
(1968) 04 GUJ CK 0011
In the Gujarat High Court

Qhuna Bhikha Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-04-1968

Acts Referred:

Land Acquisition Act, 1894 — Section 6, 6, 6(1)
Saurashtra Housing Board Act, 1954 — Section 3(3), 3(3)

Citation : (1969) 10 GLR 331

Hon'ble Judges : P.N. Bhagwati, C.J;D.A. Desai, J

Bench : Division Bench

Judgement

P.N. Bhagwati, C.J.—These petitions are directed against two sets of notifications, one set consisting of a notification dated 29th June 1959 issued u/s 4 and a notification dated 23rd November 1960 issued u/s 6 of the Land Acquisition Act, 1894, and the other set consisting of a notification dated 25th July 1959 issued u/s 4 and a notification dated 12th May 1960 issued u/s 6 of that Act. These notifications affect various lands which belong to one or the other petitioner in these petitions and since identical questions of law arise in these petitions, they have been heard together and are being disposed of by a common judgment. The purpose for which the acquisition was made under the impugned notifications was described "Low Income Group Housing Scheme near Bhaktinagar Station" and it is clear on the affidavits that this public purpose was to be executed by the Saurashtra Housing Board. It is also common ground between the parties that the Low Income Group Housing Scheme near Bhaktinagar Station was sanctioned and published in accordance with the provisions of the Saurashtra Housing Board Act, 1954 on 20th September 1962 and it would therefore appear that on the dates when the impugned notifications were issued, the Saurashtra Housing Board could not have proceeded with the execution of the Low Income Group Housing Scheme near Bhaktinagar Station. But admittedly on the Low Income Group Housing Scheme near Bhaktinagar Station being sanctioned and published on 20th September 1962, the Gujarat Housing Board which succeeded the Saurashtra Housing Board by reason of the

enactment of the Gujarat Housing Board Act, 1961, became entitled to proceed with the execution of the said Scheme. It was also an admitted position between the parties that entire cost of acquisition was to come out of the fund of the Saurashtra Housing Board and that no part of the compensation was to be paid out of public revenues. On these facts the petitioners challenged the impugned notifications as invalid and there were four grounds on which the challenge was based:

(A) The specification of the public purpose in the impugned notifications was incomplete and vague inasmuch as the instrumentality by which the public purpose was to be executed was not specified in the impugned notifications.

(B) The Saurashtra Housing Board was not competent to execute the Low Income Group Housing Scheme near Bhaktinagar Station at the dates when the impugned notifications were issued inasmuch as the said Scheme was not sanctioned and published in accordance with the requirement of the provisions of the Saurashtra Housing Board Act, 1954 until long after the issue of the impugned notifications and the impugned notifications for the execution of the said Scheme by the Saurashtra Housing Board were, therefore, null and void.

(C) The Saurashtra Housing Board for which the acquisition was made by the Government by issuing the impugned notifications was a company within the meaning of Section 3(e) of the Act and the acquisition made by the Government was, therefore, an acquisition for a company and since the provisions of Part VII of the Act were admittedly not complied with by the Government before issuing the impugned notification u/s 6, the impugned notification u/s 6 was invalid.

(D) Even if the acquisition under the impugned notifications was an acquisition for a public purpose and not an acquisition for a company simpliciter, the impugned notifications were still invalid since no part of the compensation was to come out of public revenues or some fund controlled or managed by a local authority and the condition precedent to the exercise of the power to issue a notification u/s 6 contained in the proviso to Section 6 Sub-section (1) was not satisfied.

We shall examine these grounds in the order in which we have set them out.

2. Re. : Ground (A). The ground is already covered by a decision given by us today in Special Civil Applications Nos. 230 to 234 of 1964 and it must, therefore, be rejected.

3. Re. : Grounds (B) and (C). Both these grounds are covered by the decision given by a Full Bench of this Court on 16th April 1968 in Special Civil Application No. 944 of 1963 (Ramji Popatbhai Patel v. Jamnadas Shah and Ors X G.L.R. 164), and therefore, in accordance with that decision, they must be decided against the petitioners.

4. Re. : Ground (D). This is the only ground which requires consideration since it is not covered by any of the earlier decisions of this Court. The argument of the

petitioners under this ground was that the acquisition under the impugned notifications being an acquisition for a public purpose, it could not be held valid unless it was shown that the compensation was to come wholly or in part out of public revenues or some fund controlled or managed by a local authority as required by the proviso to Section 6 Sub-section (1) of the Land Acquisition Act. This condition, it was argued, was not satisfied since the compensation was admittedly to come wholly out of the fund of the Saurashtra Housing Board and this Fund did not constitute "public revenues" nor did it satisfy the description of "some fund controlled or managed by a local authority". Now, it cannot be disputed that the compensation was to come wholly out of the fund of the Saurashtra Housing Board and this fund did not constitute any part of "public revenue" but we cannot agree that it did not fall within the description of "some fund controlled or managed by a local authority". Section 3 Sub-section (3) of the Saurashtra Housing Board Act, 1954 provided that for the purposes of that Act and the Land Acquisition Act as adapted and applied to the State of Saurashtra, the Saurashtra Housing Board shall be deemed to be a local authority. It is therefore evident that if this sub-section were valid and operative, the Saurashtra Housing Board would be deemed to be a local authority for the purposes of the Land Acquisition Act and compensation payable out of the fund of the Saurashtra Housing Board would be compensation payable out of a fund controlled or managed by a local authority. The petitioners however contended that this sub-section was repugnant to the definition of "Local authority" contained in the General clauses Act, 1897, which was applicable in the construction of that term as used in the proviso to V 6 Sub-section (1) of the Land Acquisition Act and since the Saurashtra Housing Board Act had not received the assent of the President, it was invalid and ineffective by reason of Article 254 of Clause (1) of the Constitution. The respondent did not dispute that the Saurashtra Housing Board had not received the assent of the President but their contention was that the Land Acquisition Act as adapted and applied to the State of Saurashtra was not a law made by Parliament, nor was it an existing law with respect to any one of the matters enumerated in the Concurrent List and Section 3 Sub-section (3) of the Saurashtra Housing Board Act could therefore validly add to the meaning of "local authority" as used in the proviso to Section 6 Sub-section (1) even if the Saurashtra Housing Board Act was not assented to by the President. The respondents also urged in the alternative that in any event if Section 3 Sub-section (3) of the Saurashtra Housing Board Act was invalid and inoperative and the respondents were not entitled to rely on it, the Saurashtra Housing Board was a local authority within the meaning of the definition of that term contained in the General clauses Act and the requirement of the proviso to Section 6 Sub-section (1) was satisfied. These rival contentions raise two questions, first whether Section 3 Sub-section (3) of the Saurashtra Housing Board Act was valid and operative and the Saurashtra Housing Board could be deemed to be a local authority for the purposes of the Land Acquisition Act by reason of that Sub-section, and secondly whether in any event the Saurashtra Housing Board was a local authority within the meaning of the definition of that

term as given in the General clauses Act. We are of the view that the contention of the respondent in regard to the first question is well-founded and it is, therefore, not necessary to examine the merits of the second contention.

5. Now Article 254 Clause (1) can have application only if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List. Where such is the case, Article 254 Clause (1) provides that, subject to the provisions of Clause (3) the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void unless the law made by the Legislature of the State has been reserved for the consideration of the President and has received his assent, in which event the law made by the Legislature of the State shall prevail in that State. The petitioners cannot, therefore, rely upon Article 254 Clause (1) for invalidating Section 3 Sub-section (3) of the Saurashtra Housing Board Act unless they are able to show that the Land Acquisition Act as adapted and applied to the State of Saurashtra was a law made by Parliament or was an existing law with respect to one of the matters enumerated in the Concurrent List, for then only could Section 3 Sub-section (3) of the Saurashtra Housing Board Act be held to be invalid as being repugnant to the proviso to Section 6 Sub-section (1) of the Land Acquisition Act read with the definition of "local authority" contained in the General clauses Act. But for reasons which we shall presently state, it is clear that the Land Acquisition Act as adapted and applied to the State of Saurashtra was neither a law made by Parliament, nor was it an existing law with respect to one of the matters enumerated in the Concurrent List and the premise for the applicability of Article 254 Clause (1) is, therefore, lacking.

6. Sometimes in 1949 the Rulers of different States in Kathiawar entered into a Covenant for the creation of United State of Kathiawar. Article 9 Clause (3) of the Covenant conferred power on the Rajpramukh to legislate for the United State of Kathiawar. In exercise of the power conferred upon him by that clause the Rajpramukh promulgated the Land Acquisition Act, 1894 (Adaptation and Application) Ordinance, 1948. By this Ordinance the Land Acquisition Act, 1894, as adapted by the Union of India was adapted and applied to the State of Saurashtra with certain modifications. The Land Acquisition Act as adapted and applied to the State of Saurashtra by this Ordinance was accordingly a law made by the Rajpramukh of the United State of Kathiawar and was not a law made by Parliament. Thereafter when the Constitution of India came into force, the United State of Kathiawar became Part B State of Saurashtra and by virtue of Article 372 of the Constitution, the Land Acquisition Act as adapted and applied to the State of Saurashtra continued in force "until altered or repealed or amended by a competent Legislature or other competent authority". The position which, therefore, obtained at the date of coming into force of the Saurashtra Housing

Board Act in 1954 was that the Land Acquisition Act as adapted and applied to the State of Saurashtra was in force as existing law made by the Rajpramukh and continued in force under Article 372 and as the legislative Entries stood then, it was not a law with respect to any one of the matters enumerated in the Concurrent List. Article 254 Clause (1) had, therefore, no application and there could be no question of considering whether there was any repugnancy between Section 3 Sub-section (3) of the Saurashtra Housing Board Act and the proviso to Section 6 Sub-section (1) of the Land Acquisition Act as adapted and applied to the State of Saurashtra. The Saurashtra Housing Board Act was admittedly within the legislative competence of the Legislature of the State of Saurashtra and it was competent to the Legislature of the State of Saurashtra to enact Section 3 Sub-section (3) adding to the categories comprised within the expression "local authority" as defined in the Saurashtra General clauses Ordinance, 1949 which was the law applicable in the interpretation of the Land Acquisition Act as adapted and applied to the State of Saurashtra and which too was continued in force under Article 372. We must, therefore, hold that the Saurashtra Housing Board was deemed to be a local authority for the purpose of the Land Acquisition Act as adapted and applied to the State of Saurashtra by reason of Section 3 Sub-section (3) of the Saurashtra Housing Board Act and the compensation for acquisition under the impugned notifications was payable out of a fund controlled or managed by a local authority within the meaning of the proviso to Section 6 Sub-section (1) of the Land Acquisition Act. This ground of challenge against the validity of the impugned notifications must, therefore, be rejected.

7. These were the only grounds urged in support of the petitions and since there is no substance in them, the petitions fail and the rule Issued in each petition will stand discharged with costs.

8. Mr. Shah on behalf of the petitioners applies for leave to appeal to the Supreme Court under Article 133(1)(c) of the Constitution. Leave as applied for is granted. We also issue an interim injunction restraining the respondents from making allotment of the lands until the expiration of a period of fifteen days from the date when the certified copy of the judgment is ready for delivery to the petitioners.