

(1971) 08 GUJ CK 0006

In the Gujarat High Court

Case No : Civil Revision Application No. 420 of 1971

Mohanlal Narandas

APPELLANT

Vs

State of Gujarat and others

RESPONDENT

Date of Decision : 23-08-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Land Acquisition (Gujarat Unification and Amendment) Act, 1963 — Section 21, 21

Citation : AIR 1972 Guj 178 : (1972) 13 GLR 597

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Advocate : K.K. Chokhawala, for the Appellant; G.M. Vidyarthi, Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Sheth, J.—The plaintiff has filed Regular Civil Suit No. 998 of 1970 in the Court of the Civil Judge, Senior Division at Surat for a declaration that the acquisition of land " bearing S. No. 188 of Ward No. 9 situate in the city of Surat is unlawful and ultra vires. During the pendency of the suit the plaintiff applied for an interim in- junction to restrain the defendants from taking possession of the said land. The defendants to the suit are the State of Gujarat, the Collector of Surat and the Land Acquisition Officer, Branch No. 4, Surat.

2. The learned trial Judge rejected the plaintiff's application for interim injunction on the ground that no statutory notice u/s 80 of the CPC was served upon the defendants and that therefore, the suit was not maintainable.

3. The plaintiff appealed to the District Court. The learned District Judge held that the finding of the learned trial Judge that the statutory notice u/s 80 of the CPC was not served upon the defendants was erroneous. However, he dismissed the appeal because Sec. 47-A of the Land Acquisition Act inserted by Sec. 21 of the Land Acquisition (Gujarat Unification and Amendment) Act, 1963 prohibits Civil Courts from issuing injunctions against the acquiring authorities in matters

of land acquisition.

4. It is against that appellate order that this Civil Revision Application has been filed. "

5. Mr. Chokhawala, appearing for the plaintiff, has contended before me that Section 47-A has no application to the instant case. Section 47-A provides as under:-

(1) In the application of this Act, to the State of Gujarat, for Section 47 the provisions of sub-sections (2) and (3) of this section shall be substituted. (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.

6. The first contention which Mr. Chokhawala has raised before me is that sub-section (2) of Section 47-A contemplates a valid action on the part of the Collector under the Land Acquisition Act. If the action taken by the Collector under the Land Acquisition Act is challenged as unlawful or ultra vires his powers, then Section 47-A has no application to such an action and any suit filed for challenging such an action is not subject to the provisions of Section 47-A. I am unable to agree with Mr. Chokhawala in this submission of his. All the sub-sections have got to be read together in order to find out the intention of the legislature Subsection (3) provides for reasonable compensation for any damage which a person may have suffered by reason of the wrongful exercise of his power by an officer or by the exercise of some power by an officer without authority. Section 47-A, therefore, in terms contemplates cases of wrongful exercise of power under the Land Acquisition Act by an officer or exercise of power by an officer without authority. Reading sub-section (2) in light of sub-section (3) it is clear to me that the actions contemplated by sub-section (2) are not necessarily valid actions. They must purport to be actions under the Land Acquisition Act. If the connotation of sub-section {2} is circumscribed only to valid actions under the Land Acquisition Act, as Mr. Chokhawala contends, then the provisions of sub-section (3) would be rendered absolutely redundant because in such a case no question of providing for compensation for wrongful

exercise of power or exercise of power without authority will at all arise.

7. Mr. Chokhawala has next contended that in the instant case no one had opposed or impeded the Collector in taking possession of the land in question under the Land Acquisition Act. It is a question of fact. It has been stated in the plaint itself that the Collector or someone on his behalf had gone to take possession of the land in question and that therefore, the plaintiff had filed the present suit for vindicating his rights. In view of these averments, I am unable to accept the second submission made by Mr. Chokhawala on facts.

8. In the result, since I find no substance in both the contentions raised by Mr. Chokhawala, the Revision Application fails. Rule is discharged with no order as to costs. Mr. Chokhawala, however, requests me to continue for a period of two weeks from today the interim injunction issued by this High Court in this Civil Revision Application because the plaintiff wants to challenge in a Writ Petition the vires of Sec. 47-A of the Land Acquisition Act. Since the plaintiff wants to challenge the vires of Section 47-A in a Writ Petition in this. High Court in exercise of inherent powers conferred upon me I direct that the interim injunction issued by this Court in this Civil Revision Application shall continue in force for a period of two weeks from today and shall stand vacated thereafter.

Revision dismissed.