

1963

May 8.

VALJIBHAI MULJIBHAI SONEJI
AND ANOTHER

v.

THE STATE OF BOMBAY (NOW GUJARAT)
AND OTHERS(S. K. DAS, K. SUBBA RAO, RAGHUBAR DAYAL,
N. RAJAGOPALA AYYANGAR and
J.R. MUDHOLKAR. JJ.)

Land Acquisition—State Transport Corporation—If a Company—Acquisition for the benefit of Corporation—Public purpose—Declaration by Government—If conclusive—Corporation, if a local authority—Validity of acquisition proceedings—Road Transport Corporation Act, 1950 (64 of 1950), s. 47—Bombay State Road Transport Act, 1950 (Bombay 25 of 1950), s. 29—General clauses Act, 1897 (10 of 1897), s. 3 (31)—Land Acquisition Act, 1894 (1 of 1894), ss. 3 (e), 4, 6.

Proceedings were taken under the provisions of the Land Acquisition Act, 1894, by the Government of Bombay for acquiring a piece of land for the purpose of constructing a bus depot required by the State Transport Corporation and for constructing office and other buildings for the said Corporation. A notification was issued under s. 4 of the Act in which it was stated that the acquisition was for a public purpose, namely, for "State Transport" and this fact was reiterated in the notification under s. 6 which, in addition, stated that the land was needed to be acquired for the purposes of and at the expense of the State Transport Corporation. The appellants challenged the validity of the acquisition proceedings on the grounds, *inter alia* (1) that the purpose mentioned in the notification under s. 4 of the Land Acquisition Act, 1894, was indefinite or vague and therefore, the notification was bad, and (2) that the State Transport Corporation was not a "local authority" within the meaning of the expression as used in the Act, but merely a company, and as the provisions of Part VII of the Act were not complied with, the acquisition was invalid. The provisions of the Road Transport Corporation Act, 1948 and other provisions of the later Acts showed that the State Transport Corporation had been incorporated by an Indian law within the meaning of s. 3 (e) of the Land Acquisition Act,

1894, and that it was a company as defined under that section.

Held (1) that the notifications of the Government issued under ss. 4 and 6 of the Land Acquisition Act, 1894, were conclusive on the question that the land was required for a public purpose even though it was being acquired for a corporation and not for the State;

Somawanti v. The State of Punjab, [1963] 2 S.C.R. 774 followed.

(2) that the funds of the State Transport Corporation could not be regarded as public revenue, and that the Corporation itself was not a department of Government but a separate legal entity;

(3) that the State Transport Corporation was not a "local authority" as defined by s. 3 (31) of the General Clauses Act, 1897; and

(4) that the acquisition impugned in the present case having been made for the benefit of a Corporation, though for a public purpose, was bad because no part of the compensation was to come out of public revenues and the provisions of part VII of the Land Acquisition Act, 1894, had not been complied with.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 122 & 123 of 1963.

Appeals by special leave from the orders dated March 18 and 23, 1960, of the former Bombay High Court in Applications for leave to appeal under Letters Patent from judgment and decree dated March 1, 1960, of the said High Court in Second Appeal No. 1331 of 1959.

J. C. Bhatt and *V. J. Merchant*, for the appellants.

C. K. Daphtary, Attorney-General for India,
N. S. Bindra and *R. H. Dhebar*, for respondents
Nos. 1 and 3.

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1963. May 8. The Judgment of the Court was delivered by

MUDHOLKAR J.—This judgment will also govern C.A. No. 123 of 1963. These two appeals have come up before this Court by virtue of special leave granted by it on April 27, 1960.

The appellants before us were plaintiffs in suits instituted by them before the second Joint Civil Judge (S.D). Ahmedabad, in which they challenged the validity of certain proceedings instituted by the then Government of Bombay for acquiring a piece of land belonging to respondent No. 2 for the purpose of constructing a bus depot required by the State Transport Corporation and for constructing office and other buildings by the said Corporation. The appellants, in addition, sought an injunction restraining the State of Bombay and the State Transport Corporation from proceeding with the acquisition and dispossessing them. The suit was founded on a number of grounds but ultimately when the matter went up to the High Court in second appeal Mr. Rajni Patel who appeared for the appellants based the claim only on three grounds: (1) that the purpose mentioned in the notification under s. 4 of the Land Acquisition Act, 1894, was indefinite or vague and, therefore, the notification was bad; (2) that the proceedings were collusive and were initiated by the State Government for the benefit of the owner of the land, the second respondent; (3) that the State Transport Corporation was not a local authority but merely a company and as the provisions of Part VII of the Land Acquisition Act were not complied with, the acquisition was bad.

Mr. J. C. Bhatt who appears for the appellants before us has likewise confined his attack to these three grounds. On behalf of the respondents it was contended in the Courts below and is contended before

us that the Corporation is a local authority within the meaning of the expression as used in the Land Acquisition Act, that even if it is held that it is not a local authority the acquisition was made at public expense, that the purpose of the acquisition is a public purpose and that the appellants are not entitled to go behind the notification of the Government issued under s. 4 of the Land Acquisition Act and finally that the acquisition was not *mala fide* or collusive. In addition, the learned Attorney-General, who appeared for the respondents 1 and 3, contended that the suits were premature inasmuch as they were instituted before the notification under s. 6 of the Land Acquisition Act was made.

Taking up the last point first, we may point out that no such plea was taken on behalf of the respondents in the trial court. This point was apparently not taken because even before the written statement was filed a notification under s. 6 was in fact made by the State Government. The suits proceeded throughout on the footing that there was no formal defect in regard to their maintainability. In the circumstances we do not think that it would be fair to allow the suits to be defeated merely on such a technical ground.

Coming to the first point raised on behalf of the appellants it is sufficient to point out that the notification under s. 4 of the Act clearly states that the acquisition is for a public purpose, namely, for 'State Transport'. The notification under s. 6 reiterates this fact and in addition says that the land was needed to be acquired for the purposes of and at the expense of the State Transport Corporation. There is thus a clear declaration of the Government that the purpose of acquisition was a public purpose and as has been consistently held by this Court in a number of cases, including the most recent one, *Smt. Somwanti v. The State of Punjab* ⁽¹⁾, the

1) [1963] 2 S.C.R. 774

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declaration as to public purpose by the Government is final except where it is a colourable exercise of power. Unless, therefore, it is shown that there was collusion as alleged by the appellants, between the respondents 1 and 3 on the one hand and respondent No. 2 on the other, the notification will have to be regarded as conclusive on the question that the land was required for a public purpose. Thus, even though the land was being acquired for a corporation and not for the State the acquisition must nonetheless be said to be for a public purpose, as has been held in *Somawanti's case* ⁽¹⁾, provided that it is not found to be a colourable exercise of power by the Government.

What is then to be considered is whether the action of the Government can be regarded as colourable being collusive or *mala fide*. The question whether the acquisition was collusive or *mala fide* is one of fact and on this point the High Court and the two courts below have come to the conclusion that the appellants have not been able to substantiate their pleas. It is not for this Court to review the evidence in a case where there are concurrent findings of fact, unless there be exceptional reasons, and we find none here. It must, therefore, be held that the notifications of the Government issued under ss. 4 and 6 are conclusive on the question that the land was required for a public purpose.

We must, however, point out that before effect can be given to a notification under sub-s. (1) of s. 6 of the Land Acquisition Act the terms of the proviso to that section should be satisfied. Section 6(1) and the proviso read thus :

“Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any

particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

The proviso clearly precludes the Government from making a notification under sub-s. (1) of s. 6 unless the compensation to be awarded for such property (a) is to be paid by a company, or (b) is to come wholly or partly out of (i) public revenues or (ii) some fund controlled or managed by a local authority.

It is no doubt true that it has been the appellants' case throughout that the State Transport Corporation is a company. It is also a fact that the entire compensation is to come out of the funds of the State Transport Corporation. If, therefore, we accept the contention of the appellants on this point the terms of the proviso will be said to have been satisfied. On the other hand it has been the case of the respondents that the State Transport Corporation is not a company but a local authority. The reason why this contention is raised on behalf of the respondents is that the provisions of Part VII of the Act have not been complied with here and, therefore, if in fact the acquisition is on behalf of a company it will have to be said to be bad on the ground of non-compliance with the provisions of Part VII.

The expression 'company' has been defined thus in s. 3(e) of the Land Acquisition Act :

"the expression 'Company' means a Company registered under the Indian Companies Act, 1882

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or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Indian law, or by Royal Charter or Letters Patent and includes a society registered under the Societies Registration Act 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912.”

The State Transport Corporation is not registered under any Companies Act nor has it been incorporated under Royal Charter or Letters Patent. Nor again, is it a society registered under the Societies Registration Act, 1860. It is not incorporated by an Act of the Parliament of the United Kingdom; but it is incorporated by an “Indian law”. In this connection it is necessary to refer to certain legislation. The Central legislature enacted the Road Transport Corporation Act, 1948, which received the assent of the Governor-General on April 16, 1948, and came into force in the erstwhile province of Bombay by virtue of a notification made shortly thereafter. Section 2 of the Act defines “Corporation” to mean a Road Transport Corporation appointed by the Provincial Government in pursuance of this Act. Section 4 of the Act provides for the appointment of a Road Transport Corporation by the Provincial Government. In exercise of those powers the State of Bombay appointed the State Road Transport Corporation. Section 4 of the Act further provides that a Corporation appointed by a Provincial Government in pursuance of this Act shall be a body corporate having perpetual succession and common seal and may sue and be sued by or under relevant provincial law. On May 26, 1950, the State legislature of Bombay enacted the Bombay State Road Transport Act, 1950 (25 of 1950). But it is not clear as to when it came into force. However, nothing turns on the date on which it came into force. The fact, however, is not disputed that this Act was actually put into force. By Act 64 of 1950 Parliament repealed the

Road Transport Corporation Act, 1948, and replaced it by an entirely new law. The earlier Act consisted only of 7 sections but the new law is an elaborate piece of legislation dealing with the establishment of Road Transport Corporations in the States, their incorporation, constitution, powers and duties, finance, accounts, audit etc. Section 3 of that Act deals with the establishment of Road Transport Corporations in the States and s. 4 provides that every corporation shall be a body corporate by the name notified under s. 3, having perpetual succession and a common seal and shall sue and be sued by the said name. Section 47 of the Act contains special provisions relating to Bombay and reads thus :

“(1) The body known as the Bombay State Road Transport Corporation and the Board thereof, referred to in the notification of the Government of Bombay, No. 1780/5, dated the 16th November, 1949 (hereinafter referred to as ‘the existing Corporation’ and ‘Board’ respectively) shall, notwithstanding any defect in, or invalidity of, the enactment or order under which they were constituted, be deemed for all purposes to have been validly constituted as if all the provisions of the said notification had been included and enacted in this section and this section had been in force continuously on and from the said date, and accordingly—

- (a) all action by, and all transactions with, the existing Corporation or Board, including any action or transaction by which any property, asset or right was acquired or any liability or obligation whether by contract or otherwise, was incurred, shall be deemed to have been validly and lawfully taken or done; and
- (b) no suit, prosecution or other legal proceeding shall lie against the Government of Bombay or any member of the

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Board or any officer or servant of the existing Corporation in respect of any action taken by, or in relation to the setting up of, the existing Corporation or Board merely on the ground of any defect in, or invalidity of, the enactment or order under which the existing Corporation or Board was constituted.

(2) On the establishment of a Corporation under section 3 in the State of Bombay (hereinafter referred to as 'the New Corporation')—

(a) the existing Corporation and Board shall be deemed to be dissolved and shall cease to function;

(b) all property and assets vesting in the existing Corporation shall vest in the new Corporation;

(c) all rights, liabilities and obligations of the existing Corporation, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations, respectively, of the new Corporation; and

(d) all licences and permits granted to all contracts made with, and all instruments executed on behalf of the existing Corporation or Board shall be deemed to have been granted to, made with, or executed on behalf of, the new Corporation and shall have effect accordingly."

It will be clear from these provisions that the old Corporation was recognised as having always had valid legal status and deemed to have been properly incorporated. On the establishment of a Corporation under s. 3 of the Act of 1950 the old

Corporation was dissolved. But all action by and transaction with the old Corporation including any action or transaction by which any property or asset etc., was acquired by or for the old Corporation was deemed to have been validly or lawfully taken or done. It is common ground that in consequence of the passing of the Act of 1950 the Bombay Act of 1950 stood impliedly repealed and was in fact expressly repealed by the Bombay Act 29 of 1955. The provisions which we have set out above clearly show that the State Transport Corporation having been incorporated by an Indian law is a Company. Since, however, the compensation to be awarded for the acquisition is to be paid only by the Corporation and no portion of it was paid by the Government, could it be said that the terms of the proviso to sub-s. (1) of s. 6 have been satisfied? It is contended by the learned Attorney-General on behalf of the respondent that the funds of the Corporation have themselves come out of public revenue inasmuch as they consist of moneys provided by the State of Bombay. Even assuming that the funds of the Corporation consist only of the moneys which have been provided by the State of Bombay it is difficult to appreciate how they could be regarded as part of the public revenue. No doubt, the source of the funds would be public revenue but the funds themselves belong to the Corporation and are held by it as its own property. They cannot, therefore, be regarded as 'public revenue' in any sense. It was then said by reference to several provisions of the Act that the Government is entitled to exercise control over the Corporation, that the profits earned by the Corporation would go to the Government, that if the Corporation was wound up all its assets would also go to the Government and that, therefore, the Corporation could be regarded as nothing more than a limb of the Government. Even though that may be so, the Corporation is certainly not a department of Government but is a separate legal

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entity and, therefore, moneys coming out of public revenues whether invested, loaned or granted to it would change their original character and become the funds or assets of the Corporation when they are invested in or transferred or loaned to it. While, therefore, the terms of the proviso could be said to have been satisfied because compensation is to be paid by the Corporation, the acquisition will be bad because the provisions of Part VII of the Land Acquisition Act have not been complied with. In order to get out of this difficulty the learned Attorney-General argued that the State Transport Corporation is a local authority.

The expression "local authority" is not defined in the Land Acquisition Act but is defined in s. 3 (31) of the General Clauses Act, 1897, as follows :

"'local authority' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:"

The definitions given in the General Clauses Act, 1897, govern all Central Acts and Regulations made after the commencement of the Act. No doubt, this Act was enacted later in point of time than the Land Acquisition Act ; but this Act was a consolidating and amending Act and a definition given therein of the expression "local authority" is the same as that contained in the earlier Acts of 1868 and 1887. The definition given in s. 3 (31) will, therefore, hold good for construing the expression "local authority" occurring in the Land Acquisition Act. We have already quoted the definition.

It will be clear from the definition that unless it is shown that the State Transport Corporation is an

'authority' and is legally entitled to or entrusted by the Government with control or management of a local fund it cannot be regarded as a local authority. No material has been placed before us from which it could be deduced that the funds of the Corporation can be regarded as local funds. It was no doubt submitted by the learned Attorney-General that the Corporation was furnished with funds by the Government for commencing its business ; but even if that were so, it is difficult to appreciate how that would make the funds of the Corporation local funds.

Learned Attorney-General then relied upon the provisions of s. 29 of the Bombay State Road Transport Act, 1950, which provides that the Corporation shall for all purposes be deemed to be a local authority. No doubt, that is so. But the definition contained in this Act cannot override the definition contained in the General Clauses Act of 1897 which alone must apply for construing the expression occurring in a Central Act like the Land Acquisition Act unless there is something repugnant in the subject or context. Though land acquisition is now in the concurrent list and, therefore, the State can legislate, the Bombay Act not having received the President's assent, cannot prevail against the meaning of the expression 'local authority' in that Act. No repugnancy is pointed out.

Then again, the Act of 1948 had empowered the Province of Bombay, among other provinces, to appoint Road Transport Corporations and conferred power on the Provincial Governments under ss. 5 and 6 to deal with compensation and winding up of Corporations so appointed. In pursuance of this power and after the commencement of the Constitution the Bombay Act of 1950 had been enacted by the State Legislature of Bombay. But by the repeal of the Act of 1948 by the Central Act of 1950 the foundation for the continuance and existence of the Bombay Act

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of 1950 disappeared. Moreover, since s. 41 of the Central Act provided that a Corporation shall be deemed to be a local authority within the meaning of the Motor Vehicles Act, 1939, and not within the meaning of any other law, the provisions of s. 29 of the Bombay Act could in no circumstances be said to survive. In view of all this the learned Attorney-General did not press his argument on the point further.

In our view the acquisition impugned in this case having been made for the benefit of a Corporation, though for a public purpose, is bad because no part of the compensation is to come out of public revenues and the provisions of Part VII of the Land Acquisition Act have not been complied with. We, therefore, allow the appeals and decree the suits of the appellants with costs in all the courts.

Appeals allowed.

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May 9.

SRI GOPAL JALAN & COMPANY

v.

CALCUTTA STOCK EXCHANGE
ASSOCIATION LTD.

(A. K. SARKAR, M. HIDAYATULLAH and
J. C. SHAH JJ.)

Company—Allotment of shares—Forfeiture of shares—Forfeited shares reissued—If filing of return compulsory—The Companies Act, 1956 (1 of 1956), s. 75.

The respondent-company did not file any return of the re-issued forfeited shares under s. 75 (1) of the Act and therefore the appellant-shareholder moved the High Court for an order requiring it to do so.

Held that the words "allotment of shares" have been used in s. 75 to indicate the creation of shares by appropriation out