

(1994) 05 SC CK 0059

In the Supreme Court Of India

Case No : Civil Appeal No's. 2339 to 2346 of 1989

Srinivasa Cooperative House Buildings Society Ltd.

APPELLANT

Vs

Madam Gurumurthy Sastry and Others

RESPONDENT

Date of Decision : 03-05-1994

Acts Referred:

Companies Act, 1956 — Section 40(1)

Land Acquisition Act, 1894 — Section 3, 4, 4(1), 40, 41

Citation : (1994) 2 ALT 36 : (1994) 4 JT 197 : (1995) 1 LW 267 : (1995) 109 PLR 331 : (1994) 2 SCALE 785 : (1994) 4 SCC 675 : (1994) 3 SCR 848

Hon'ble Judges : N. Venkatachala, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : R.N. Keshwani and G. Prabhakar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Ramaswamy, J.—Admittedly the appellant was registered under the Andhra Pradesh Coop. Societies Act. Its object appears to be to develop the land and allot plots thereof to its members for construction of houses. Notification u/s 4(1) of the Land Acquisition Act 1 of 1894 for short the Act was published in the State Gazette on February 8, 1979, acquiring an extent of 71 acres 56 cents of land situated in Moolasagaram near Nandyal in Kurnool Dist. for the aforesaid purpose. A report u/s 5A, of the enquiry, was submitted to the Govt. The appellant entered into an agreement u/s 41 of the Act dated December 12, 1981 with the Govt. treating the appellant as a company and it was published in the gazette dated February 4, 1982. But it was given up. The state thereafter contributed Rs. 100 for each acquisition and got declarations u/s 6, published in the State Gazette on February 4, 1982 to an extent of 54 acres 66 cents and on January 19, 1984 for another extent of 16 acres 19 cents. It is not necessary to mention the previous history of the litigation but suffice to state that a single judge dismissed one writ petition and allowed other writ petitions on December 9, 1985 on the ground that the procedure prescribed in part VII of the Act had not been followed holding when the acquisition was for public purpose. On

appeals the Division Bench in Writ Appeal No. 316 of 1986 etc. by judgment dated December 6, 1986, quashed the notification u/s 4(1) and the declarations u/s 6, primarily on two grounds, namely, (1) that the respondents are small farmers; (2) the appellant society consists of members who could afford to construct houses by themselves, (3) acquiring the lands of the poor small farmers for the benefit of the rich is arbitrary and the contribution of Rs. 100/- each by the government is a colourable exercise of the power to avoid the mandatory requirements in Chapter VII of the Act. In these appeals we are concerned with 40 acres of land, since other owners have not challenged the acquisition.

2. Sri Sitiiramaiah, the learned Senior counsel for the appellant contended that once the government contributed Rs. 200/- from the public exchequer, the public purpose envisaged u/s 3(f) of the Act is satisfied and the requirements envisaged in Chapter VII need not be followed. Alternatively it was contended that once the acquisition was found to be for providing house sites to the members of the Coop Society, it was a public purpose and that, therefore, mandatory requirement of Chapter VII was not required to be followed. In either event, it was contended that the High Court was wrong in quashing the notification and the declarations on the ground that the acquisition of the small farmers inferentially offends Articles 14 and proviso to Article 31A of the Constitution is unwarranted.

3, Section 2(c) of the Act defined Company under per 1984 Amendment Act as meaning a Company registered under the Indian Companies Act, 1882... and included a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912, or any other law relating to coop, societies for the time being in force in any State. Section 2(f) defined the expression public purpose to include the provision of village sites in districts in which the appropriate government shall have declared by notification in the official Gazette that it is customary for the government to make such provision. Chapter VII deals with the acquisition of land for companies. Article 31 of the Constitution (preceding 44th Constitution Amendment Act, 1978) prohibits compulsory acquisition of the property for anything except for a public purpose. Public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally the executive would be the best Judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interests of a section of the society may be public purpose when it is benefited by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily.

Admittedly, there is no group housing scheme approved by the State Government. On the other hand, housing schemes are being executed by the A.P. Housing Board under the Act. We are not concerned the public purpose as amended under the 1984 Act.

4. The Act recognises dicotomy, namely, acquisition for a public purpose in Chapter II and acquisition for a private purpose of a type restricted in Chapter VII. There is no provision in the Act to say that when a land is not required for a company. It may also be for a public purpose. Therefore, if a company, namely a co-operative society registered under the Central or State Coop Societies Act, preceding 1984 Amendment Act, it had to acquire the land in strict compliance with Chapter VII. The company, (Coop Society) requires land for any purpose other than those mentioned in Section 40, then no compulsory acquisition under the Act is possible. Part VII nowhere authorises the government to apply the provision of that part to private acquisition. A.P. State Amendment Act expressly included acquisition for providing house sites for the poor; for the execution of any housing scheme under A.P. Housing Boards Act; godowns for a coop society as for public and urgent purposes. By necessary implication the acquisition for a Private Coop. house Building Society to construct houses for its members must be a private purpose.

5. Section 39 (preceding 1984 Amendment Act) provides that the provisions of Sections 6 to 37 both inclusive shall not be put into force in order to acquire land for any company, unless with the previous consent of the appropriate government or unless the company shall have executed the agreement thereinafter mentioned. Section 40 enjoins that such consent shall not be given unless the appropriate government be satisfied, either on the report of the Collector under Sub-section (2) of Section 5-A or by an enquiry held as hereinafter provided :-

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling-house for workmen employed by the company or for the provision of amenities directly connected, therewith or;

(aa) that such acquisition is for the construction of some .pa

building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or

(b) that such acquisition is for the construction of some work and that such work is likely to prove useful to the public.

6. u/s 41 if the appropriate government is satisfied, after considering the report, if any, of the Collector under Sub-section (2) of Section 5-A, or on the report of the officer making an inquiry u/s 40, that the proposed acquisition is for any of the purposes referred to in Clauses (a or aa) or (b) of sub-section (1) of Section 40, it shall require the company to enter into an agreement with the appropriate government, providing to the satisfaction of the appropriate government for the

following matters, namely:-

- (1) the payment to the appropriate government of the cost of the acquisition;
- (2) the transfer, on such payment, of the land to the company;
- (3) the terms on which the land shall be held by the company;
- (4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the condition on which and the manner in which the dwelling houses or amenities shall be erected or provided:
- (4-A) where the acquisition is for the construction of any building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for public purpose, the time within which, and the condition on which, the building or work shall be constructed or executed; and (5) where the acquisition is for the construction of any other work, the time within which and the conditions on which, the company shall be entitled to use the work.

7. u/s 42. every such agreement shall as soon as may be after execution, be published in the Official Gazette and shall thereupon, so far as regards the terms on which the public shall be entitled to use the work, have the same effect as if it had formed part of the Act. Explanation engrafted in Section 43 is not material for the purpose of the case. Section 44-A provides that no company for which any land is acquired under this part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate government. Section 44-B enjoins that, notwithstanding anything contained in this Act, no land shall be acquired under this Part except for the purpose mentioned in Clause (a) of sub-section (1) of Section 40, for a "private company" which is not a government company.

8. Explanation - 'Private Company' and 'Government Company' shall have the meanings respectively assigned to them in the Companies Act, 1956. A plain reading of the fascicule of these provisions clearly indicates the distinction, statute has envisaged, namely, acquisition for a public purpose and acquisition for a private purpose. Even the acquisition for a company, unless utilisation of the land so acquired is integrally connected with public use, resort to the compulsory acquisition under Chapter VII cannot be had. Even when Chapter VII was invoked, the requirements of Section 40 and 2.41 are mandatory and shall be strictly complied with. It is clearly discernible from scheme of the acquisition in Chapter VII that the land can be acquired for the erection of dwelling houses for workmen employed by the company or for the provisions of amenities directly connected therewith or needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose or is needed for the construction of some work which is likely to prove useful to the public. Notwithstanding anything contained in the Act, i.e. despite the compliance of Chapter VII, no land should

be acquired under Chapter VII except for the purpose mentioned in Clause (a) of sub-section (1) of Section 40, for a private company which is not a government company and that such company shall not be entitled after the acquisition under Chapter VII to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate government. The object, therefore, appears to be that the land acquired under Chapter VII shall always remain to serve the public purpose, beneficial to the public. It is not open to the government to waive any of the provisions in Part VII. The provisions contained therein have mandatory operation. The object of Sections 44-A and 44-B appears to be that they intend to safeguard public interest. The company acquiring the land for a public purpose in Chapter VII may, after the acquisition has become final, divert the land for private profit motive, defeating the purported public purpose for which the acquisition was made. The government company obviously does not alienate such property for private gain since the profits merge into public fund. While the private company could get acquisition but thereafter become free to dispose of the property.

Therefore, the acquisition for a private company get limited only for purposes envisaged u/s 40(1)(a) and thereby the public purposes envisaged therein get safeguard and protected. The dominant purpose of public utility pervades the provisions in Chapter VII of the Act.

9. A private company as defined under the Companies Act, 1956, the private Coop. House Building Society does not become a private company u/s 44-A of the Act and Section 44-B prohibits transfer by way of sale etc. of the land so acquired under Part VII. Therefore, the Private Coop. Housing Society registered under the A.P. Coop. Societies Act is not a company u/s 3(d) of the Act entitling to invoke the provisions in Chapter VII.

10. The question, therefore, is whether the contribution of Rs. 100/- for each declaration from the public exchequer would make the private purpose "a public purpose" u/s 2(f) of the Act.

11. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, the facts were that the Government of Punjab issued a Notification u/s 4(1) acquiring the petitioners' land for a private company to set up a factory to manufacture various ranges of refrigeration compressors and ancillary equipment. An inquiry u/s 5-A was dispensed with and a declaration u/s 6 was published. The Government contributed Rs. 100/- from public exchequer. When it was questioned by a petitioner under Article 32, this Court at p.805 and p.818 held that it is for the State Govt. to decide about a public purpose. If the purpose is within the legislative competence, the declaration of the government in that behalf will be final, however, subject to one exception, being that if there is a colourable exercise of power, the declaration will be open to challenge at the instance of the aggrieved party. It was contended that when the government contributed a token money and when the entire compensation of the land was to be met by a

company, declaration u/s 6 would be a colourable exercise of the power and thereby the acquisition was mala fide and invalid. In that context, this Court considered the question and laid at pp. 817-18 that "We would, however, guard ourselves against being understood to say that a token contribution by the State towards the cost of acquisition will be sufficient compliance with the law. In each and every case whether such contribution satisfies the requirement of law would depend upon the facts of a particular case. Indeed the fact that the State's contribution is nominal may well indicate, in particular circumstances that the action of the State was a colourable exercise of power. In our opinion, part does not necessarily mean a substantial part, and that it would be open to the court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of law". In that case it was found that the company was to manufacture refrigeration equipment and its accessories which would save substantial part of foreign exchange and construction of the quarters for workmen would also be a public purpose. Accordingly it was held that though the company was a private company, acquisition was not a colourable device to avoid the rigour of part VII. In that behalf it was amplified that if "the Govt. could acquire land for such a purpose (private) only after complying with the provisions of Part VII . and that the use of the provisions of Section 6(1) is merely a colourable device to enable respondent No. 6 to do something, which, under terms of Section 6(1), could not be done." In view of the finding that the manufacturing of the articles was for the benefit of the community and to save substantial part of foreign exchange and staff quarters to workmen it was held that acquisition was for public purpose. Acquisition without resort to Part VII did not constitute a fraud on state's power to acquire land and was not colourable exercise of such powers. In *Indrajit C. Parekh of Ahmedabad and Another Vs. State of Gujarat and Others*, , nine proposals were sent by E.S.I. Corporation, a Company incorporated under the Indian Companies Act to acquire certain plots of land in Dariyapur-Kazipur area of the city of Ahmedabad bearing certain numbers to establish a dispensary for Employees' State Insurance Scheme at Ahmedabad. The government contributed one rupee to each of the proposals and passed resolution to acquire the private plots of land for the above purpose. After receipt of the report u/s 5-A a declaration u/s 6 was published. When they were challenged, the High Court dismissed the writ petition. On appeal, this Court held that the public purpose of the E.S.I. Scheme was not disputed. The only question was whether publication of declaration u/s 6 is a colourable exercise of the power by the State Govt. In the light of those facts it was held that the exercise of the power u/s 6 could not be held to be colourable exercise of the power. In *Bai Malimabu and Others Vs. State of Gujarat and Others*, for the construction of staff quarters for employees and of the dispensary etc. of E.S.I. u/s 4(1) notification followed by an inquiry u/s 5A and a declaration u/s 6 of the Act were published. The Govt. contributing Re. 1 towards the cost of acquisition. This Court negated the contention that contribution of Re. 1 from the public exchequer for the purpose of acquisition of the land for the use of E.S.I. Corporation was a colourable exercise of the power. In *Land Acquisition Collector*

and Another Vs. Durga Pada Mukherjee and Others, , the Govt. published a notification u/s 4(1) of the Act that the lands specified therein was needed for a public purpose, namely, expansion of factory of the company at the expense of the company. When it is objected to another notification was issued that the land was needed for industrial development at public expense contributing token money. It was contended that it was for the private purpose, namely, for the benefit of the company. A single judge dismissed the writ petition but the division bench allowed the appeal holding that there was no evidence produced that the land was needed for public purpose and not for the benefit of the company. On appeal this Court allowed and held that the public purpose was for the industrial development which was a public purpose and declaration u/s 6 was conclusive. The person impugning on the ground of mala fide or colourable exercise of the power must prove affirmatively. Even in the absence of production of documentary evidence by the State, the onus does not shift the burden that it is a mala fide or colourable exercise of power on the part of the State. 12. In Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others, , the notification issued u/s 4(1) and published in the State Gazette followed by an enquiry u/s 5-A and declaration u/s 6 for acquiring the land for the State Road Transport Corporation with a contribution from the Gujarat State Revenue was impugned as being ultra vires of the power. This Court held that the contribution of Re. 1 from the State Revenue was adequate to hold that the acquisition was for public purpose with the State fund and it was not illusory so as to invalidate the acquisition. In Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, , this Court held that where acquisition is made for a public purpose, the cost of acquisition for payment of compensation has to be paid wholly or partly out of Public Revenues, or some fund controlled or managed by a local authority. On the other hand, in the case of an acquisition for a Company, the compensation has to be paid by the Company. In such a case there can be an agreement u/s 41 for transfer of the land acquired by the Government to the Company on payment of the cost of acquisition; as also other matters. The agreement contemplated by Section 41 is to be entered into between the Company and the appropriate government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the appropriate government has been given to the acquisition. Section 6 is in terms, made subject to the provisions of Part VII of the Act. The declaration for acquisition for a Company shall not be made unless the compensation to be awarded for the property is to be paid by a Company. In the case of an acquisition for a Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily means that an acquisition for a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds. Hence an acquisition for a Company may also be made for a public purpose, within the

meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition, for a company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII. In that case the government have sponsored the Housing Scheme and substantial amount has been extended on the scheme out of the government Revenue in the form of subsidies and loans. The acquisition was also for the construction of the quarters for the workmen under the government sponsoring Housing Scheme for industrial workers. Under those circumstances it was held that the acquisition for the company was for public purpose. We may make it clear at once that a token contribution from public revenue, under all circumstances cannot be considered to be colourable exercise of power. Each case must furnish its back drop whether the acquisition is for public purpose or for a private purpose. The facts and circumstances must carefully be scrutinised to reach a finding.

13. This Court in *Virupaxappa Veerappa Kadampur Vs. The State of Mysore*, construing Section 161(1) of the Police Act and the words (under the colour of duty) interpreted to include acts done under the cloak of duty, even though not by virtue of the duty, when the police officer prepares a false Panchnama or a false report, he is clearly using the existence of his legal duty as a cloak for his corrupt action or as a veil of his falsehood. The acts thus done in dereliction of his duty must be held to have been done under colour of the duty. In *Stroud's Judicial Dictionary*, 5th Edn., Vol. 1, p. 460, "Colour of office" was defined as is always taken in the worst part, and signifies an act evil done by the countenance of an Office, and it bears a dissembling face of the right of the Office, whereas the office is but a veil to the falsehood, and the thing is grounded upon Vice, and the office is as a shadow to it. In *Blacks Law Dictionary*, 6th Edn., p. 266 "under color of any law" of a State include not only acts done by State officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of an official to be done under colour of any law, the unlawful acts must be done while such official is purporting or pretending to act in the performance of his official duties; that is to say, the unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature or character, and be committed under such circumstances, that they would not have occurred but for the fact that the person committing them was an official then and there exercising his official powers outside the bounds of lawful authority. It would thus be clear that when an Act is done by the State under colour of authority of law it must be for the lawful purpose envisaged under the Act. If the purpose, namely, public purpose envisaged under the Act is not served that the exercise of the power of the declaration u/s 6 must be held to be colourable exercise of the power, though not with evil motive. It is seen that the appellant is a private society and it is not for any of the purposes u/s 40(1)(a) or u/s 3(c) of the Act. It is for the transfer of the acquired land to the members of the society who are now as per the

record placed in this court appears to be Advocates, Chartered Accounts, Businessmen and alleged to be possessed of more than one house. The government does not appear to have bestowed its thought to these aspects while considering the report u/s 5A in this perspective before accepting the report and contributing a sum of Rs. 100/- each from the public exchequer within the teeth of Sections 40; 41; 44A and 44B of the Act. Thus it must be held that the acquisition and declaration published u/s 6 is a colourable exercise of the power.

14. The appeals are accordingly dismissed with cost quantified at Rs. 10,000/-.