

(2009) 12 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 4301 of 2009

Mohamad Sayed Ismailbhai Khidkiwala APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 47, 6

Citation : (2009) 12 GUJ CK 0031

Hon'ble Judges : M.S. Shah, Acting C.J.; K.M. Thaker, J

Bench : Division Bench

Advocate : Nilesh A. Pandya, for the Appellant; Pranav Dave, Asst. Government Pleader for Respondent 1, Asim J. Pandya for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Mohit S. Shah, A.C.J.

1. In present petition under Article 226 of the Constitution of India the petitioner has approached this Court raising dispute with regard to the acquisition of lands by "consent award" made by the authority on 5th June 1992.

After 16 years, the petitioner has challenged the said consent award and has prayed for the following directions:

(A) to quash and set aside the consent award passed by the Land Acquisition Officer in LAR Case No. 11 of 1990, decided on 5.6.1992 qua the aforesaid land i.e. land bearing Survey Nos. 162, 163 and 165 situated in village Pansoli, Taluka Dabhoi, District Vadodara, which is belonging to the petitioner

(B) to quash and set aside the notice issued by the respondent dated 2.3.2009.

(C) to direct respondents their agents and servants that if they want to acquire the aforesaid land i.e. land bearing Survey Nos. 162, 163 and 165 situated in village Pansoli, Taluka-Dabhoi, District- Vadodara, then fresh land acquisition

proceedings prescribed under the Land Acquisition Act may be initiated and without following such procedure, the respondents have no right to take the possession of the aforesaid land and further be pleased to quash and set aside the compensation awarded by ay of that award with respect to aforesaid land- i.e. land bearing Survey No. 162, 163 and 165 situated in village Pansoli, Taluka- Dabhoi, District- Vadodara and fresh procedure may be directed to be initiated under the provisions of the Land Acquisition Act.

The petitioner has also prayed for interim orders to protect his possession of the lands in question or to stay execution of the consent award dated 5.6.1990.

2. The facts in the background of which the petitioner has approached his Court and prayed for aforesaid relief/s are:

2.1 The petitioner's father owned various parcels of lands including 3 parcels of lands bearing Survey No. 162, 163 and 165 admeasuring about Hector 4.78.15 in village Pansoli, District Vadodara. The petitioner has alleged that his father, expired on 22nd February, 1996, and after his father's death the names of the petitioner and other family members were mutated in Revenue Record. The respondent No. 1 State required the lands for public purpose of Rehabilitation of project affected persons (Sardar Sarovar Project) and therefore proposed to acquire the said and other lands and after certain deliberation all villagers, including petitioner's father, consented and agreed to allow acquisition as well as for the rate of compensation under consent. Consequently, in Land Acquisition Reference Case No. 11 of 1990, consent award was made on 5.6.1992 and the said consent award included the aforesaid survey numbers 162, 163 and 165 as well. There is no dispute between the parties on facts to this extent.

2.2 It is the claim of the petitioner that though his father had, at the relevant time, given consent along with other villagers and the lands have been accordingly acquired by virtue of consent award no compensation was paid to the petitioner/petitioner's father either at the relevant time or subsequently for almost 16 years. The petitioner has also asserted in the petition that throughout this period the possession of the lands in question has continued with the petitioner and the acquiring authority had never taken possession and then suddenly a notice dated 4.12.2008 came to be served on the petitioner asking the petitioner to collect the compensation of Rs. 2,14,922/- as per the consent award dated 05.06.1992 and to handover the possession of the lands in question.

2.3 The petitioner has also averred that the demand of the respondent authorities was not acceptable to him as there was no question of payment of compensation and demand for possession after 16 years and therefore he raised objection and conveyed to the acquiring authority that he would not accept the compensation and /or hand over the possession. The petitioner has also averred that the said notice dated 4.12.2008 was followed by another notice dated 2.3.2009 asking the petitioner to remain present on 12.3.2009 at 12.00 O'clock to handover the possession and receive the compensation and in the event of

petitioner's failure the respondent authorities will have to initiate criminal proceedings.

2.4 Aggrieved by the said notices dated 4.12.2008 and 2.3.2009, the petitioner filed a Civil Suit being Special Civil Suit No. 140 of 2009 in the Civil Court at Vadodara for declaration and permanent injunction restraining the respondents from dispossessing him without due process of law and for declaration that without fixing present market price the respondents have no right to take over the possession of the lands in question. During the hearing it has been stipulated and declared by the petitioner that the suit has been withdrawn, after presentation and initial hearing of the petition.

2.5 After rendition of the consent award dated 5.6.1992 the petitioner has preferred this petition, without taking any action for 16 long years from 1992 to 2008 either for demanding the compensation and handing over the possession or for asking the authorities to take the possession and pay the compensation or even to release the lands from acquisition. The petitioner stood fastly and without taking any action, continued to hold-on to the possession of the land and its usage. Now in 2009, the petitioner has prayed that the said consent award dated 5.6.1992 may be set aside. He has also prayed that if the respondent wants the land in question then the respondent must acquire the land in question afresh after initiating acquisition proceedings and on payment of present market price.

2.6 As against such facts, the respondent No. 3 has stated that it is the petitioner who intentionally did not collect the compensation amount and has continued to hold unauthorized possession and occupation of land in question and though the payment of compensation was offered, the petitioner did not remain present to collect it and therefore on 20.3.2009 the competent authority has deposited the compensation amount i.e. Rs. 2,14,922/-.

2.7 It is further asserted by the respondent No. 3 that the lands in question along with several other parcels of land were acquired for the purpose of rehabilitation of the land losers in Sardar Sarovar Project and that out of the three parcels of land regarding which the petitioner has raised grievance land bearing survey No. 163/1 paiki 1/04/42 has been granted to a project affected person viz. one Mr. Putiyapita Telsibhai. However, the petitioner is not allowing said Mr. Putiyapita Telsibhai to enter the land and to cultivate and that therefore said Mr. Putiyapita Telsibhai has now approached the grievance authority by registering his complaint as case No. 4402 of 2008.

2.8 The respondent No. 3 has also stated that in view of such facts after the notice dated 4.12.2008 another notice dated 2.3.2009 had to be issued asking the petitioner to remain present on 12.3.2009 and handover the possession of the lands in question. However, since the petitioner did not remain present a panchnama was drawn on 12.3.2009.

2.9 It is at the stage when the notice dated 2.3.2009 came to issued and served

on the petitioner that he has, after 16 years from the date of consent award, approached this Court challenging the notices dated 2.3.2009, 22.12.2008 and 4.12.2008 and has also inter alia prayed that the consent award dated 5.6.1992 be set aside.

2.10 The petition has been opposed by respondent No. 2 and 4 also by making an affidavit dated 16.7.2009 stating the facts about the consent award and the mutation of entry No. 1682 and about the fact that the petitioner has unlawfully continued to occupy the lands in question.

2.11 The reply affidavits filed by the respondents have been disputed by the petitioner by filing rejoinder affidavits whereby the petitioner has denied almost all statement and assertions by the respondents and has continued to harp single tune that he continues to be in possession of the lands in question and the compensation has not been paid and therefore, after 16 years he cannot be asked to part with the possession and the details about panchnama stated by the respondent is incorrect.

3. We have heard at length Mr. Nilesh Pandya, learned advocate for the petitioner. We have also heard Mr. Asim Pandya, learned advocate for respondents No. 2 and Mr. Pranav Dave, A.G.P for respondent No. 1, 3 and 5.

4. Mr. Pandya for the petitioner vehemently submitted that it has been 16 long years since the consent award was made and until 2008 the petitioner was not paid the compensation and now the respondents claim that after passage of more than 16 years the original compensation amount (i.e. at the rate fixed by the consent award of June 1992) has been deposited in the treasury and that the petitioner cannot be expected, much less, compelled to accept such meager amount and/or to abide by the consent award. He also submitted that if at all the respondents still need the lands in question then the acquisition proceedings in accordance with law must be carried out afresh and the compensation at the rate of present market price should be fixed and paid to the petitioner. Mr. Pandya also submitted that possession of the lands was never taken by the respondents and the petitioner continues to be in possession of the lands in question. He also submitted that since the compensation was not paid representations were made to various authorities including Hon'ble Chief Minister. Mr. Pandya also contended that the petitioner cannot be offered compensation in 2008 at the rate of the price fixed in 1992 and that the impugned notices and the actions of the respondents of demanding possession as well as of offering compensation at the rate of the price fixed in 1992 are arbitrary.

4.1 On the other hand Mr. Asim Pandya opposed the petition on diverse grounds, however mainly on the ground that the petition is inexcusably delayed and suffers from vice of laches, delay and acquiescence. It is also urged that the petitioner is trying to take undue benefit and advantage of his own wrong of not handing over the possession for 16 years. The respondents have also opposed the petition on the ground that the consent award has become final and has been

in operation since June 1992 and all other land owners/claimants whose lands came to be acquired under the same award have since then handed over the possession and received the compensation and petitioner alone cannot ask for different treatment. Besides these contentions the respondents have also opposed the petition on the ground that in the interregnum new equities have been created inasmuch as the acquired lands including the lands of the petitioner have been allotted, by the rehabilitation authority, to the "Sardar Sarovar Project Affected Persons" and that therefore the petitioners demand for setting aside the consent award and the petitioner's adamant stand to not handover the possession is not only unjustified but also illegal, unauthorized and untenable. The respondent No. 3 has also asserted that pursuant to the consent award dated 5.6.1992, necessary entry i.e. entry No. 1682 in the Revenue Record has been registered on 13th June, 2000 and has also been certified on 4th December, 2000 and that even after such mutation and certification of the entry the petitioner did not take any action whatsoever.

5. In present case the petitioner is challenging, in 2009, consent award made in May 1992. The said consent award was made in light of the consents given by all the villagers including the petitioner's father who consented to allow the acquisition of lands bearing Survey Nos. 162, 163 and 165 and to accept the compensation at the rate determined by the award. A copy of the said consent is produced by the respondents at annexure-B.

6 The petitioner is challenging the award after almost 16 years on the allegation that he has not been paid the compensation and possession of the lands in question was not and has not been taken.

7. Before dealing with the rival contentions it deserves to be mentioned at the outset that in view of the rival submission of the contesting parties and the conflicting assertions, we considered it necessary to call for specific details with regard to certain relevant issues arising from the submissions by both sides and for that purpose an order dated 6.8.2009 was passed calling for replies and details with regard to the below mentioned 6:

Whether the respondents had paid compensation for all the lands acquired under the same notification under Sections 4 and 6 of the Land Acquisition Act, 1894 in 1992 or 1993 other than lands bearing survey Nos. 162,163 and 165.

Whether the dispute about non-payment of compensation raised in the present petition in respect of survey Nos. 162,163 and 165 is raised in respect of any other lands which were acquired under the aforesaid notification.

Out of the lands acquired under the aforesaid notification, how many lands are allotted by respondent Nos. 2 and 4 Narmada oustees?

Whether any other land is available for allotment to Mr. Putiyapitabhai who had recently been allotted the lands bearing Survey Nos. 162,163 and 165 in his capacity as an oustee on account of construction of the Narmada Dam.

What is the area of the land already taken over from the petitioner for resettlement of Narmada Dam oustees.

Whether the petitioner will be left with any other lands for cultivation after the lands bearing survey Nos. 162, 163 and 165.

7.1 The replying respondents have, in response to the issue No. 1, declared in their affidavit that all the land owners, except in respect of the said three parcels of lands, have been paid compensation and in respect of the issue No. 2 it has been declared that any dispute regarding compensation has not been raised by any other land owners whose lands were acquired by the consent award.

7.2 As regards the non-payment of compensation to the petitioner it has been stated that Dena Bank had a charge over the lands in question to the extent of Rs. 2,42,000/- and a Co-operative Mandali had a charge of Rs. 24,341/-. Thus, the total charge over the land in question was to the extent of Rs. 2,66,341/- whereas the amount of compensation came to the tune of Rs. 2,14,9222/-. Hence there was a shortfall to the extent of Rs. 51,419/- and until the said shortfall was made good, by the petitioner in favour of the Bank/Mandli, the Acquiring Authority could not have acquired clear title even after acquisition of lands.

7.3 In response to the issue No. 3 the respondents have declared that lands admeasuring 203-46-63 hectors were acquired and out of the acquired lands, 131-83-51 hectors of lands have been allotted to the project affected persons and that the remaining land was either waste land or ravine land or non-command land and therefore, it was not possible to allot such land for cultivation purpose and consequently any other excess land was not and is available for allotment to the said project affected person namely, Mr. Putiyabhai Telsingbhai

7.4 In reply to issue No. 5 the respondents declared that even after the acquisition of the said three parcels of lands the petitioner still has in his possession land bearing survey No. 218 admeasuring 1-18-92 hector.

7.5 The respondents Nos. 2 and 4 also filed an additional affidavit and have inter alia, stated that all land owners whose lands came to be acquired, except the father of the petitioner, were already paid 100% compensation soon after the consent award was made and that except the 3 Survey Numbers originally owned by the petitioner's father there was no disputes with regard to the possession and/or compensation in respect of any other lands in all 203-46-63 hectors of land was acquired for the rehabilitation purpose, which included the lands in question.

8. Having given the said details the respondents asserted in the affidavit that:

&.. the total amount, which was to be paid by the father of the petitioner to the above said financial institutions was Rs. 2,66,341/- against which the amount of compensation was Rs. 2,14,922/- .Thus, Rs. 51,419/- was till to be paid by the father of the petitioner to the financial institutions towards the repayment of the

loan obtained by him on the above said land. Since the father of the petitioner did not make payment of Rs. 51,419/- to the financial institutions, the compensation amount which was to be paid to the father of the petitioner, could not be paid. Unless the father of the petitioner cleared the dues of the banks, the titles of the land would remain imperfect. In view of this peculiar situation it appears that the compensation amount was not paid to the father of the petitioner, all other land-losers were paid 100% compensation amount soon after the consent award was passed.

8.1 Then in para 10 of the same affidavit the respondent No. 2 and 4 have also averred that -

&&. from the forgoing facts, it is clear that the amount of compensation to be paid to the father of the petitioner could not be paid as there were charges of the financial institutions on the land and unless and until the remaining amount of charge exceeding the amount of compensation was paid by the father of the petitioner, it was not possible for the respondents to make payment to the father of the petitioner. It is submitted at the cost of repetition that the present petition is a mala fide attempt of the petitioner to retain the possession of the land, which was already acquired in the year 1992-93 and which has now been allotted to the Project Affected Person, Mr. Putiyabhai Telsingbhai.

8.2 In his counter the petitioner has, disputed the said details, but; interestingly, the petitioner has also claimed, inter alia, that the loans/dues were cleared by him in 2004. Thus, even if the petitioner's assertion is taken as true, then also, even as per his own admission it is established that until 2004 there was charge over the lands in question.

9. As noticed earlier the petitioner has inter alia prayed that the consent award dated 5.6.1992 may be set aside and he has also averred that he does not intend to be bound by the consent given in June, 1992. The petitioner is, so as to wriggle out of the consent award, alleging and citing that the possession of the lands in question has not been taken and compensation has not been paid to him until now.

9.1 In this regard it is appropriate to take into consideration the fact that the lands of various other land owners were also acquired at the relevant time and the possession of lands in all other cases was, at the relevant point of time, taken and the land-owners were also paid the compensation and that therefore it is not palatable that the authorities would not take possession of only those parcels of lands which belonged to the petitioner and/or would not pay compensation only to the petitioner.

9.2 In this regard even the total inaction on part of the petitioner (and also petitioner's father) right from June, 1992 until 2008 of not taking any steps either demanding payment of the compensation or asking the authority to take possession also cannot be overlooked.

9.3 In our view, such inaction on the part of the petitioner supports and justifies the submission of the authorities that the petitioner illegally continued to be in occupation of the lands in question after its acquisition pursuant to consent award and since there were dues to be paid by the petitioner to Bank/the Co-operative Mandli, it was not possible for the acquiring authority to get clear title of the lands in question until the dues of the Banks were cleared.

9.4 The Acquiring Authority could not make the payment of the compensation to the petitioner as the dues of the Bank/the Co-operative Mandli were not cleared. Further, in absence of any authorization by, and consent from the side of, the petitioner to directly make the payment from the compensation amount to the Bank/the Co-operative Mandli, the Acquiring Authority also could not directly make the payment of the amounts due to the Bank and the Mandli.

9.5 If the petitioner had given such consent and authorization to the Acquiring Authorities then the Acquiring Authority could have made the payments directly to the Bank and the Mandli and after such adjustment if any balance from compensation amount remained, then it could have been paid to the petitioner. Although in present case actually the compensation amount fell short of the due and outstanding amounts.

9.6 On one hand without giving such consent and authorization to the Acquiring Authority and on the other hand without himself making the payment of the amounts due to the Bank and the Mandli, the petitioner is not justified in raising contention or making grievance that the compensation amount has not been paid to him.

9.7 If the petitioner's submission is to be presumed as correct and that too in absence of any documentary evidence, then even as per his own submission the petitioner cleared the dues only in 2004, which means that even according to the petitioner's case, the dues remained unpaid until 2004.

9.8 Further, the petitioner does not appear to have informed the Acquiring Authority that he had, cleared the dues. In absence of any intimation from the petitioner and/or the Bank/Mandli about the dues, the Acquiring Authority ultimately deposited the compensation amount with the authority. It is not the case of the petitioner that he or the Bank/Mandli had informed the acquiring authority that the dues were cleared and the lands in question were free of and were released from the charge. If the acquiring body had been informed the said fact, it could have taken necessary and appropriate actions.

9.9 So far as the petitioner's allegation that possession has not been taken is concerned, it deserves to be recalled that the Acquiring Authority has asserted that it had, immediately after the consent award was made in June, 1992, taken possession of all other parcels of lands (except the three parcels of lands owned by the petitioner) which makes it clear that there could not have been any reason, except the petitioner's obstructions, for the Acquiring Authority not taking possession only of the lands in question (petitioner's lands).

9.10 In this context it also deserves to be recalled that the Entry No. 1682, in the revenue record an entry in the name of Acquiring Authority is said to have been mutated in June-2000 in respect of the lands in question and on 4.12.2000 the Revenue Authority also certified the said Entry. It deserves to be noted at this stage that the petitioner has not claimed that he has challenged the said entry and/or its certification. It is not, even in the petition the petitioner's case that the said entry was or has been challenged by him before any authority or in any Court. Thus, even for the sake of testing the petitioner's allegations if his submission that possession was not taken is to be presumed to be true, then also after the certification of the Entry such allegation does not hold good inasmuch as it was (mutation of entry) a crystal clear indication to the petitioner that he continued to be in illegal and unauthorized possession of the lands in question.

9.11 The petitioner's actions and particularly his claim in the petition deserves to be tested also in light of the aforesaid feature of the matter viz. even after the mutation and certification of the Entry the petitioner did not take any steps either to challenge the mutation and certification of the Entry much less to handover vacant, peaceful and absolute possession and occupation of the lands. The petitioner very conveniently ignored the entry and its certification and also ignored or rather frustrated the allotment of lands in question to the project affected person.

10. In the facts of the case it cannot be ignored that:

(a) that the lands were acquired for the public purpose of rehabilitation of project affected persons.

(b) that the land in question has since long been allotted to one of the project affect persons and vacant and peaceful possession of land in question is required to be handed over to the said allottee (project affected person).

(c) possession of all other lands were taken at the time of consent award, thus there is no convincing reason why the authority could not take possession of the petitioner's lands.

(d) all other land owners have been paid 100% compensation at the relevant time, and on this count also there is no explanation or convincing reason given by the petitioner to explain why the acquiring body would not make payment of compensation only to the petitioner.

(e) upon allotment, equity in favour of third party i.e. the allottee (project affected person) is created since long and the said allottee has not been able to get the possession of the land as the petitioner continues to hold possession and the allottee is said to have been constrained to approach grievance redressal authority.

(f) in light of the facts recapitulated at serial No. (c), (d) and (e) above there appears to be enough substance, in the respondents' submissions to be true, and therefore it seems safe to assume that it must be the petitioner who did not

handover the possession and obstructed acquiring authority from taking possession and continues to be in illegal and unauthorized occupation.

(g) it also cannot be ignored that it is after 16 years that the petitioner has come forward challenging the consent award and he claims that after 16 years the consent award may be set aside.

(h) It also cannot be ignored that during past 16 years the petitioner did not take any action either to vacate the possession and occupation of the land and to handover the possession of the land in question or to claim compensation despite or even after the various developments as stated above.

(i) it also cannot be ignored that even after the certification of the entry in 2000, the petitioner did not take any action either to challenge the entry or to challenge the consent award or to demand the compensation by offering the possession.

(j) This inaction of the petitioner, or his action of adamantly holding the possession, demonstrates that the petitioner never intended to, and he did not, handover the possession of the land in question.

(k) it also cannot be ignored that at least until 2004 there was charge of bank/mandali over the land in question since the petitioner had not paid the dues of the bank/mandali and the outstanding amount was more than the amount of compensation.

(l) besides the aforesaid aspects, the most prominent feature of present case is that in the interregnum (i.e. throughout the span of 16 years) the petitioner has continued to enjoy the possession, usage and fruits of the lands in question. Differently put the petitioner has continued the usage of the land and thereby has continuously enjoyed the yield from the lands and consequently continued to earn income from the land in question.

While all other land owners" (whose lands came to be acquired by the consent award) had handed over the possession and ceased to enjoy the income from their lands, the petitioner stood apart and has continuously earned from the lands in question during past 16 years.

11. We also cannot help but observe that the petitioner has caused anguish and hardships to the allottee (i.e. the project affected person) who has been deprived of the possession of the land after allotment in his favour and has been compelled to approach the grievance redressal authority claiming appropriate actions may be taken so that he may be able to enter into and use the allotted land.

12. In our view, the petitioner's claim that the consent award may be set aside deserves to be rejected. The said claim has to be recorded only for the purpose of rejecting it, since in the first instance, ordinarily Court would not entertain challenge against a consent award under the Land Acquisition Act except in a

very exceptional and rare case of fraud and also for the reason that even otherwise such challenge against consent award after lapse and delay of 16 years is not maintainable and cannot be granted, more so when third party equities have arisen as well as for the reason that when a person who comes forward 16 years after the consent award came to be made and challenges the award for which his father had consented cannot be granted, more particularly when such consent award in respect of all other land owners has already been acted upon by both sides and third party equities have been created.

13. The last question is whether we should direct the respondents to pay interest to the petitioner and if yes, then whether from 4/12/2000 (the date on which the entry was certified) or from 2004 i.e. when the dues of the bank/mandali came to be cleared (as per the claim of the petitioner) to the date on which the respondents deposited the amount.

14. On giving anxious consideration, we are of the view that granting any such relief to the petitioner would not be equitable since it would favourably discriminate the petitioner as against the other land owners, who handed over the possession at the time of the consent award and received the compensation as against the petitioner, who not only unauthorizedly continued to occupy and possess the lands in question but also profitably used it and enjoyed the fruits and income from the lands in question for all these years. If such interest or any monetary compensation is awarded to the petitioner then it would amount to granting double benefit, which would not be just or equitable.

15. Though this is not a petition preferred by the allottee or the acquiring authority, in the facts of the case we find it necessary to observe that it would be open to the acquiring authority to invoke the power u/s 47 of the Act and to request the Magistrate to take appropriate action for handing over the possession to the allottee so to enable him to enter and use the allotted land.

16. In view of the foregoing discussion, the petition fails and deserves to be rejected and is accordingly dismissed, subject to the observations in para No. 15 above. We, however, refrain from making any order as to costs. Interim relief, if any, stands vacated forthwith.

At this stage, learned advocate for the petitioner prays for stay of operation of this judgment for a period of 8 weeks to have further recourse in accordance with law.

In the facts and circumstances of the case, the request is rejected.