
(1965) 03 GUJ CK 0010
In the Gujarat High Court
Case No : First Appeal No. 718 of 1960

State of Bombay

APPELLANT

Vs

Chatrabhuj Nenshi

RESPONDENT

Date of Decision : 22-03-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : AIR 1966 Guj 185 : (1965) GLR 869

Hon'ble Judges : P.N. Bhagwati, J; Mohanlal Ujamshi Shah, J

Bench : Division Bench

Advocate : J.M. Thakore, General and B.R. Sompura, Asst. Govt. Pleader, for the Appellant; M.H. Chhatrapati, for the Respondent

Final Decision : Allowed

Judgement

Bhagwati, J.—This appeal is directed against an order made by the District Judge, Kutch, in Land Acquisition Reference No. 1 of 1958 awarding a total compensation of Rs. 1,20,094-8-0 to the respondent for acquisition of a piece of land bearing Survey No. 910 situate on the Bhachau Rahapar Road in Kutch District. The land belonged to the respondent which is a Limited Company carrying on business inter alia of ginning cotton and it was taken possession of by the Government of Kutch on 19th November 1949 under an arrangement that some other land suitable for the requirements of the respondent would be given by the Government of Kutch to the respondent in exchange for the land so taken over. At this time the Land Acquisition Act, 1894, was in force in Kutch but no notification u/s 4(1) was issued by the Government of Kutch in respect of the land and no proceedings were adopted under the Act for acquisition of the land. The possession of the land was taken by the Government of Kutch for construction of the State Guest House and the Court house for the Subordinate Judge at Bhachau and these buildings were constructed on the land after possession of the land was taken, though no steps were taken to vest the title to the land in the Government of Kutch either by a conveyance from the respondent

or by acquisition. It appears that the Government of Kutch was not in a position to give to the respondent in exchange equivalent land acceptable to the respondent and the arrangement upon which the land was originally taken over by the Government of Kutch, therefore, fell through but by this time the Government of Kutch had already constructed buildings on the land and the Government of Kutch, therefore, issued a notification u/s 6 of the Act declaring that the land was needed for a public purpose. The notification directed the Deputy Collector in charge of the Eastern Sub-division u/s 7 to take order for acquisition of the land. The Deputy Collector accordingly issued the necessary notices u/s 9 and after holding the prescribed inquiry made an award dated 22nd April 1957 u/s 11 determining the true area of the land as 6 acres and 35 1/2 gunthas and awarding as and by way of compensation Rs. 585-44 nP for the land valuing it as agricultural land and Rs 3,828 for the well and pipeline in the land and Rs. 662 as 15 per cent solatium u/s 23(2) making in all an aggregate sum of Rs. 5,075-44 nP. The respondent was dissatisfied with this award & he, therefore, applied to the Deputy Collector to make a reference and the Deputy Collector accordingly made a reference to the District Court u/s 18 of the Act. The respondent raised a two-fold objection against the award in the Reference. The first objection was as regards the measurement of the land. The respondent's contention was that the true area of the land was 8 acres and 28 gunthas and not 6 acres and 35 1/2 gunthas as found by the Deputy Collector. This contention was, however, given up at the hearing of the Reference and the true area of the land was accepted as 6 acres and 35 1/2 gunthas. The other objection, was to the amount of compensation both in respect of the land as also in respect of the well and pipeline. But so far as the well and pipeline were concerned, no evidence was led on behalf of the respondent to show that the valuation of Rs. 3,828 made by the Overseer of the Public Works Department was erroneous and the learned District Judge, therefore, negatived the objection in so far as it related to the amount of compensation in respect of the well and pipeline. The objection as to the amount of compensation in respect of the land was, however, found by the learned District Judge to be well founded. The respondent had claimed before the Deputy Collector compensation at the rate of Rs. 6 per square yard on the basis that the land was a building-site but the Deputy Collector had proceeded to award compensation on the basis that the land was agricultural land. The same claim of Rs. 6 per square yard was repeated before the learned District Judge and it was contended that the rate of Rs. 6 per square yard represented the market value of the land on the date of the notification u/s 6 on the basis of the land being a building-site and since there was no notification u/s 4(1), the respondent was entitled to claim compensation on the basis of the market value of the land on the date of the notification u/s 6. It was not disputed on behalf of the State that the respondent was entitled to compensation on the basis of the market value of the land at the date of the notification u/s 6 and the learned District Judge, after considering the evidence on record, came to the conclusion that the market value of the land at the date of the notification u/s 6 should be taken to be Rs. 3 per square yard and on that basis the learned

District Judge awarded compensation of Rs. 1,00,000-8.0 for the land. Adding to this the amount of compensation in respect of the well and pipeline and 15 per cent solatium the learned District Judge came to the conclusion that the respondent was entitled to claim Rs. 1,20,094-8-0 as compensation and he accordingly made an order awarding the said amount as compensation together with interest thereon at the rate of 6 per cent per annum from 1st February 1955 being the date of the notification u/s 6 and proportionate costs. The State thereupon preferred the present appeal in this Court.

2. The learned Advocate General appearing on behalf of the State advanced broadly two contentions in support of the appeal. The first was a contention of a preliminary nature and it raised a question of some importance. The contention was that under the machinery provided by the Land Acquisition Act for determination of compensation for acquisition of land, compensation could be determined only on the basis of the market value of the land at the date of the notification u/s 4(1) and the learned District Judge has, therefore, in error, awarded compensation on the basis of the market value of the land at the date of the notification u/s 6. The learned District Judge, it was argued, should have held that since in the present case there was no notification u/s 4(1), it was not possible to determine the amount of compensation payable for the land under the machinery of the Land Acquisition Act and the Reference should, therefore, have been rejected by the learned District Judge. The second contention was directed to the merits of the case and it was urged that even if the learned District Judge was, in the absence of notification u/s 4(1), entitled to award compensation on the basis of the market value of the land at the date of the notification u/s 6, the compensation awarded by the learned District Judge was not at all justified by the evidence on record and as a matter of fact there was no satisfactory evidence which would entitle the respondent to claim higher compensation than that awarded by the Deputy Collector. This second contention would become necessary to be considered only if the first contention were decided against the State, but in our opinion the first contention is well-founded and it is, therefore, not necessary to go into the evidence for the purpose of deciding the validity of the second contention. Let us examine the first contention.

3. In order to appreciate this contention it is necessary to examine briefly the scheme as appearing from the various provisions of the Act. The preamble of the Act shows that it is an Act to amend the law for the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition. Part I of the Act contains sections of a preliminary nature dealing with subjects such as extent and commencement and definitions. Then comes Part II which is headed "Acquisition" and which sets out the procedure to be followed in effecting acquisition of land. The first step which is required to be taken is the issue of a notification under Sub-section (1) of Section 4. That Sub-section provides that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that

effect shall be published in the Official Gazette. On the issue of the notification u/s 4(1) steps are taken to enter upon and survey the land and take all other actions necessary to decide whether the land is fit for the purpose for which it is needed and in that connection Section 5A provides that any person interested in the land may, within thirty days after the issue of the notification, object to the acquisition of the land. Every objection u/s 5A is required to be made to the Collector in writing and that section enacts that the Collector shall after hearing all objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with a report containing his recommendations on the objections and the decision of the Government on the objections shall be final. Section 6 then provides for the issue of a notification declaring that the land is needed for a public purpose or for a company. The notification u/s 6 is made conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be, and Section 7 declares that on such notified tion being issued the appropriate Government shall direct the Collector to take order for acquisition of the land. Section 8 requires the Collector to cause the land to be marked out measured, and planned and Section 9 says that the Collector shall then cause public notices to be given to persons interested in the land stating that the Government intends to take possession of the land and that claims to compensation for all interests in the land may be made to him. Section 10 empowers the Collector to require and enforce the making of statements as to names of persons possessing interest in the land and the nature of such interest with the object of enabling the Collector to make a proper award determining compensation to be paid for acquisition of the land and apportioning such compensation amongst persons interested in the land Section 11 is a little important and we would prefer to set it out in full rather than give a mere gist of it in our own words. That section runs as follows:

"11. Enquiry and award by Collector: On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4, Sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of -

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims, he has information, whether or not they have respectively appeared before him."

The award made by the Collector is declared by Section 12 to be final and conclusive evidence as between the Collector and the persons interested, of the

true area and value of the land and the apportionment of the compensation among the persons interested Sections 13 and 14 deal merely with the powers of the Collector while holding the inquiry and are not material for the purpose of the present discussion Section 15 enacts that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Ss. 23 and 24. After the Collector has made the award, he may take possession of the land and on possession being taken, the land vests absolutely in the Government free from all encumbrances Section 17 confers power on the Government in cases of urgency, to direct the Collector to take possession of any waste or arable land needed for public purposes or for a company even before any award has been made and in such cases, on possession being taken, the land vests absolutely in the Government free from all encumbrances. That section also authorizes the appropriate Government to dispense with the inquiry u/s 5A in certain cases. Here ends Part II, Part III deals with the subject of reference to Court and procedure on such reference Section 18 which is the first section in Part III provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. Section 19 specifies the particulars which are required to be set out by the Collector in making a reference to the Court. Sections 20, 21 and 22 deal with certain matters of detail in regard to the Reference which have no bearing on the question before us. Then comes Section 23 which is a very important and relevant section. The material part of that section reads as follows:

"23. Matters to be considered in determining compensation: (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market value of the land at the date of the publication of the notification u/s 4, Sub-section (1);

xx xx xx xx xx xx xx xx (2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition."

Section 24 lays down what matters must not be taken into account by the Court in determining compensation and one of those matters is that set out in the seventh clause of the section, namely:

"any outlay or improvements on, or disposal of, the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the notification u/s 4, Sub-section (1)"

Then follow Ss. 25 to 28 which lay down certain rules as to amount of compensation and make provision for award of costs and interest. These are the relevant sections of the Act which we will have to bear in mind while examining

the validity of the contention urged on behalf of the State.

4. Now it is clear from the summary of the Section which we have given above that the Act contemplates two notifications to be issued by the Government as essential steps in acquisition of land; one being a notification u/s 4(1) and the other being a notification u/s 6. The notification u/s 4(1) pre-cedes the notification u/s 6 and it constitutes the first step in the process of acquisition. It is undoubtedly true that the notification u/s 4(1) is merely an introductory measure exploratory in character and having no consequence beyond initiating a proposal for acquisition of land but none-the-less it constitutes an essential step which must needs be taken before acquisition of any land can be effected. It is significant that in cases covered by Section 17 Sub-section (4) an inquiry u/s 5A may be dispensed with but there can be no dispensing with the notification u/s 4(1) and that notification must be issued before any further step is taken in the matters of acquisition of land. Since the issue of the notification u/s 4(1) is the first step in the process of acquisition of land and is a step which would necessarily be taken in all cases of acquisition of land, the date of that notification is taken as the date at which the value of the land must be determined for the purpose of ascertaining the amount of compensation awardable for acquisition of land. Section 11 which we have reproduced above in terms provides that the Collector for the purpose of making his award determining the amount of compensation which in his opinion should be allowed for the land shall enquire into the value of the land at the date of the publication of the notification u/s 4(1). It is on the basis of the value of the land at the date of the notification u/s 4(1) that the Collector is required to determine compensation which should be awarded for acquisition of the land. The scope of the inquiry to be made by the Collector is restricted to ascertainment of the value of the land at the date of the notification u/s 4(1) and he cannot transgress that limit and enquire into the value of the land at any other date and award compensation on that basis. Now the award of the Collector is merely in the nature of a proposal by the Government and the persons interested in the land may accept it or may prefer to take the matter to Court by way of Reference. When the matter is taken to the Court by way of Reference, the Court would then have to determine the amount of compensation which should be awarded to the applicant for acquisition of the land. Now obviously the scope of the inquiry before the Court cannot be any wider or any different from the scope of the enquiry before the Collector & it would, therefore, be reasonable to conclude that the Court would also have to enquire into the value of the land at the date of the notification u/s 4(1) and award compensation on that basis. But this is not a matter left to be gathered by implication. We find that it is expressly provided in Section 23 that in determining the amount of compensation to be awarded for the land, the Court shall take into consideration the market value of the land at the date of the publication of the notification u/s 4(1). It is an injunction issued to the Court by the Legislature that the Court must take into consideration the market value of the land at the date of the notification u/s 4(1) in determining

the amount of compensation. In the face of this provision it is difficult to see how it can be urged that the Court may, in a possible case, take into consideration the market value of the land at some date other than the date of the notification u/s 4(1). The argument urged on behalf of the respondent was that all that Section 23 requires the Court to do is to take the market value of the land at the date of the notification u/s 4(1) into consideration; it does not say that the Court shall determine the amount of compensation on the basis of the market value of the land at the date of the notification u/s 4(1) or that the market value of the land at the date of the notification u/s 4(1) shall be the amount of compensation. Bill this argument is wholly devoid of merit and is based on what we may term legal casuistry. As the preamble of the Act shows, the Act was passed inter alia for determining the amount of compensation to be made on account of acquisition of land and Section 23 is one of the sections laying down the principles for determining the amount of compensation to be paid for acquisition of land. The various clauses of Section 28 set out the matters which must be considered by the Court in determining the amount of compensation so that they are provided for in the amount of compensation which is awarded by the Court. One of the matters is the market value of the land at the date of the notification u/s 4(1) and it is that market value and no other which must be taken into account when the Court determines what is the amount of compensation which must be awarded for the land. To accept the contention urged on behalf of the respondent would mean that the Court would be at large in determining the amount of compensation and the principles for determining the amount of compensation laid down in Section 23 would have no compulsive force. The true meaning of Sub-section (1) of Section 23, we think, is that the amount of compensation to be awarded for the land shall consist of various components and one of the components shall be the market value of the land at the date of the notification u/s 4(1). This view which we are taking is considerably reinforced by reference to Sub-section (2) of Section 23 which says that in addition to the market value of the land as above provided, the Court shall in every case award a sum of 15 per cent of such market value as solatium. Sub-section (2) clearly shows that under Sub-section (1) the Court is to award the market value of the land at the date of the notification u/s 4(1) and in addition to that market value the Court must also award 15 per cent of such market value as solatium. Section 24 also emphasizes that the crucial date which is required to be taken into account is the date of the notification u/s 4(1) for it says that in determining the amount of compensation the Court shall not take into account any outlay or improvements, on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification u/s 4(1). It is, therefore, clear that the Collector making an inquiry under S 11 as also the Court hearing a reference u/s 18 can award compensation only on the basis of the market value of the land at the date of the notification u/s 4(1).

5. The question then is what is to happen if in a given case no notification u/s 4(1) has been issued by the Government and the only notification issued is that

u/s 6? Now, as we have pointed out above the Act does not contemplate any such situation and it is, therefore, natural that there is no provision in the Act dealing with such a situation. If there is no notification u/s 4(1) the machinery provided by the Land Acquisition Act for determination of compensation for acquisition of the land obviously cannot apply. Neither the Collector nor the Court can take into account the market value of the land at any other date on the ground that there is no notification u/s 4(1) and consequently it is not possible to take into account the market value of the land at the date of such notification. The Court as well as the Collector can-not travel outside the limits placed upon the exercise of their jurisdiction and determine the amount of compensation on the basis of the market value of the land at a date other than that provided in Section 11 or Section 23. The Collector and the Court are exercising the jurisdiction conferred upon them by the Act and if the Act directs in positive mandatory terms that in determining the amount of compensation the Collector and the Court shall take into account the market value of the land at the date of the notification u/s 4(1), the Collector and the Court cannot take into account the market value of the land on any other date. To do so would be to act beyond the authority conferred by the Act. It may be that in a given case where no notification u/s 4(1) has been issued, it may not be possible to determine the amount of compensation payable for the acquisition of the land by resort to the machinery provided by the Act, but that difficulty or hardship should not induce us to take a view which is not warranted by the language of the various provisions of the Act and which flies in the face of Ss. 11 and 23. The difficulty arises in such a case because the Act does not contemplate acquisition without issue of a notification u/s 4(1) and the Act has, therefore, not provided any machinery for determination of compensation for acquisition of land in such a case. The respondent may be able to successfully contend that the acquisition is bad since it is not initiated by a notification u/s 4(1) or the respondent may be able to claim compensation by pursuing any other remedy available to him but we are not concerned with that. The only question is whether the respondent can claim compensation by availing himself of the machinery provided by the Land Acquisition Act and on that question we do not think we can give an answer in favour of the respondent. Since there is no notification u/s 4(1) in the present case, it is not possible to determine the amount of compensation payable for acquisition of the land under the machinery provided by the Land Acquisition Act and the learned District Judge should have, therefore, rejected the reference.

6. The result, therefore, is that the appeal is allowed and the order passed by the learned District Judge awarding compensation to the respondent is set aside. There will be no order as to costs of the appeal.