

(2016) 03 GUJ CK 0055

In the Gujarat High Court

Case No : Special Civil Application No. 2945 of 2001

Silver Leaf Co-operative Housing Society Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 4, Section 48(1), Section 5A, Section 6

Citation : (2016) 03 GUJ CK 0055

Hon'ble Judges : Akil Abdul Hamid Kureshi and Z.K. Saiyed, JJ.

Bench : Division Bench

Advocate : N.D. Nanavati, Sr. Adv. and Rutvij M. Bhatt, Advocate, for the Appellant; Rakesh Patel, AGP, for the Respondent

Final Decision : Allowed

Judgement

Akil Abdul Hamid Kureshi, J.—1. The petitioner has prayed for quashing and setting aside impugned notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 ("the Act" for short) dated 11.03.1999 and 21.06.2000 respectively.

2. Brief facts are as under:

"The petitioner is a co-operative housing society duly registered under the Gujarat Co-operative Societies Act and consists of 38 members. The society had purchased land bearing Survey Nos. 187, 188 and of Village Motera, Taluka and District: Gandhinagar under a registered sale deed dated 29.05.1998. The land is situated in the outskirts of city of Ahmedabad."

3. The Government desired to set up an engineering college and, therefore, required certain private lands for such purpose in addition to the Government kharaba lands identified at the said location. To acquire sufficient lands for such purpose, notification under Section 4 of the Act was issued on 04.08.1998. However, this notification did not include the land of the petitioner-society. However, subsequently, further notification dated 11.03.1999 was issued under

Section 4 of the Act covering the land of the petitioner-society also.

4. After issuance of notification under Section 4, the Land Acquisition Officer was required to grant hearing to the persons interested and submit his report in terms of Section 5A of the Act. The petitioner lodged objections before the Special Land Acquisition Office under a communication dated 09.08.1999. In such communication, the petitioner pointed out that earlier nearby land bearing Survey No. 138 was released from acquisition. Such land was undeveloped. In case of the petitioner-society, NA, NOC have already been granted. Residential houses are being constructed. The members of the society have invested their lifetime savings. The Government has already granted nearly 2 lacs sq.yard of land at Chandkheda for the construction of the college which is more than sufficient. The petitioner pointed out that the AUDA has also deducted nearly 7000 sq.mtrs of the land of the petitioner-society. Along with such objection, the petitioner also annexed a copy of its earlier objection dated 03.04.1999.

5. Despite such objections, since the respondents did not drop the land of the petitioner from acquisition and, instead, issued notification under Section 6 of the Act on 21.06.2000, the petitioner filed this petition. In such petition, the petitioner pointed out that the land of the society was acquired long before the proposed acquisition. Necessary permission for development of the land had been granted by the authorities. The construction work of residential units for the members was also going on. The petitioner also raised certain grounds of personal mala fides and joined the then Minister of Technical Education as respondent No. 4 contending that it was solely on account of his personal rivalry with the Secretary of the petitioner-society that the land of the society was being acquired. The case of the petitioner was that, the Collector has given report under Section 5A of the Act recommending that the acquisition of petitioner's land be dropped.

6. During the pendency of the petition, this Court had granted order of status quo, protecting the petitioner from further acquisition proceedings. Such position continued throughout.

7. On 01.03.2016, noticing the broad contours of the petitioner's challenge to the acquisition, we had required the Government pleader to make the original file of the acquisition available for our perusal. Accordingly, today, the petition was taken up for further hearing, during which proceedings, we have heard learned counsel for the parties and also perused the original files of the Government concerning the acquisition of the petitioner's land.

8. Learned counsel for the petitioner submitted that the petitioner-society acquired the land in question long before the proposal for setting up of Government college was made. Even before issuance of notification under Section 4 of the Act, the petitioner had obtained necessary permissions from the authorities for development of the land and substantial construction of residential units was already carried out by the individual members. The land in question

was never needed for setting up of the Government college since there was more than sufficient Government kharaba land already allotted for such purpose. In any case, there was additional private land under acquisition making the acquisition of the petitioner-society wholly unnecessary. Counsel lastly contended that the Special Land Acquisition Officer had recommended dropping of the acquisition proceedings in his report under Section 5A of the Act. Such report was not properly considered before the Government took the decision to issue notification under Section 6 of the Act.

9. Learned AGP Mr. Rakesh Patel on the other hand, relied on the original files and contended that the authorities have taken into consideration all relevant aspects of the matter. The decision of the authorities that such land is needed for public purpose is not open to judicial review.

10. Learned advocate Mr. Sanjanwala appeared for respondent No. 5 and submitted that, there is internal dispute between the petitioner-society and said respondent regarding the ownership and title of Survey No. 188. Such dispute is pending before the lower Appellate Court. Insofar as the petitioner-society's challenge to the acquisition of this land is concerned, however, respondent No. 5 would also support the petitioner.

11. Having thus heard learned counsel for the parties and having perused the documents on record, we may recall that, by the time the Government issued notification under Section 4 of the Act, admittedly, the petitioner-society had purchased the land in question, had also obtained necessary permissions for developing the same and initial development in the form of construction of residential units had also begun. Therefore, when the Government issued notification under Section 4 of the Act, the petitioner-society strongly opposed such acquisition. It was, for this purpose, that the petitioner raised such objections under a communication dated 06.08.1999 along with which the petitioner, annexed a copy of its earlier objection dated 03.04.1999. In the objection dated 06.08.1999 it was highlighted that non-agriculture use permission and permission to carry out construction have already been granted. Even otherwise, the AUDA has deducted a hefty 7000 sq.yards of land from the holding of the petitioner-society. If substantial portion of the land is now acquired by the Government, the society would be left with virtually no land. It was also pointed out that there are Government and AUDA lands in the same vicinity which can be utilized for such purpose instead of the land of the petitioner-society.

12. Though not part of the record, from the original file, we have perused the report of the Special Land Acquisition Officer dated 21.12.1999. With respect to the petitioner-society he noticed written objections dated 03.04.1999, 06.08.1999 and 13.10.1999 and also referred to the oral submissions made by the Chairman of the society. He recorded that, as per such representation of the society, the land was acquired by the society for the purpose of construction of tenements for residential use. AUDA has already granted permission for

development, for which, charges have also been deposited. The land was converted into non-agriculture use with the permission of the authorities, which was granted on 16.09.1998. 38 houses are proposed to be constructed. Lintel level construction has already been completed. If the land is acquired, the members of the society would lose their lifetime savings which they have put in the construction. Other alternative lands are available. The Government has also acquired 20,000 sq.mtrs from other survey numbers. If the acquisition proceedings qua the petitioner-society are dropped, there would be no major change in the frontage of the proposed college. Such objections were considered by the Special Land Acquisition Officer and substantially accepted. He recorded that, during his personal visit to the site, he found that lintel level construction was over. The market value of the land could be assessed at Rs. 1000/- per sq.mtr. The lands of Survey Nos. 185, 184 paiki are on the southern side of the highway. They are open agriculture lands. If land of the society is acquired, the Government would have to pay much higher compensation. The members, who have already invested their savings, would suffer financial loss. He was, therefore, of the opinion that it was not practicable to acquire such land. He noted that such land abuts on the Ahmedabad-Gandhinagar Highway and there is every possibility of increase in the volume of traffic. He, therefore, recommended that the land in question be released from acquisition.

13. The original file would further show that this report was processed by the Ministry. On 20.06.2000, a note was put proposing that the recommendations be not accepted. It was noted that Special Land Acquisition Officer had taken into account following grounds for making his recommendations:

"(i) The construction activities has already commenced after obtaining permission from the AUDA by paying development charges of Rs. 2,16,000/- and obtained NA and NOC permission;

(ii) There is alternative land available with AUDA which is acquired from agriculturists;

(iii) The lands are not adjacent to the existing site and are divided by a highway;

(iv) Looking to the fact that lintel level construction is already over and compensation at the rate of Rs. 1000/- per sq.mtr would have to be paid, which is very high and;

(v) Even otherwise, the engineering college has sufficient frontage."

14. These grounds were overruled, however, without citing specific reasons. When this submission of 20.06.2000 approved by various Government authorities in the hierarchy was placed before the concerned Secretary, he, under his remark dated 21.06.2000, ordered the same to be placed before the Hon"ble Minister. The Hon"ble Minister made a detailed order dated 06.09.2000 on such submissions. He recorded that, the Collector has allotted 1,85,116 sq.mtrs of land. Additionally, 90,669 sq.mtrs of land has been acquired and given by the

Government. Thus, five times the area of the minimum required land has been allotted to the college. The Minister noted that, the Special Land Acquisition Officer has recommended not to go ahead with the acquisition of the present land. Even other alternative lands are available for acquisition, if need be. He, therefore, concluded that for the following three reasons, the acquisition qua the present land be dropped:

- "(i) The College has already been allotted land five times of its requirement;
- (ii) Part of the land under proposed acquisition is on the other side of the road;
- (iii) For the land in question, necessary permission for non-agriculture use, building construction etc. have already been granted before issuance of notification under Section 4 of the Act and, the society had already carried out construction upto lintel level. He, therefore, decided to drop the acquisition and issued necessary order."

15. This decision for dropping the acquisition and issuing necessary order, however, ran into certain procedural and technical difficulties. Submissions were placed by the administration for necessary clarifications. Finally, the Chief Secretary recommended that the decision be reconsidered on certain grounds under his remarks dated 18/20.11.2000. Thereupon, the Secretary (Land Reforms) suggested collection of following details:

- "(i) The opinion of the Education Department regarding the Minister's order dated 06.09.2000;
- (ii) How much land is required as per the norms set by AICTE;
- (iii) For the purpose of land requirement the area would be considered as urban area/rural area/area covered under the urban development authority;
- (iv) Whether Motera can be considered as rural area or urban area and;
- (v) What would be the future requirement of land of the college. If there is any estimate, the same may be called for."

16. These remarks of the Secretary (Land Reform) dated 22.11.2000 were placed before the Hon'ble Minister who on 10.04.2001, recorded as under:

"With respect to this issue, separate files are moving in Education Department and Revenue Department. Therefore, in absence of full information and notings, it is not possible to arrive at a definite decision. However, as discussed with the Ministers at a high level meeting, there is definite need of land for the college. Keeping this in mind, order dated 06.09.2000 may be cancelled and notification under Section 6 of the Act be issued for the purpose of acquiring the land and the notification under Section 48(1) be cancelled."

17. Even this order ran into certain procedural and incidental queries of the administration with respect to which we are not concerned. What we can, however, record is that as a culmination of such exercise, the Government issued

its final order dated 06.09.1999 under Section 6 of the Act qua the petitioner's land also.

18. It can thus be seen that the proposal for acquisition of the land of the petitioner-society passed through various stages. First was the stage where Special Land Acquisition Officer considered the objections of the petitioner raised through multiple representations and oral submissions of the Chairman of the society. He submitted his report under Section 5A of the Act recommending that the acquisition of the petitioner's land be dropped. This recommendation was not supported at the Secretarial level. However, the Minister for Revenue, under his order dated 06.09.2000, recorded detailed reasons and ordered that the acquisition be dropped and necessary declaration be made under Section 48(1) of the Act.

19. Two things may be noted at this stage. First is that, the submission of the Secretary did not encounter different grounds, on which the Special Land Acquisition Officer had recommended dropping of the acquisition, but merely suggested that the land is needed and that, therefore, the acquisition be carried on. The Minister held different opinion. He cited three reasons, why in his opinion, the acquisition must be dropped. It was the decision of the Minister which would obviously prevail.

20. If this was the decision of the Government at one stage, we fail to understand how this decision changed without there being any material change in circumstances. This is not to suggest that an administrative decision can, under no circumstances, be varied. This is only to suggest that before such decision was actually acted upon, if it had to be changed, there had to be strong reasons for doing the same. First and foremost, we are not even sure how the question of reconsideration of the decision of the Minister came up. We may recall, the Minister had cited multiple reasons including that the land, far in excess of the requirement of the College, had already been allotted; that the parcels of land were separated by a road and; finally, that the members of the society had already obtained building use permission after converting the land into non-agriculture use; obtained construction permission; had invested considerable amount of money in carrying out such activities and putting up construction which had reached to the level of lintel.

21. Even if therefore, review of the decision of the Minister dated 06.09.2000 was permissible the same had to be founded on valid grounds. Instead, the Minister only noted that since the file moved separately before two departments, full information was not available and, therefore, it would not be possible to take a final decision. He, therefore, opined that in view of the need of the college the acquisition may be carried on.

22. In our opinion, the decision making process suffered from material irregularities and total non-application of mind. The decision which was first taken after recording multiple reasons for dropping of the acquisition, was

changed completely by citing reasons, which are totally unconveniencing for multiple reasons. The Minister himself recorded that since the files are moving in two different departments, necessary information is not available. If that be so, nothing prevented him from getting further information and taking a fresh decision only after the information was made available to him. Merely because necessary information is not available, can hardly be a ground for receiving a decision and for depriving a citizen of his private property through compulsory acquisition that too after having recorded weighty reasons for coming to the conclusion that such acquisition was not in public interest.

23. Far more significant aspect of the matter which emerges from the record is that, the Chief Secretary had merely recommended reconsideration of the decision on certain suggested issues. The Secretary (Land Reforms) recommended that information be gathered from the concerned department. Such information included the precise requirement of a college on the basis of AICTE norms, what would be the future expansion plan and need of the college and whether Motera area can be considered as a rural area/urban area. Such further information alone would decide the land requirement of the college. Admittedly, no such opinion was either called for or, in any other manner, made available. The Minister instead went ahead to recall his own order that too on the ground that full information is not available since the file is moving parallelly in two different departments of the Government. Surely, the difficulty of getting necessary information from two different departments of the Government can hardly be a reason to hold that certain private land is needed for public purpose.

24. Section 5A of the Act envisages an important stage in the decision making process before notification under Section 6 of the Act can be issued. Section 4, as is well known, pertains to notification to be issued by the Government of its primary intention of acquiring private land for public purpose. At that stage, the persons interested in such lands, would have a right to raise objections to such acquisition which right is recognized under Section 5A of the Act. The right includes raising of objections and hearing which may be granted to the person interested. Under sub-section (2) of Section 5A the Collector would give the objector an opportunity of being heard in person or through authorized representative or even through a pleader and make his recommendations after hearing objections and making such further inquiry as he may think necessary. The Government would even take a decision on such objections, which decision would be final. Undoubtedly, it is the decision of the Government on the objections raised by the person interested which is recognized as final. Nevertheless, the report and the recommendations of the Collector in terms of Sub-section (2) of Section 5A of the Act has certain significance. Such objection can undoubtedly be overruled by the Government. Nevertheless, the reasons cited by the Collector for making a positive recommendation, would have to be addressed. While doing so, in the present case, at one stage, the Minister himself was fully convinced that the Collector has rightly recommended dropping of the acquisition. He had recorded three reasons for concurring with the view of the

Collector and discarded the suggestion of the Secretary to continue the acquisition proceedings. Once this was done, it was simply not open for the Minister to recall the decision in the manner in which he did. The first decision was well reasoned, duly documented and was final. The later decision was not based on any reasons which can be stated to be germane. The Secretary had recommended collecting further relevant information before taking a final decision. The petitioner ignored such recommendation and merely, on the basis that such information was not available since the file was moving parallel before the two departments, upturned his own decision and effectively concluded that the land was required for public purpose. Surely the Government's decision cannot be based on ipse dixit and any satisfaction, so recorded, would not be sufficient for the purpose of Section 6 of the Act.

25. In the result, the impugned notifications dated 11.03.1999 and 21.06.2000 under Sections 4 and 6 of the Act respectively, insofar as the lands of the petitioner-society are concerned, are quashed. Petition is allowed and disposed of accordingly.