

(2014) 03 GUJ CK 0091
In the Gujarat High Court

Case No : Special Civil Application No's. 8140 to 8162 of 2013

Nayanaben Ratilal Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 38
Constitution of India, 1950 — Article 226 300A

Citation : (2014) 03 GUJ CK 0091

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Jitendra H. Singh, for the Appellant; P.P. Banaji, A.G.P. for the Respondent Nos. 1-2 and Mr. Ravi Karnavat, Advocate for the Respondent Nos. 3-4, for the Respondent

Final Decision : Disposed Off

Judgement

R.M. Chhaya, J.—Heard Mr. Jitendra H. Singh, learned advocate for the petitioner, Mr. P.P. Banaji, learned Assistant Government Pleader for respondent Nos. 1 and 2 and Mr. Ravi Karnavat, learned advocate for respondent Nos. 3 and 4. Though served, no one appears on behalf of respondent No. 5. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following relief's:--

(A) Your Lordships will be pleased to declare that in Chapter IV-A of the Railways Act 1989 related to the land acquisition for a Special Railway Project there is no provision to pay/deposit the arbitration fee and expenses by the applicant/petitioner in the arbitration proceeding before the arbitrator appointed by the Central Government for the purpose of re-determination of the market price of the acquired land.

(B) Your Lordships will be pleased to hold and declare that on the arbitration application of the petitioner, before the respondent No. 5 arbitrator. The petitioner is not liable in law to pay/deposit the arbitration fee and expenses for

getting the re-determination of the market price of the acquired land of the petitioner and such demand of the arbitration fee by the respondent No. 5 is illegal, arbitrary, unconstitutional. And further be pleased to quash and set aside the communications sent by the respondent No. 5 at Annexure L containing the illegal action of to file the arbitration application of the petitioner and also the demand letter at Annexure H by issuing suitable writ, order, direction.

(C) Your Lordships will be pleased to hold and declare that it is beyond the competence of the respondent No. 5 to file the arbitration application of the petitioner and action of filing the arbitration application by the respondent No. 5 is illegal, improper and without the jurisdiction, authority and contrary to the mandate and provision of law and violative of fundamental rights of the petitioner.

(D) Your Lordships will be pleased to direct the respondent No. 4 to appoint some other arbitrators to hear and decide the arbitration application of the petitioner for determining the market price of the acquired land of the petitioner by issuing suitable writ, order or direction.

(E) Your Lordships will be pleased to direct the respondent No. 4 to appoint in the meantime any arbitrator to hear and decide the arbitration application of the petitioner pending the final hearing and disposal of the present petition.

(F) Any other and further relief/s as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case be granted.

2. At the outset, it may be noted that this Court (Coram: Rajesh H. Shukla, J.) passed a detailed order dated 8.5.2013 and has observed thus:--

3. In view of the contentions raised, specifically pointing out the fact that the lands in question are sought to be acquired for the purpose of Dedicated Railway Freight Corridor by Respondent No. 4, Government of India, Ministry of Railways, and Respondent No. 3 is implementing the entire project in national interest. However, as could be seen from the contentions raised, the persons like the petitioners, whose lands have been acquired, are sought to be deprived of even a legitimate right to pursue the remedy for enhancement of the claim in respect of the lands acquired on such grounds raised by the Respondents, which the learned Advocate Shri Ravi Karnavat has stated as follows:

(i) He has referred to the Railways Act and pointedly referred to sub Sections (6) and (7) of Section 20F to emphasize about the determination of the amount payable as the compensation.

(ii) He has stated that Sub-Section (7) of Section 20F states that the provisions of the Arbitration and Conciliation Act, 1996 would apply to every arbitrator under the Railways Act. He has therefore stated that when any arbitration proceedings are undertaken by the aggrieved party and in respect of the compensation for the land acquired, the arbitrator like Respondent No. 5, who has to decide and consider the aspect of compensation, it will be subject to the Arbitration and Conciliation Act.

(iii) He has also referred to the Arbitration and Conciliation Act, 1996 and referred to Section 38 that the Tribunal is empowered to fix the amount of compensation to meet with the expenses and both the parties have to deposit the amount.

(iv) Learned Advocate Shri Ravi Karnavat has stated that in fact the proceedings are filed by the persons like the petitioners, and the Railway is dragged to the arbitration proceedings and cannot be made to pay the entire cost, and therefore, it has to be shared by both the sides as provided in the Arbitration and Conciliation Act, 1996.

4. Though these submissions have been made, on face of it, it cannot be sustained for the reasons:

(i) The right of the people like the petitioners, whose lands have been acquired, is required to be considered in light of the constitutional provisions including Article 300A, where though it may not be a fundamental right, nevertheless it is an important or rather basic human right inasmuch as the people are deprived of their lands or the part of their lands, for which adequate compensation has to be awarded.

(ii) In order to get such compensation or when the compensation which has been fixed by the Respondent No. 4 Government of India, Ministry of Railways, it is found to be inadequate, the petitioners or the owners of the lands have to pursue the remedy by way of arbitration as provided in the Railways (Amendment) Act. The said proceedings are to be considered by the Arbitrator to be appointed by the Respondent No. 4 who is required to decide the proceedings under the Arbitration and Conciliation Act, 1996.

(iii) The basic underlying idea seems to be that on the one hand the acquisition of lands for the purpose of Dedicated Freight Corridor and the progress in implementing of such project could be made without any hurdle in a time schedule, and normally, the court would not exercise the discretion considering the public or the national interest. At the same time, when the aspect of compensation is required to be decided by the Arbitrator to be appointed by Respondent No. 4, Government of India, Ministry of Railways under the Arbitration and Conciliation Act, 1996, it would imply that, by such provision, the process of deciding the aspect of compensation is sought to be expedited, which would perhaps grant some relief to the persons whose lands have been acquired.

5. Therefore, considering this underlying object, if the contentions which have been raised by learned Advocate Shri Ravi Karnavat for Respondent Nos. 3 and 4 are to be accepted or considered, it runs counter to the underlying policy and the purpose of the legislature, and it is rather disappointing that such a contention could be raised at the instance of Respondent No. 4, Government of India, Ministry of Railways. In fact if the Respondent No. 4 claims to acquire the lands of the citizen for the purpose of the project or development, it will be subject to the provisions of Article 300A, which would stare in the face. However, such a

project in public interest, for which the acquisition of a land is permitted, cast an obligation upon the acquiring body like Respondent No. 4 Union of India that adequate compensation is also awarded and also within a reasonable time.-- Therefore, the Hon''ble Apex Court in various pronouncements has expressed the word of caution that such an issue about acquisition of land has to be addressed with sensitivity.

6. A useful reference can be made to the judgment of the Hon''ble Apex Court reported in Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another, where it has been observed:

The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities. In Centre for Public Interest Litigation v. Union of India, this Court declared the dictum that State actions causing loss are actionable under public law. This is a result of innovation, a new tool with the courts which are the protectors of civil liberties of the citizens and would ensure protection against devastating results of State action.

7. Further, the Hon''ble Apex Court in another judgment reported in Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, has laid down the broad guidelines with regard to the procedure and the principles which is required to be followed in such cases of acquisition of land as the effect of depriving the owner of his right to property require a care and circumspection. Therefore, under the concept of eminent domain, the right of the acquiring body on one hand for acquisition and the right of the land owner for getting " the compensation or just compensation has to be balanced.

8. It is in the background of these observations and the guidelines, such a contention cannot be prima facie accepted. However, as the contentions required detailed hearing, the following order is passed:

Rule. By way of ad interim relief, it is directed that the Respondent No. 5 The Arbitrator and Revenue Inquiry Commissioner shall proceed with the arbitration proceedings irrespective of any obligation for the payment by the petitioners, and the Respondent No. 4 Government of India, Ministry of Railways shall make the provision regarding the administrative and other expenses of the Arbitrator, without any delay, so that the proceedings for the, purpose of compensation of the claimants are not delayed.

9. It is required to be mentioned that if the Respondent No. 4 desires the implementation and the progress of such Dedicated Freight Corridor project expeditiously, it is also under the obligation that the aspect of compensation is not delayed and should not resort to some such provision of the Arbitration and Conciliation Act to fasten the liability on the persons whose lands have been acquired, which will be adding insult to the injury, as they would be made to shell out a portion of amount of compensation or less compensation, that is awarded

towards such further cost to get the enhanced compensation that cannot be a purpose. Therefore, the Respondent No. 4 Union of India, Ministry of Railways shall make an arrangement for expeditious disposal of the arbitration proceedings in respect of the compensation for the lands acquired and for the purpose Dedicated Freight Corridor, as discussed above.

3. It may be noted that respondent Nos. 3 and 4 challenged the said order by way of filing Letters Patent Appeal No. 738 of 2013 and allied appeals. The Division Bench by an order dated 12.11.2013 dismissed the said appeals.

4. Mr. Jitendra Singh, learned advocate for the petitioner as well as Mr. Ravi Karnavat, learned advocate for respondent Nos. 3 and 4 have pointed out that as per the order dated 8.5.2013, respondent No. 5 - learned arbitrator has proceeded further with the arbitration proceedings and as per the said order, respondent Nos. 3 and 4 have deposited the amount of costs as per Annexure-L to these petitions. Mr. Singh has also produced a photocopy of the arbitration award dated 31.5.2013 for perusal of this Court.

5. Mr. Singh therefore rightly pointed out that as far as prayers prayed for in Paragraph 28(C) to 28(E) would not survive any more.

6. As far as prayers prayed for in Paragraph 28(A) and 28(B) are concerned, considering the order dated 8.5.2013 as respondent Nos. 3 and 4 have already deposited the amount of costs and the order dated 8.5.2013 having been confirmed by the Division Bench in Letters Patent Appeal No. 738 of 2013 vide order dated 12.11.2013, as such no further orders on merits are called for by the learned advocates appearing for the parties, keeping the issue as to who has to bear the cost as provided u/s 20(F) open, these matters are disposed of in light of the facts and circumstances which have arisen in these petitions, more particularly, as respondent Nos. 3 and 4 have already paid the costs and the learned arbitrator has already passed the award.

7. Mr. Ravi Karnavat, learned advocate for respondent Nos. 3 and 4, on instructions, states that no further orders are necessary to be passed. However, it may be provided that this order may not be treated as precedent.

8. Considering the facts and circumstances arising out of these petitions, these petitions are disposed of in light of the earlier order dated 8.5.2013 with a further clarification that the same may not be construed to be a precedent in any other case. It would be open for either of the parties to take appropriate recourse available under the law as far as the award of arbitration is concerned.

9. It is further clarified that as far as this group of petitions are concerned, the only question involved was payment of cost. No other issue is raised in these petitions. It is therefore clarified that it would be open for the parties to take appropriate legal course available in relation to the award dated 31.5.2013 passed by the learned arbitrator.

10. Mr. Karnavat further submits that respondent Nos. 3 and 4 intend to

approach the learned arbitrator as the cost is not provided for in the award. It goes without saying that if any such application is filed, the same shall be examined in accordance with law by the arbitrator. With these observations and clarification, these petitions are disposed of. Rule is made absolute to the aforesaid extent.