
(2008) 08 BOM CK 0174
In the Bombay High Court
Case No : Writ Petition No. 323 of 2006

Ramdas Thanu Dessai and Others

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 258
Land Acquisition (Companies) Rules, 1963 — Rule 4
Land Acquisition Act, 1894 — Section 3, 4, 4(1), 5, 5A

Citation : (2008) 6 ALLMR 153 : (2009) 2 BomCR 218

Hon'ble Judges : Mohite R.S., J;Khandeparkar R.M.S., J

Bench : Division Bench

Advocate : M.S. Sonak, for the Appellant; S.S. Kantak, Gen., R. Chodankar, A.G. for respondent No. 1, J. Vaz, Cen. Gov. Standing Cou. for respondent Nos. 2 and 5, Sarvasri A.N.S. Nadkarni, H.D. Naik, for respondent No. 3, Sudesh Usgaonkar, for respondent No. 4, Norma Alvares, for respondent No. 6, Sarvasri S.G. Desai and Shivan Desai, for the Respondent

Final Decision : Allowed

Judgement

Khandeparkar R.M.S., J.—The petitioners challenge the acquisition proceedings initiated by issuance of notification u/s 4 of the Land Acquisition Act, 1894, hereinafter called as "the said Act", dated 24-1-2006 along with the declaration u/s 6 dated 20-12-2006 on various grounds including the ground that the said notification and the declaration are bad in law since the acquisition is proposed by the State of Goa which is not the appropriate Government to acquire the land for the purpose of Union of India considering the provisions of law comprised under Sections 4 and 6 read with Section 3(ee) of the said Act. On the other hand, the notification and the declaration are sought to be defended on the ground that the acquisition is not exclusively for the purpose of the Union and, therefore, the appropriate Government is the State Government.

2. The facts which are not in dispute are that the notification and the declaration u/s 4 and Section 6 respectively clearly provide that the land specified in the

Schedule to the notification is needed for public purpose, viz. land acquisition for construction of railway line and cargo handling terminal at Shelvona and Xic-Shelvona Villages of Quepem Taluka for South Western Railway. The declaration further discloses that the Government of Goa is of the opinion that the acquisition is urgently necessary. Obviously, therefore, the notification and the declaration on the face of the record disclose that the proceedings have been initiated by the State Government in its capacity as the appropriate Government within the meaning of the said expression u/s 3(ee) of the said Act. It is also not in dispute that the said acquisition of land is for South Western Railways in order to construct a railway line and cargo handling terminal. In fact, Sri Agnelo T. D? Souza, Senior Technical Assistant in the Directorate of Mines, Government of Goa, who has filed the Affidavit in reply on behalf of the respondent No. 1 i.e., the State of Goa has stated in his Affidavit that the land is being acquired by the State Government at the request of the railways and the cost would be paid by the railways. Further, the Affidavit filed on behalf of the respondent Nos. 2 and 5 by Sri A. Saibaba, Deputy Chief Engineer (Construction), South Western Railways, in his Affidavit has clearly stated that the respondent Nos. 2 and 5 i.e., the said Deputy Chief Engineer and the Union of India respectively have deposited Rs. 1.13 crores with the respondent No. 1 on 6-1 -2006 for the said acquisition, the respondent Nos. 2 and 5 would build "loop railway line" in an area of approximately 20 hectares at the cost and expenses of the respondent Nos. 2 and 5, the land being acquired is for the respondent Nos. 2 and 5 and not for the respondent No. 4. The Affidavit further clarifies that in the railway budget a provision has been made for Rs. 13.0759 crores pursuant to the approval of the Parliament.

3. The above stated undisputed facts leave no room for the doubt that the land is being acquired for the Union of India and at the cost of the Union of India. The fact that the railways are owned by the Union of India is also not in dispute. Besides, the said point being well settled by the decision of the Apex Court in the matter of The State of Kerala Vs. The General Manager, Southern Railway, Madras, .

4. The Section 4(1) of the said Act provides that whenever it appears to the appropriate Government that the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality. The provision also clarifies last of the dates of such publication and the giving of such public notice shall be the date of publication of the notification u/s 4. The provision, therefore, clearly specifies that the acquisition proceedings under the said Act can commence in relation to any particular land when the same appears to the Government to be needed or likely to be needed for public purpose. The term "appropriate Government" is defined in Section 3(ee) to mean in relation to acquisition of land for the

purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government. This definition in no uncertain terms specifies that when the acquisition of land is for the purpose of Union, the appropriate Government who is to initiate the action for acquisition by issuing the notification in that regard has necessarily to be the Central Government.

5. As already seen above, once it is not in dispute that the acquisition is for the South Western Railways for the purpose of construction of railway line and cargo handling terminal at Shelvona, and the entire acquisition cost would be borne by the respondent Nos. 2 and 5, it obviously means that the acquisition is for the Union and, therefore, such acquisition has to be by the Central Government who is the appropriate Government for initiating such action.

6. It is, however, the contention on behalf of the respondent Nos. 1 and 4 that it is the State Government who has taken the decision to acquire the land at Shelvona in order to alleviate the sufferings of its citizens residing in the affected area. The setting up of railway line and cargo handling terminal at Shelvona is in order to shift the activity from Sanvordem Town to Shelvona which will provide for a healthy life to the residents of the affected area. It is the contention on behalf of the said respondents that the ore, which is extracted in the State of Karnataka, is exported via Goa and for that purpose the ore is brought from Karnataka in railway wagons and is unloaded at Sanvordem Railway Station. It is then reloaded in the trucks and transported by road at the river loading point where it is loaded in barges and transported to Mormugao for export. The activities of unloading of ore from the railway wagons into the stack-yard, reloading the same into trucks and transporting via road passing through Sanvordem Town results in severe dust pollution in the area. It is on account of generation of hazardous dust, it results in respiratory problems and other diseases to the residents in the locality and, therefore, bearing in mind the order of this Court in Writ Petition No. 123 of 1999, the State Government took a decision that the ore entering Goa from Karnataka should be directly unloaded at Shelvona which is close to the river point and for that purpose it is necessary to construct railway terminal at Shelvona and hence the acquisition of land in question was proposed. Considering the same, according to the respondent Nos. 1 and 4, the acquisition cannot be said to be exclusively for the purpose of Union but it is for the benefit of the citizens in the affected area and it is the obligation of the State to take all necessary steps for a healthy life to its citizens and hence the acquisition being also for the other purpose, it would fall in the category of acquisition for "any other purposes", as specified in Section 3(ee) of the said Act.

7. In our considered opinion, it is difficult to accept the contention sought to be raised on behalf of the respondent Nos. 1 and 4. The Section 4 of the said Act clearly requires the appropriate Government to take initiative for commencement of acquisition proceedings and Section 3(ee) specifies as to who would be the appropriate Government bearing in mind the purpose for which the acquisition of

land is contemplated. In the case in hand, as already seen above, the acquisition of land specified in the Schedule annexed to the notification is for the purpose of construction of railway line and cargo handling terminal for South Western Railway. The arguments on behalf of the respondent Nos. 1 and 4 relates to the benefits which may arise to the local residents out of construction of such railway line and the terminal and not to the purpose for which the land is sought to be acquired. The resultant benefits which the residents of the affected area in Goa may enjoy is not the purpose for which a particular land is sought to be acquired. If the argument on behalf of the respondent Nos. 1 and 4 is to be accepted, then even the land which is used for laying the railway line and which undisputedly belong to the Union of India would fall in the category of any other purpose. That is not the legislative intent behind defining the term "appropriate Government" u/s 3(ee).

8. The appropriate Government u/s 4 read with Section 3(ee) is that Government which takes decision to acquire the land for its purpose. In the case in hand, once it is not in dispute that pursuant to the proposal by the State Government it was the decision of the Union and its Department of Railways to acquire a particular land for construction of the terminal to be constructed and maintained by the respondent Nos. 2 and 5, it cannot, in the same breath, be said that the acquisition is also for any other purpose. The purpose of acquisition is clearly specified in the notification. Once a particular purpose is specified in the said notification, it cannot be sought to be stated by way of an Affidavit that the real purpose is something different from the one disclosed in the notification nor such additional benefits which may accrue on account of acquisition of land to the residents of the locality could be said to be the purpose for which the land is sought to be acquired.

9. It is to be borne in mind that after issuance of notification u/s 4, the interested parties are entitled to object to such notification and in that regard the Collector is enjoined to hear the objections and make a report to the appropriate Government and after considering such reports, the appropriate Government is required to take appropriate decision which should culminate in the form of declaration u/s 6. The Sections 4, 5, 5-A and 6 specifically refers to the appropriate Government and its satisfaction for need to acquire the land. Once it is not in dispute that the proposed acquisition of land is for the purpose of railway terminal, to be built by the respondent Nos. 2 and 5 at their own cost and to be maintained by them, and such terminal is to be a shed for the activities in relation to the railways i.e., for unloading of ore transported by the railways from Karnataka to Goa, it cannot be said that the land is sought to be acquired for any other purpose. It is to be held that the land is being sought to be acquired for the Union purpose.

10. In spite of the fact that the land is sought to be acquired for the Union, it is undisputed fact that the State Government claims to be the appropriate Government in respect of the acquisition proceedings in question. Obviously, it is

without any authority to be the appropriate Government for the purpose of such acquisition. Therefore, the notification and the declaration are to be held as bad in law.

11. It is also sought to be contended on behalf of the respondent Nos. 1 and 4 that pursuant to deletion of Entries 33 and 36 in the Union and the said List, respectively, in the Constitution of India and introduction of the subject "Acquisition and requisitioning of property" in Entry 42 of the concurrent list thereof, the State Government is entitled to acquire properties for the purpose of the Union. The contention is devoid of substance. The Entries in the Lists of the VIIth Schedule to the Constitution of India are not source of power to make law but they identify the legislative heads and circumscribe legislative field. The law in that regard is well-settled by a number of decisions including the decision sought to be relied upon by the petitioners i.e., Vijay Kumar Sharma and others Vs. State of Karnataka and others, . Besides, no executive decision is permitted to transgress the legislative mandate.

12. When the statutory provisions comprised under Sections 4 and 6 read with Section 3(ee) of the said Act clearly provide that in cases of acquisition for the purpose of Union, the appropriate Government would be the Central Government, the exercise of executive power cannot be allowed to transgress the said statutory provisions comprised under the said Act. The petitioners are justified in contending that the executive power is always subservient to the legislative power. It is always subject to legislative provision and has to yield to the legislative power. Mere inclusion of the Entry No. 42 in the concurrent list, which speaks of the principles on which compensation for the property acquired and requisitioned for the purpose of the Union and the State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given, by that itself would not empower the executive to act in contravention of the provisions made in the Central legislation. It cannot be disputed that the said Act was enacted prior to the independence of India. However, the same was adapted in terms of the Adaptation Order of 1950 and, therefore, is a law made by the Parliament within the meaning of the said expression under the proviso to Article 162 of the Constitution of India.

13. It is also not in dispute that there is no delegation of power as contemplated under Article 258 of the Constitution of India by the Central Government.

14. This Court in Nandkumar Girme Vs. Union of India (UOI) and Others, had clearly held that the acquisition of land for approach lights for night landing of the aeroplanes at the Airport at Aurangabad was for the purpose of the Union of India and the appropriate Government for exercise of the power under Sections 4 and 6 of the said Act was the Union of India. It was also held therein that the President of India, in terms of Article 258 of the Constitution of India, can delegate to the State Government the power to acquire land for the Union's purpose. As already seen above, it is not the case of the State Government in the case in hand that there has been any such delegation of power by the

President of India in terms of Article 258 of the Constitution of India in relation to acquisition in question.

15. The petitioners are justified in relying upon the decisions in the matters of Balak and Others Vs. State of Uttar Pradesh and Another, , Angrup Thakar and Others Vs. State of Punjab and Another, and (Ghousia Begum v. The Union Territory of Pondicherry) reported in AIR 1975 Mad 345. In Balak's case (supra) the acquisition by the State of Uttar Pradesh for construction of staff quarters for enforcement of North Eastern Railway Headquarters Scheme was held to be ultra vires since the appropriate Government for such acquisition was the Union Government and not the State Government. In Angrup Thakar's case (supra) the acquisition by the State Government for the purpose of construction of building and doing research work on vegetables at the Indian Agriculture Research Institute was held to be for the purpose of the Union and, therefore, the acquisition could not have been initiated by the State Government. In Ghousia Begum's case (supra) the acquisition was for the construction of an auto-telephone exchange for the Posts and Telegraph Department and being so, for the purpose of the Union Government and hence the acquisition could not have been initiated by the State Government.

16. In the matter of Sudhansu Sekhar Maity and Others Vs. State of West Bengal and Others, , the acquisition was made at the expenses of the local authority and it was for setting up a subsidiary port for the benefit of the general public in the State and, therefore, it was held that the acquisition was not solely for the purpose of the Union.

17. In (Tinsukia Development Corporation Ltd. v. State of Assam and Anr.) reported in AIR 1961 Ass 133, the acquisition was for construction of food-grains godown. In that regard, it was held by the Assam High Court that though the particular building was to be constructed by the Central Government and food-grains also may be stocked by the Central Government but the same were required to be distributed amongst the inhabitants of the State and it was as much a State purpose as a Union purpose as the acquisition was essentially for the public benefit in the State as much as in the interest of the Central Government. In those set of facts, the Assam High Court held that the State Government was equally empowered to be the appropriate Government for the purpose of acquisition. It was in those circumstances the scope of the legislative power of the State Government in the subject of acquisition and requisitioning of property in terms of Entry 42 in the concurrent list was sought to be considered by the Assam High Court.

18. It is thus clear that inspite of the fact that the acquisition of the land is for the Union's purpose and at the cost of the Central Government, the process of acquisition was sought to be initiated by publication of notification u/s 4 of the said Act by the State Government claiming to be the appropriate Government. As the law stands, the acquisition for the Union's purpose cannot be initiated by the State Government unless there is specific delegation of power in that regard and

in the case in hand there has been no such delegation. Hence, as rightly submitted on behalf of the petitioners, the notification u/s 4 and the declaration u/s 6 in relation to the land in question by the State Government is bad in law and is liable to be struck down.

19. Undoubtedly, the acquisition is also challenged on some other grounds and it is, therefore, sought to be contended on behalf of the respondent No. 1 that the petition is required to be heard on all the issues before being disposed of and in that regard reliance is sought to be placed in the decisions of the Apex Court in (Mota Mandir Trust and Ors. v. State of Maharashtra and Ors.) reported in 2006(9) S.C.C. 379 and Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, .

20. As regards the decision of the Apex Court in Mota Mandir Trust's case (supra) is concerned, it was squarely on the basis of the facts and circumstances of that case. The para 6 of the decision of the Apex Court clearly reads thus:

Having regard to the facts and circumstances of the case, we are satisfied that the High Court ought to have disposed of the writ petition dealing with all the contentions raised in view of the relief sought for in the writ petition.

(Emphasis supplied)

That was a case where the writ petition was filed seeking various reliefs and on disposal thereof, a review petition was filed and in both the proceedings written submissions were filed in support of the various grounds raised therein; however, the High Court had not dealt with all the contentions raised by the party, either while disposing the writ petition or while disposing the review petition. In the peculiar facts and circumstances of the said case, the Apex Court had held that the High Court ought to have dealt with all the contentions raised in the matter.

21. In Fomento Resorts, case [supra], the petition was filed under Article 226 of the Constitution challenging the notification u/s 4 and the declaration u/s 6 of the said Act before this Court and the same was allowed only on the ground that the inquiry under Rule 4 of the Land Acquisition (Companies) Rules, 1963 was not held prior to the notification u/s 4 of the said Act. The propriety and validity of the said decision was challenged before the Apex Court in appeal. The High Court had also noted that though the notification was sought to be challenged on several other grounds, in the view that it had taken on the first ground, namely, the notification u/s 4 of the Act being bad for non-compliance of the said Rule 4, it was not necessary to deal with other grounds. In that context, while setting aside the order passed by the High Court holding that before issuance of the notification u/s 4 there was no requirement for compliance of the procedure contemplated under the said Rule, the Apex Court held that:

In a matter of this nature where several contentions factual and legal are urged and when there is scope of an appeal from the decision of the Court, it is desirable as was observed by the Privy Council long time ago to avoid delay and

protraction of litigation that the Court should, when dealing with any matter dispose of all the points and not merely rest its decision on one single point.

(Emphasis supplied)

Obviously, therefore, the ruling was on taking into consideration the factual matrix and the nature of the case and in those circumstances, the grounds which were urged by the authority while challenging the acquisition proceedings, were required to be dealt with.

22. In the matter in hand, we are dealing with an issue which relates to the very authority of the State Government to initiate the acquisition proceedings. Once it is not in dispute that the acquisition proceedings for the Union's purpose are initiated by the State Government and we having arrived at the finding that the State Government lacks the authority or jurisdiction to initiate the acquisition proceedings for the Union's purpose taking into consideration the provisions of law applicable to such circumstances, question of dealing with any other ground challenging the acquisition in question does not arise at all. If initiation of the proceedings is itself bad in law on account of lack of authority to the State Government to initiate the acquisition proceedings, it relates to lack of jurisdiction to initiate the acquisition proceedings and, therefore, question of dealing with the other issues does not arise at all. Viewed from this angle, in our considered opinion, the decisions of the Apex Court sought to be relied upon by the respondent No. 1 are of no help to contend that the matter should be heard in relation to all other grounds. In the facts and circumstances of the case, we do not find it necessary to deal with the other issues in the matter.

23. For the reasons stated above, therefore, the petition succeeds and the same is allowed and the notification in question as well as the declaration in question referred to above are hereby quashed on the limited ground stated above. We make it clear that this shall not preclude the appropriate Government from initiating fresh acquisition proceedings bearing in mind the order of this Court in Writ Petition No. 123 of 1999. The rule is accordingly made absolute in above terms with no order as to costs.