
(1925) 11 BOM CK 0001
In the Bombay High Court

Nur Mahomed Husen

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 10-11-1925

Acts Referred:

Land Acquisition Act, 1894 — Section 7

Citation : AIR 1926 Bom 369

Hon'ble Judges : Macleod, C.J.;Coyajee, J

Bench : Full Bench

Judgement

Macleod, C.J.—Three suits, Nos. 8, 9 and 10 of 1924, were filed in the Court of the District Judge at Surat by certain owners of house property in Surat, situated at Nagda Tekra, Begampura, within the Surat City Municipal limits, against the Secretary of State for India in Council and the Land Acquisition Officer, Surat City, for injunctions restraining the defendants from taking possession of the properties which had been acquired under the Land Acquisition Act, on the ground that the Land Acquisition Officer had acted without any authority as no proper order was passed u/s 7 of the Land Acquisition Act directing the Collector to take order for the acquisition of the properties in question.

2. The only question raised before the District Judge was whether the Land Acquisition Officer, who had taken order for the acquisition of the properties, and had made the award, had acted illegally and without authority.

3. u/s 7 of the Land Acquisition Act.

Whenever any land shall have been so declared (under Section 6) to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

3. u/s 3(a), the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the function of a Collector under this Act.

4. In these cases, the Government directed, in the first instance, that the Assistant or Deputy Collector in charge of the Chorasi Taluka should be directed to take order for the acquisition of the land. These orders were notified by Government Order No. 7982, dated August 1, 1918, as follows:

In modification of the orders contained in Government Resolution No. 1040, dated February 4, 1913, the Governor in Council is pleased to direct that the officer in charge of the City Survey, Surat, should be directed to take order for the acquisition of the land referred to in that resolution.

5. It is perfectly clear that the City Survey Officer would be the officer specially appointed by the Local Government to perform the functions of a Collector under this Act, and I cannot follow the argument, on which is based the contention that the City Survey Officer was illegally appointed by the Government to perform the functions of the Collector under the Act; that is to say, to perform the functions with regard to the acquisition of the properties which are acquired under the provisions of the Act. The appeals, therefore, against the decrees of the District Judge in these three suits, Nos. 8, 9, 10 of 1924, will be dismissed with costs.

6. Further, nineteen suits were instituted by the owners of certain properties situated at Nagda Tekra, Begampura, within the municipal limits against the Secretary of State for India in Council and the Land Acquisition Officer for injunctions restraining the defendants from taking possession of their properties which had been acquired under the Land Acquisition Act on two grounds:

(1) That the notification for acquiring the properties having been issued in 1913 and that Act having been amended by Act 38 of 1923, the procedure laid down in the amended Act should have been followed in the matter of the acquisition of the properties in question, and a fresh notification issued u/s 4 as required by Section 5 A of the amending Act and that consequently this omission vitiated the proceedings taken for the acquisition of the properties of the plaintiffs; and

(2) that the Land Acquisition Officer had no power to acquire the properties as no proper order was passed, u/s 7 of the Land Acquisition Act, directing the Collector to take order for the acquisition of the properties in question. The latter point I have already dealt with in the judgment just delivered.

7. With regard to the former point, it is necessary to refer to the sections of the Land Acquisition Act, I of 1894, before they were amended by Act 38 of 1923, to see what was, required to be done by the Government before they could obtain possession of properties declared to be needed for any public purpose.

8. Section 4(1) was as follows:

Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

9. The result of issuing such a notice was that, under Sub-section (2), it would be lawful for any officer, either generally or specially authorized by the Government in this behalf, and for his servants and workmen, to enter upon and survey and take levels of the land and any land in such locality.

10. Section 6(1) was as follows:

Subject to the provisions of Part 7 of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders;

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

11. There was, therefore, no obligation on Government when it considered that land was needed for a public purpose to issue a notice u/s 4, but it could proceed at once to issue a notice u/s 6. That procedure was followed in the present case with regard to the lands of the plaintiffs, and proceedings continued for the valuation of the properties in order that compensation might be awarded in the usual manner and tendered to the plaintiffs. But, as a matter of fact, the actual awards were not made in the cases until July 10, 1924 after Act 38 of 1923 had come into force. Section 4(1) of the Land Acquisition Act as amended by that Act now reads as follows:

Whenever it appears to the Local Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

12. And by Section 5A which has been added:

Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a Company 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.

13. As I understand the plaintiffs' case, it amounts to this : They contend that the effect of the amending Act was to practically put a stop to all proceedings in all acquisition matters which were pending when the amending Act came into force, so that any person whose land was then in process of being compulsorily acquired was entitled to receive a notice u/s 4 of the Land Acquisition Act as amended, which would entitle him within thirty days after the issue of the notice to raise objections to the acquisition of his land. It would be very extraordinary if the Legislature, by the amending Act, had intended to produce so startling a result. In the first place, taking the amended Section 4 as it would stand on January 1, 1921, it could only apply to lands which appeared to the Local Government to be needed for any public purpose thereafter. It could not possibly apply to lands which had appeared previously to the amendment to be needed or likely to be needed, so that the provisions of Section 5A should apply.

14. It is contended, however, that the provisions in Sections 4, 5 and 6 of the Land Acquisition Act relate to procedure, and any alterations in the rules of procedure are always retrospective. But there is this principle to be observed that such alteration will only be retrospective provided that there be no good reason to the contrary (see Maxwell on Statutes, p. 401) and I think what I have just stated, as to what would be the effect of the amendment if the contention of the plaintiffs were correct and it were to act retrospectively, would be sufficient ground for saying that there would % be good reasons for holding that the alterations in the procedure for the acquisition of lands, effected by the amending Act, should not have any retrospective effect.

15. Then, again we have been referred to Section 6 of the General Clauses Act, X of 1897, which states that:

Where this Act, or any Act of the Governor-General in Council or Regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

16. "Enactment" is defined in Section 3(17), as including a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and also including any provision contained in any Act or any such Regulation as aforesaid.

17. So that the amending Act 38 of 1923 repealed the provisions of Act I of 1894 to this extent that it made it compulsory for the Government to give notice u/s 4(1) if it appeared to Government that the land was needed for a (public purpose, and, in my opinion, there lean be no possible doubt but that the intention of the Government in amending the Act was that it should only apply to eases of lands which might appear to Government after the Act came into force to be needed or likely to be needed for any public purpose. It could not possibly have been intended that in the hundreds of cases which would ordinarily be pending at the time the amending Act came into force, and in which possession had not been handed over to Government, the owner could ask the Court to restrain the Government from taking possession until a notice under the amended Section 4 had been issued,, so that not only the whole proceedings should commence de novo, but that owners of lands in such cases should have an opportunity of protesting against the acquisition of their properties. In my opinion, there can be no doubt that the decision of the District Judge was right and the appeals must be dismissed with costs.

18. Having dismissed these appeals with costs, a question has been presented to us on what basis the costs should be taxed. By Rule (1)(b) of Schedule 3 of the Bombay Pleaders Act XVII of 1920

In appeals from decrees (including preliminary decrees) other than appeals from execution proceedings which decide on the merits the real dispute between the parties the amount of the pleader's fee shall be computed on the amount or value of the subject matter in the suit appeal, application or proceeding.

19. Clearly the subject-matter in dispute in these suits was the property involved in each suit.

20. The appellants, however, argue that the subject-matter of the suit was the question which they raised, whether they were not entitled to the injunction they asked for. There is a considerable dispute which will affect the result of the suit according to the manner in which it is decided by the Court, and the subject-matter of the suit which clearly is the thing about which a dispute has arisen.

21. In *Bai Meherbai v. Maganchand* [1904] 29 Bom. 229 the plaintiff sued to set aside a sale and for a declaration that it was null and void, and for the recovery of possession of the property comprised in it the property was admittedly worth more than Rs. 5,000, but for the purposes of the Court-fees the suit was valued

at Rs. 640. Chief Justice said (p. 233):

The principle and rule of taxation ought (in our opinion) as far as possible to be such as to secure that the successful party should recover from his opponent such costs as are necessary to enable him to place his case properly before the Court, and this can best be secured by adopting the actual value as the basis of taxation.

22. Effect was given to that decision by Rule (1)(b) of the Bombay Pleaders Act to which I have just referred.

23. It must be then that the pleader's fee shall be calculated on the value of the subject-matter of the suit, which in these cases was the property of which defendant sought to take possession under the Land Acquisition Act.

Coyajee, J.

24. I am of the same opinion.