

(1979) 07 GUJ CK 0010

In the Gujarat High Court

Case No : Spl. Civil Application No. 1153 of 1979

Vallabhbhai Khushalbhai Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 25-07-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 1980 Guj 144 : (1980) GLR 1

Hon'ble Judges : B.J. Divan, C.J;R.C. Mankad, J

Bench : Division Bench

Advocate : B.R. Shah, for the Appellant; J.R. Nanavati, Asstt. Govt. Pleader, M.L. Have, of Bhaishanker Kanga and Girdharilal, for the Respondent

Judgement

Divan, C.J.—The petitioner herein has challenged under Article 226 of the Constitution notifications under Sections 4 and 6 of the Land Acquisition Act. The petitioner is the owner of agricultural land" bearing survey No. 20/2 (Paiki) admeasuring 4 Acres 26 Gunthas situated at village Sankari, in Bardoli Taluka of Surat District. His land is part of survey No. 2012. A portion of the said land admeasuring about one acre is waste and uncultivable land and the remaining portion of the land is cultivable. The land is perennially irrigated and is watered by irrigation canal supplying water from Kakarapar Water Bund Scheme. The petitioners and his family members are cultivating the land personally. Sugarcane is the main crop grown in the land and the income derived by cultivation of this land is the main source of income of the petitioner and his family members. It is the petitioner's case that as far back as May 1, 1968, a notification u/s 4 of the Land Acquisition Act was issued stating that the land of the petitioner was likely to be needed for the construction of houses of Halpatis under the Halpati Housing Scheme. The petitioner opposed this proposed acquisition inter alia on the ground that waste and uncultivable land either belonging to the State Government or vested in the Panchayats was available in the vicinity and that land could be suitably utilised for housing Halpatis and that apart from the Government land and the land vested in the Panchayats, there were waste and

uncultivable lands owned by private individuals which could be suitably acquired at a cheaper rate and made available to the Halpatis. Subsequently, on April 20, 1971 the Government cancelled the notification dated May, 1, 1968 that had been issued u/s 4 of the Land Acquisition Act. Another notification was issued u/s 4 on September 4, 1973, stating that the portion of the land admeasuring 0.74 Hectares and 57 square metres was likely to be needed for a public purpose, namely, construction of houses for Halpatis under the Halpatis Housing Scheme. The petitioner filed his objection u/s 5-A of the Land Acquisition Act contending inter alia that the notification was issued as a "deliberate attempt to harass and subdue the petitioner who had launched a campaign against imposition of ceiling on the holding of agricultural land. The notification was published in the Gazette of October 4, 1973. Thereafter a notification was issued by the Govt. of Gujarat on Sept. 4, 1976, u/s 6 of Land Acquisition Act and this notification u/s 6 came to be published in the Gujarat Government Gazette of September 16, 1976. The notification under S. 6 as originally issued and published in the Govt. Gazette was faulty inasmuch as no public purpose whatsoever was stated in the notification. In the body of the notification it was mentioned that the land was likely to be needed for the public purpose "specified in column 4 of the Schedule to the notification and even the satisfaction of the Government was recorded in the following terms a "that the said land is needed to be acquired at the public expense for the purpose specified in column 4 of-the schedule hereto", and the declaration as contemplated by sub-section (1) of Section 6 was also with reference to column 4 of the schedule to the notification and in column 4 in the schedule under the heading "public purpose for which the land is needed" there was no mention of any public purpose and that column was blank. The notification as published in the Gujarat" Government Gazette of September 16, 1976, also showed Col. 4 of the Schedule as blank. Thereafter on October 20, 1976, an Erratum was issued by the Government of Gujarat mentioning that in the Schedule to the notification dated September 16, 1976, in col. 4 under the head "Public purpose for which the land is needed" the following words should be read: "for construction of houses for Halpatis under Halpatis Housing Scheme". Thus the blank which was found in the original notification and also in the notification as published in the Government Gazette was sought to be filled up by this Erratum issued on October 20, 1976, which Erratum came to be published in the Gazette on Oct. 28, 1976. u/s 6 sub-section (1) of the Land Acquisition Act, the Government has first to consider the report, if any, made u/s 5-A of the Act. After that consideration, if the Government is satisfied that any particular land is needed for a public purpose or for a company, then, a declaration has to be made by the Government to that effect and the declaration has to be under the signature of a Secretary to Government or of some officer duly authorised to certify its orders. Under the proviso to sub-section (1), no declaration in respect of any particular land covered by a notification u/s 4 sub-section (1) shall be made after the expiry of three years from the date of such publication. Under sub-section (1) of Section 6, every declaration shall be published in the Official Gazette, and shall also state the district or other territorial division in which the

land is situate etc. Therefore, the three stages, namely, consideration of the report, if any, u/s 5-A, the stage of satisfaction that a particular land is needed for a public purpose and the stage of making a declaration are three distinct stages which must follow one after the other under the scheme of Section 6(1). The declaration has a great deal of importance in view of Section 6(2) because the declaration shall be conclusive evidence that land is needed for a public purpose and after making such declaration the appropriate Government may acquire the land in the manner appearing in the rest of the provisions of the Land, Acquisition Act. In the instant case, a declaration was made u/s 6 after the Government was satisfied and after the Government considered the report u/s 5-A. Annexure B to the petition which is the notification dated 14th September, 1976, Issued u/s 6 states that the report u/s 5-A was considered and after consideration of the report, Government was satisfied that land mentioned in the Schedule was required to be acquired at public expense for the purpose specified in column 4 of the Schedule to the notification and there after, in the third paragraph, it was declared u/s 6 of the Act that the lands required for the purpose specified in column 4 of the Schedule were needed for that public purpose. Now since col. 4 of the Schedule to the notification was blank, it meant that there was no public purpose in respect of which the declaration contemplated by Section 6(1) was made when the notification was issued on September 14, 1976. It was only by the Erratum dated October 20, 1976, which came to be issued more than three years after the publication of the notification u/s 4 that complete declaration setting out the public purpose came to be issued. "Mr. Nanavati for the Govt. contended before us that originally on the Government files the notification itself was complete but it was only when publication was made in the Government Gazette of September 16, 1976 that, by some mistake, the public purpose came to be omitted in column 4 and col. 4 was left blank. If that was so, the language of the Erratum, part of Annexure B to the petition, would be totally different. The Erratum, says: "In the schedule appended to the Government notification Revenue Department No dated 14th Sept., 1976, issued u/s 6 of the Land Acquisition Act, 1894 (I of 1894) in the acquisition of land for construction of houses for Halpatis under Halpati Housing scheme..... read "for construction of houses for the Halpatis under Halpatis Housing Scheme". Therefore, what was being corrected was the notification issued u/s 6 and not merely the Gazette publication. The Erratum nowhere mentions that an error had occurred in the Publication though the original notification was correct and in accordance with the Provisions of Section 6. It is only when the Erratum was issued on October 20, 1976, that a complete notification u/s 6 came in existence and by that time the period of three years for making declaration had expired. Therefore, it is obvious that the requirement of Section 6(1) was not met within the period of three years from the publication of the notification u/s 4. The notification u/s 6 issued on September 14, 1976, though purported to be corrected by the Erratum of October 20, 1976, is made beyond the period of three years contemplated by the proviso to Section 6(1) and hence it was beyond the competence of the Government to make any such

declaration. Since there is no valid declaration in the eye of the law within the period of three years from the date of publication of Section 4(1) notification, Section 4 notification is also infructuous and of no use whatsoever. Hence, the notification u/s 4 is struck down as it has now become infructuous; and the notification u/s 6, even after its amendment by the Erratum of October 20, 1976, is invalid and must be quashed and set aside by reason of the fact that it is beyond the period of three years mentioned in Section 6(1). Both the notifications under Sections 4 and 6 are therefore quashed and set aside. This special civil application is, therefore allowed, In view of the clear position emerging regarding the notification u/s 6. We have not gone in any other aspect of the matter and we have not allowed Mr. Shah to argue any of those other points. Rule is made absolute. The respondents will pay the costs of this petition to the petitioner.

2. Application allowed.