a strong suspicion that he must not be in possession of land as a lessee on the date when the notified u/s 4 was published. Besides, it may be remembered that the notice was served on Bai Kashi who was occupant of the land. In response to that notice. Bai Kashi did not raise any objection about the acquisition of the land nor did Bai Kashi inform the land acquisition officer that the present plaintiff was in possession of some portion of the land on the date of the notification as a lessee. This circumstance also negatives the plea of the plaintiff that he was a tenant of the land in 1956 that is prior to the date of the notification u/s 4 of the Act. When the fact of the plaintiff being a lessee of the land was controverted by the defendants specifically, it was incumbent of the plaintiff to prove that he was a lessee of the land by leading unimpeachable and reliable evidence. No documentary evidence has been produced by the plaintiff in support of his case. The plaintiff has also not examined either Bai Kashi or her relatives in support of his case that the land was leased out to him for a particular period. Realising this difficulty Mr. Parikh urged that the very fact that the notice was issued on the plaintiff u/s 9 and 10 of the Land Acquisition Act by the land acquisition officer would clearly indicate that he must be a tenant of the land. He urged that if he was not accepted as a tenant of the land, there was no question of awarding any compensation to him in his capacity as a tenant of the land. He therefore, urged that when the land acquisition officer had already accepted him as a tenant and on that basis had awarded compensation to him, it was not open to the State now to urge that the plaintiff was not a tenant on the date of the notification. We are unable to agree with the submissions made by Mr. Parikh. It may be noted that even if the plaintiff may not be a lessee of the land on the date when the notification u/s 4 was published, he may be induced upon the land after the notification was issued and finding that he was in actual possession of the land, the land acquisition officer may have thought fit to issue a notice on him u/s 9 and 10 of the Act while determining the compensation of the land. But merely because he was served with the notice u/s 9 and 10 of the Act it would not necessarily go to show that he was a tenant of the land on the

date when the notification u/s 4 of the Act was issued. Ex. 21 is the notice, dated 2nd July 1961 served on the present plaintiff. It merely says that he should appear before the land acquisition officer and prove his right as a lessee or any other right or interest which he may be having in the land on or before 19th July 1961. This notice does not indicate that the land acquisition officer had accepted the plaintiff to be tenant of the land on the date of the said notification. As stated earlier, the notification u/s 4 of the Act was published in the Government gazette on 2nd January 1958 while the notice in question was issued on 2nd July 1961. Therefore, nothing turns on this notice which would in any way favour the plaintiff in support of his case that he was in possession of the land on the date of the notification, as a lessee thereof. In our opinion, therefore, the plaintiff has failed to establish that he was a tenant of the land on or before 2nd January 1958.

5. Mr. Parikh, however, urged that if he had no interest in the land on the date of the notification he would not be entitled to receive any compensation under the Act and the very fact that he was awarded compensation by the land acquisition officer, would go in his favour in support of his contention that he was a tenant. We are unable to accept the submission made by Mr. Parikh. Unless it is established by the plaintiff that he was in actual possession of the land, on or before the date of the notification published u/s 4 of the act, it was not incumbent on the land acquisition officer to serve him with a notice individually as contemplated in the rules framed by the Government in that behalf. Mr. Parikh referred to the case of *Ashokkumar Gordhanbhai v. State of Gujarat* (1969) 10 GLR 503 wherein it was observed that:--

"The learned Advocate General, however, contended that none of the provisions of the act requires any such notice being given and the rule even if it implies any such notice, cannot provide anything that conflicts with the provisions of the Act. He pointed out that Section 4 only lays down that:-

"Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the official gazette"

The Section 5-A itself under which the right to file objections is claimed even does not lay down that any individual notice should be given to all persons interested. It only reads:

"Any person interested in any land which has been notified u/s 4, sub-section (1) may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be".

The learned Advocate General had however to concede that the wordings of the rule are capable of being construed by necessary implication as providing for such individual notice. But he argued that such a construction should not be placed as it would go beyond the scope of Section 4(1) and would conflict with the provisions of Section 4 and Section 5-A. He further argued that there is no

statutory obligation cast by the Act and no such statutory obligation be read by so construing the rule. Section 4 notification is published only at the exploratory stage and in many cases it would cast great burden on the Government to serve on all persons interested, as large tracts of land may only be indicated by locality as likely to be needed for acquisition. Therefore the court should not put such a burden, by placing the construction canvassed for on behalf of the petitioners.

We are not impressed by this submission of the learned Advocate General. It is true that neither Section 4(1) nor Section 5-A provides for any such personal notice but the State Government itself under the powers vested u/s 55 of the Act has framed rules for the guidance of the officers in dealing with objections lodged u/s 5-A and rule No. 1 itself contemplated the giving of such a notice, But we are satisfied that the rule making authority have intended and such an intention can be culled out by necessary implication that personal notice be given to persons interested. We are placing this interpretation under a conviction that the rule making authority could not have intended that if Section 4(1) does not provide for giving of personal notice, no such personal notice should be given we may observe here that so far as this case is concerned the predecessor-in-title of the petitioner. Lalbhai was in actual occupation of the land and that the record of right would also show him to be the occupant of the said land".

With respect we are in complete agreement with the principle enunciated therein. In our opinion, therefore, the learned Judge below was not right in holding that it was not necessary to serve all the persons interested in the land, with the notice individually.

6. But the pertinent question which arises for our consideration in this appeal is - whether the plaintiff in fact has proved that he was in possession of the land on the date of the notification u/s 4 of the Act. In our opinion, as stated earlier, the plaintiff has miserably failed to show that he was in occupation of the land at the relevant time. Barring the bare word of the plaintiff, there is nothing to show that he was in fact in actual possession of the land on the date of the notification. In our opinion, therefore, the plaintiff would not be entitled to be served individually if in fact, he was not in possession of the land on the date of notification u/s 4 of the Act.

7. Mr. Parikh, however, urged that under the scheme of the land Acquisition Act, unless the plaintiff was a tenant of the land on the date of the notification issued u/s 4 of the Act, he would not be entitled to receive compensation. He urged that the land acquisition officer had accepted the plaintiff as a tenant of the land and on that basis had awarded him compensation. He, therefore, urged that it should be taken for granted that the plaintiff was in fact a tenant of the land on the date of the notification and that the relevant time. We are unable to agree with him. It may happen that the plaintiff have been inducted on the land after the notification u/s 4 was published. In that case also, it is not unlikely that in view of the fact that the plaintiff was found in actual possession of the land, at the

time the amount of compensation was to be determined, a notice may have been served on him under Sections 9 and 10 of the Act. But merely because a notice u/s 9 and 10 of the Act was served on the plaintiff, that would not necessarily relate back to the date of the publication of the notification u/s 4 of the Act. In this connection, it will be worthwhile to refer to certain observations made by the Supreme Court in the case of *Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others*, wherein it was observed that--

"Where after the notification u/s 4, the owner of the land was permitted to construct structures on the land on condition that the owner will not claim compensation for those structures the lessee of these structures, who were not upon the land at the date of notification u/s 4, acquire prima facie no interest in the land, and hence on failure of the authorities to serve them notice u/s 9(3), the acquisition proceedings do not become invalid. Even assuming that they acquire by virtue of their respective tenancies, any interest in the lands their remedy lies in approaching the Land Acquisition Authorities for claiming apportionment of compensation".

Mr. Parikh urged that this ruling would go to show that if he was inducted on the land after publication of the notification u/s 4, prima facie, he would not acquire any interest in the land as observed by the Supreme Court and therefore he would not be entitled to receive any compensation. He however, urged that the land acquisition officer had accepted him as a tenant and in fact, awarded compensation to him. He, therefore, urged that it should be taken for granted that he was a tenant of the land on the date of the notification u/s 4 of the Act. We are unable to agree with him. As observed by the Supreme Court in this very case referred to earlier, that even assuming that the plaintiff having acquired tenancy rights subsequent to the date of the notification u/s 4 of the Act acquired interest in the land, his remedy lies in approaching the land acquisition authorities for claiming apportionment of compensation. Thus, merely because the plaintiff was awarded compensation by the land acquisition officer, it cannot necessarily be inferred that he was in occupation of the land as a lessee on the date of the notification u/s 4 of the Act. In our opinion, as the plaintiff has failed to prove that he was in occupation of the land as a tenant on the date of the notification under S. 4 of the Act, his contention that the notification under Ss. 4 and 6 of the Act without a notice being served on him individually, were illegal and ultra vires cannot be sustained.

8. Mr. Parikh next urged that there was no specific issue in the trial court about the plaintiff being in possession of the land as a lessee on the date of the notification issued u/s 4 of the Act and in the absence of any specific issue on the point, the plaintiff did not think it necessary to lead evidence in this behalf. He, therefore, urged that in the interest of justice, the suit should be remanded to the trial court in order to enable the plaintiff to lead proper evidence in support of his say that he was in fact in possession of the land as a lessee at the relevant time. We do not agree. It is true that there was no specific issue on the point but

issue No. 1 would certainly include the contention which has been raised by the plaintiff in support of his say that the notification issued u/s 6 of the Act was illegal and ultra vires as no individual notice was served on the plaintiff. If the plaintiff had acquired any interest in the land on the date of the notification issued u/s 4, as a lessee, it was incumbent on him to lead necessary evidence in this behalf and to establish his case. If the plaintiff has not done so he has to thank himself. We see no good reason why the suit should be remanded to the trial court for enabling the plaintiff to fill up the lacuna in his case. We, therefore, reject the sub-missions made by Mr. Parikh that the suit should be remanded to the trial court.

9. Mr. Parikh next urged that as the acquired land was situated in the proposed town planning scheme, it cannot subsequently be acquired by the Government under the Land Acquisition Act. He therefore, submitted that the land acquisition proceedings were vitiated and were not binding on the plaintiff. Mr. Parikh has been unable to substantiate his say by reference to any specific Section in the Town Planning Act or in the Land Acquisition Act or by reference to any case-law on the point. On the contrary, if we refer to Ss. 81 and 84 the Bombay Town Planning Act, 1954 it will be clear that it is open to the Government to acquire land which is incorporated in the proposed town planning scheme if the said land is acquired for a purpose other than the purpose for which it was included in the town planning scheme. Section 81 of the Town Planning Act says--

"81. Land needed for the purpose of a town planning scheme or development plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894".

Thus the purpose for which the land is needed for the purpose of town planning scheme also could be considered to be a public purpose within the meaning of the Land Acquisition Act, 1894. Section 84 (1) says--

"84 (1) If at any time the State Government is of opinion that any land included in a town planning scheme is needed for a public purpose other than that for which it is included in the scheme it may make a declaration to that effect in the official gazette in the manner provided in Section 6 of the Land Acquisition Act, 1894. The declaration so published, shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section".

Thus the provisions of Section 84 (1) clearly go to show that it is within the competence of the State Government to acquire land for purpose other than the purpose for which it was included in the town planning scheme. This section clearly negatives the contention of Mr. Parikh that one that land was included in the town planning scheme, it cannot be acquired under the Land Acquisition Act. In the instant case, the plaintiff has not stated a word in his deposition in court that the land was included in the proposed town planning scheme. There is no evidence showing that the proposed town planning scheme had in fact come into force. There is no evidence to show for what purpose, the land bearing survey

number 13 was included in the proposed town planning scheme as stated by the plaintiff. However, Mr. Parikh conceded that it was not including for the purpose of slums clearance. In the instant case, the land has been acquired by the Government for the purpose of slums clearance. Therefore, even assuming for the sake of argument that land bearing survey number 13 was included in the town planning scheme, if the purpose for which the suit land is now acquired by the Government is different from that for which it was included in the town planning scheme, u/s 84 of the Act, it would be within the competence of the State Government to acquire it under the Land Acquisition Act. There is, therefore, no merit in the submission made by Mr. Parikh that once the land was placed in the proposed town planning scheme, the same cannot be acquired now under the Land Acquisition Act. In this connection, it will be worthwhile to refer to the observations of the Supreme Court in the case of State of Gujarat Vs. Shantilal Mangaldas and Others, , wherein, it was observed that--

"Section 84 only contemplates a special class of cases in which the land which is included in a town planning scheme is needed by the State Government for a public purpose other than that for which it is included in the scheme. In such a case, the State Government may make a declaration to that effect and the provision of the Land Acquisition Act, 1894, as modified by the schedule apply. We are not concerned in this case with any such notification issued by the Government nor has it any relevance to the question in issue".

It was further observed--

"Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way, the thing must be done in that way or not at all".

Relying on these observations, Mr. Parikh urged that once the land was placed in the proposed town planning scheme, it has to be acquired only under the Town Planning Act and it cannot be acquired under the Land Acquisition Act. As stated earlier, if the land was to be acquired for the same purpose for which it was placed in the town planning scheme, then Mr. Parikh would be right in contending that the land has to be acquired under the Town Planning Act. But if the land has to be acquired for the purpose other than the purpose for which it was included in the town planning scheme, there is no bar in the Act which would prevent the State Government from acquiring the land under the Land Acquisition Act. In such a case, Section 84 would come into play and as observed by the Supreme Court in the case of 10 Guj LR 879 = State of Gujarat Vs. Shantilal Mangaldas and Others, , the State Government may make a declaration to this effect and the provisions of the Land Acquisition Act, 1894 as contained in Section 84 apply. In the case of Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others, , referred to earlier, it was observed by the Supreme Court that:--

"In any case, the power of the appropriate Government u/s 4 of the Land

Acquisition Act to notify land needed or likely to be need for a public purpose is not subject to the restriction that when the public purpose is of the municipality the municipality has attempted to purchase the land by private treaty and has failed in that attempt. The scheme of the Land Acquisition Act is that whenever the land is needed for a public purpose, the Government may resort to the machinery provided under the Act for acquiring the land. Where the public purpose is the purpose of a Local authority and the provisions of the Land Acquisition Act are put in force for acquiring land at the cost of any fund controlled or managed by a local authority, Section 50 of the Land Acquisition Act provides that the charges of and incidental to such acquisition shall be defrayed from such fund".

In our opinion, therefore, Mr. Parikh is not right in contending that because the land in question was placed in the town planning scheme it should be acquired only under the Town Planning Act and not under the Land Acquisition Act. As already observed, if the purpose, for which the land is acquired under the Land Acquisition Act is different from the purpose for which it was placed in the town planning scheme, the State Government is not prevented from acquiring the same.

10. Lastly. Mr. Parikh urged that the land acquisition proceedings were vitiated because there was great delay between the date of publication of the notification u/s 4 and 6 of the Act. In support of his contention, he referred to the case of Valji Muliji Soneji v. State of Gujarat (1970) 11 GLR 95, wherein it was observed that:--

"Considerable prejudice is likely to be caused to the owner of the land if there is unreasonable delay between the publication of Section 4 notification and the making of declaration u/s 6. During the whole of the period, he would have only a qualified ownership or enjoyment of his property. If land, he could not improve it or build upon it: if a house, he could not rebuild or repair it, however urged the necessity of doing so, might be, without the strong probability of getting return for the money so laid out, if the Government ultimately took over the land. He would also not be able to earn maximum return from the property by letting it out profitably for it is elementary that few good tenants can be found if they apprehend that they might be liable to be turned out in course of time. Moreover, since compensation is to be determined with reference to the date of publication of Section 4 notification, the land owner would stand to lose if unreasonable delay in issuing Section 6 notification is made. These circumstances clearly and inevitably point to the conclusion that the legislature could never have intended that the declaration u/s 6 may be made at any time, even after the expiration of an indefinite or unreasonable length of time after the issue of Section 4 notification. The exercise of the power to make a declaration u/s 6 after an indefinite or unreasonable length of time would clearly be unreasonable and must, therefore, lead to the implication that the notification u/s 6 must be issued within reasonable time after Section 4 notification".

With respect we are in complete agreement with the observations made therein. In that case, there was a delay of nearly 15 years between the issue of notification u/s 4 and issue of notification u/s 6. It was therefore rightly held in that case that there was unreasonable delay which vitiated the acquisition proceedings. In the instant, case, there is hardly delay of 15 months. The notification u/s 4 was published in the Government gazette on 2nd January 1958 while the notification u/s 6 was published on 5th March 1959. By no stretch of imagination, it can therefore be said that there was inordinate or unreasonable delay in issuing the notification u/s 6 of the Act after the notification u/s 4 was published. In our opinion, therefore, the observations made in the case referred to above would not, be applicable in the instant case. Mr. Parikh also referred to the observations of this court in the case of Doongarsee and Sons and Others Vs. State of Gujarat and Others, wherein also, the same principle was laid down. In that case also, there was delay of nearly 5 years between issuance of notification u/s 4 and that u/s 6 of the Act. The ratio of that case also would not govern the facts of the instant case. There is, therefore, no substance in the submission made by Mr. Parikh that the land acquisition proceedings were vitiated on account of the delay in issuance of the notification u/s 6 of the Act.

11. In the result the appeal fails and is dismissed. So far as the costs of this appeal are concerned, it would be just and proper if each part is ordered to bear its own costs in view of the fact that even though the appeal fails, the appellant has succeeded on a point which was decided against him by the lower court. His appeal has been rejected on a point other than what was decided by the lower court.

12. At this stage, Mr. Parikh requested for maintaining status-quo for a period of six weeks in order to enable him to file an application for obtaining a certificate to file an appeal to the Supreme Court. We, therefore, order that status-quo be maintained for a period of six weeks from today. The referer is directed not to take possession of the land from the claimant till expiration of six weeks.

13. Appeal dismissed.