

(1995) 03 GUJ CK 0040
In the Gujarat High Court
Case No : First Appeal No. 1 of 1979

Ramchandra Jagannath and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Land Acquisition (Gujarat Unification and Amendment) Act, 1963 — Section 21
Land Acquisition Act, 1894 — Section 10, 12(2), 16, 3, 4

Citation : AIR 1996 Guj 43

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : P.V. Nanavati, for the Appellant; S.P. Dave, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—The appellants are the original plaintiffs and the respondent is the original defendant. For the conveniences sake, the parties are hereinafter referred to as arraigned in the trial Court.

2. The plaintiffs instituted a Civil Suit No. 2645 of 1974 in the City Civil Court at Ahmedabad on 1-10-1974 questioning the acquisition of Final Plot No. 108 (Part), 107 (Part) and 106 (Part) of Ellisbridge Town Planning Scheme No. 3, Ahmedabad, on the ground that it is illegal and mala fide. The plaintiffs also claimed perpetual injunction restraining the defendant-State of Gujarat, from taking possession of the acquired land from the plaintiffs.

3. The suit was reserved by the defendant inter alia contending that the Ahmedabad Municipal Corporation had requested the Government to acquire lands for the purpose of widening the road and accordingly the proceedings were undertaken as per the provisions of law. The contention of mala fide was seriously denied and the whole suit was challenged.

4. On appreciation of facts and circumstances and the evidence on record, the trial Court dismissed the suit on 26th Sept. 1978. Therefore, being aggrieved by the judgment and decree passed in aforesaid suit, the original plaintiffs have now come up before this Court challenging its legality and validity by filing this appeal.

5. There is no dispute about the fact that plaintiffs are the tenants of the lands which are under acquisition. The defendant-State of Gujarat started acquisition proceedings pursuant to the request made by Ahmedabad Municipal Corporation by its letter dated 22-12-1967 to acquire lands bearing Final Plot No. 106 (Part), 107 (Part) and 108 (Part) of Dariapur-Kazipur, Town Planning Scheme No. 3, Ahmedabad, for the purpose of widening the road for Ahmedabad Municipal Corporation. The lands were notified for acquisition as required u/s 4 of the Land Acquisition Act, 1894 (Act). The Government issued notification u/s 4 dated 22-3-1968 and published in the Government Gazette on 4-4-1968. The necessary enquiry was conducted u/s 5-A of the Act after issuing requisite notices u/s 4(1) of the Act to the owners and interested persons. Upon the enquiry, the defendant-State Government reached to the satisfaction that, the lands were required for public purpose and, therefore, a notification u/s 6 of the Act finally was issued. Notification u/s 6 came to be issued on 18th March, 1971 and published in Official Gazette on 26th March, 1971.

6. After observing necessary procedure and issuing notices under Sections 9 and 10 of the Act, the competent authority passed an award u/s 11 on 10-8-1973. Thereafter, notices came to be issued under Sections 12(2) and 16 of the Act on the persons interested and the date was fixed for handing over the possession. It was 26-9-1974 on which the possession was sought from the concerned persons. As the possession of the acquired land was not handed over, required statutory notices u/s 47-A of the Act for enforcement of the award for possession came to be issued. The date for handing over possession was fixed as on 4-10-1974.

7. After having examined the facts and circumstances and the relevant provisions of law, the trial Court found no substance in the suit and, therefore, suit came to be dismissed. After having examined the facts and circumstances and the relevant provisions of law, this Court is satisfied with the impugned judgment dismissing the suit of the plaintiffs, is justified. Nothing has been successfully pointed out or spelt out which would warrant the interference by this Court in this appeal.

8. The trial Court has rightly found that suit is meritless. The allegation of mala fide has remained only at the stage of allegation. Mere allegation of mala fides is not enough to quash the proceedings. Plaintiffs have not been able to successfully, show or prove the fictitious, vague and bold plea of mala fides. On the contrary, it clearly transpires from the record of the case that the acquisition of the lands in question is for the public purpose like that for the construction of the 40 feet wide road as per the requirement of traffic in that area and in view of the proper development of the city of Ahmedabad. Not only that the allegations of mala fide is not proved, but it is disproved from the facts and circumstances

emerging from the record of the present case.

9. It is true that the plaintiffs are persons interested within the meaning of Section 3(b) of the Act and, therefore, they could bring the action. However, they had gone to a wrong forum. There is a statutory inhibition for filing a civil suit against the actions or orders passed by the Collector, Magistrate or Commissioner of Police u/s 47-A of the Act as applicable to the State of Gujarat.

10. Section 47 makes a provision for enforcement of orders for possession made under the Act. When the Collector is opposed or impeded in taking possession of an acquired land under the Act, he can enforce the surrender of the land into himself.

11. The Gujarat Government has inserted Section 47-A in Land Acquisition Act of 1894 by Land Acquisition (Gujarat Unification and Amendment) Act, 1963, a special provision debarring and banning civil actions in Civil Court. It would, therefore, be interesting to refer the provisions of Section 47-A of the Act. Section 47-A provides as under;

"47-A. Executive Magistrate or Commissioner of Police to enforce surrender of land or closure of easement.

(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."

It could very well be seen from the aforesaid provisions that any action taken under Sub-section (2) of Section 47-A cannot be questioned in a Civil Court and no injunction could be issued by the Court for restraining such an action. Section 47-A(3) of the Act provides for reasonable compensation for any damage which a person may have suffered by reason of the wrongful exercise of the power by the prescribed authority or the officer and also the exercise of some power by an officer without authority. It, therefore, becomes clear that, in view of provisions of Section 47-A of the Land Acquisition Act inserted by Section 21 of the Land

Acquisition (Gujarat Unification and Amendment) Act, 1963, provides remedy for reasonable compensation for any damage suffered by the interested person by the exercise of the powers under this section by any such officer wrongfully or without authority while prohibiting the civil suit and the injunction order of the Civil Court. It, therefore, becomes clear that any action taken under Sub-section (2) of Section 47-A of the Land Acquisition Act cannot be questioned in a Civil Court, and no injunction could be issued by the Court for restraining such an action. In the circumstances, the suit filed by the plaintiffs was misconceived and it is not maintainable in view of the clear statutory inhibition incorporated in provisions of Sub-section (3) of Section 47-A of the Land Acquisition Act. Suit is also not maintainable even on the ground that the impugned action purported to have taken by an authority in exercise of powers under Sub-section (2) of Section 47-A was without authority or wrongful. Even on such a plea, the remedy to file suit is barred. The remedy for compensation is provided, ensured and in substance an interested person-plaintiff is not entitled to file a suit for or against any action taken by the authority concerned under Subsection (2). Therefore, the appellants, who are the original plaintiffs-tenants, were not entitled to file a civil suit. The suit was, therefore, rightly dismissed by the trial Court. There is no justification or any merits in this appeal requiring interference. While dismissing the appeal in such a case, ordinarily Court should award very heavy, high and exemplary cost for stalling and delaying the execution of a public work or purpose by filing a civil suit for obtaining injunction which is diametrically opposite to the proposition of law propounded in Section 47-A(3). However, in the present case, it is contended that the 35 appellants are the original plaintiffs who are tenants and poor hutmen and, therefore, costs may not be awarded against them. Otherwise also, there are no merits in this appeal.

12. Considering the peculiar facts and circumstances, the appeal is dismissed with cost without directing the appellants to bear exemplary costs, which, otherwise, ordinarily should be awarded. The interim injunction passed in Civil Application No. 3 of 1979 shall, obviously, stand vacated. It will be open for the respondent-authority to proceed with further actions in connection with the disputed land. The appeal is dismissed.