

A

PARSHOTTAM JADAVJI JANI

v.

STATE OF GUJARAT & ORS.*April 1, 1971*

B

[S. M. SIKRI, C. J., G. K. MITTER, K. S. HEGDE, A. N. GROVER
AND P. JAGANMOHAN REDDY, JJ.]

Land Acquisition Act (1 of 1894), ss. 5A and 55—Rules framed regulating enquiry under s. 5A—Complied with—Acquisition for Corporation—Right to cross examine officers of Corporation.

C

By a notification issued under s. 4 of the Land Acquisition Act, 1894, the State Government declared that the appellant's lands were needed for the public purpose of construction of an Industrial Estate by the Gujarat Industrial Development Corporation. The officer on special duty informed the appellant that if he had any objection to the acquisition he might file objections on or before a particular date and, that he or his counsel would be heard at the time of filing the objections. The appellant filed his objections and prayed that the officers of the Corporation may be summoned for the purpose of cross-examination to show that the proposed acquisition was not for a public purpose and that there was no need to acquire his land, and that a personal hearing may be granted to him. The hearing was fixed for a particular date and the date was extended from time to time but the appellant did not appear on those dates nor did he apply for any, further extension of time. His written objection were considered by the officer and included in his report to the Government under s. 5A.

D

E

On the question whether the report was vitiated because the officer had not granted an opportunity to the appellant to cross-examine the officers of the Corporation,

HELD: The question whether the inquiry was administrative or quasi-judicial did not arise. Rules had been framed under s. 55 of the Act for the guidance of officers dealing with objections under s. 5A, and the rules had been complied with in the present case. The appellant was given an opportunity to be heard personally but he did not choose to avail himself of that opportunity. He could not, under the rules, claim to cross-examine officers of the Corporation when they had not given any evidence before the officer on special duty and there was no principle which entitled the appellant to claim such right. [297H ; 298A-B]

F

Gandalal v. State, (1963) Guj. L.R. 326, referred to.

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1990 of 1970.

Appeal from the judgment and order dated July 31, 1970 of the Gujarat High Court in Special Civil Application No. 464 of 1970.

H

P. M. Raval and *M. V. Goswami*, for the appellant.

B. D. Sharma, for the respondents Nos. 1 and 2.

B. Sen and *K. L. Hathi*, for respondent No. 3.

The Judgment of the Court was delivered by

A

Sikri, C. J.—This appeal, by certificate granted by the High Court of Gujarat under Art. 132 and Article 133 (1) (c) of the Constitution of India, is directed against its judgment and order dismissing the present appellant's petition under Article 226 of the Constitution.

B

The appellant is the owner of Survey Nos. 219/1 and 121 situated on the outskirts of Mahuva in Bhavnagar District. By notification dated April 25, 1969, issued under Section 4 of the Land Acquisition Act, 1894, the State Government declared that the above-mentioned lands were needed for the public purpose of construction of an Industrial Estate by the Gujarat Industrial Development Corporation or were likely to be needed for that purpose. On May 3, 1969 a notice was issued to the appellant by S. O. Collector, Officer on Special Duty, Land Acquisition, informing the appellant that if he had any objection to the acquisition of the lands, he might file objections on or before August 16, 1969. He was further informed that the Officer will hear him or his Counsel at the time of filing the objections. The appellant filed his objections. He took various points, but we are only concerned with one. He pointed out that the Gujarat Industrial Development Corporation has come out with ambitious projects for the establishment of the Industrial estate though, in fact, the land already acquired by the Corporation is in excess of the requirement of the Corporation. I say that the corporation is not in possession of such material as would establish genuineness for the establishment of an industrial estate of Mahuva. I, therefore, claim that the responsible officer should be cross-examined by me for the purpose of showing that the proposed acquisition is not for public purpose and that there is no need to acquire the present lands. The other suitable lands are available and the Corporation has not availed of the same and that the acquisition needs to be dropped. I say that the contiguous lands to the lands under the first notification are available and it would be more suitable than the present land. I, therefore, submit that the proposed acquisition is *mala fide* inasmuch as my lands are preferred to the other land owners available immediately near the lands required under the first notification.

C

D

E

F

G

He accordingly prayed :

“(a) That the officers of the said Corporation which have sought the acquisition and/or such Officer I name hereafter be summoned for the purpose of cross-examination.

H

(b) That personal hearing be granted.”

A It appears that hearing was fixed for September 18, 1969; this date was extended from time to time till November 18, 1969. The appellant did not appear on these dates nor did he apply for any extension of time. His written objection dated August 12/18, 1969 and dated September 18, 1969 were considered and included in the report, under Section 5A to the Government.

B

Three points were pressed by the appellant before the High Court. The principal point that the Gujarat Industrial Development Corporation Act, 1962 was beyond the legislative competence of the State legislature no longer survives as this Court has held this Act to be valid in the case of *Ramtanu C. H. Society v. State of Maharashtra* (1). The second ground pressed before the High Court was that the establishment of Industrial Area by the Corporation was not a public purpose but a private purpose. In our view the High Court was right in holding that this was a public purpose. The third ground raised before the High Court was strongly pressed before us. According to the learned Counsel the report under Section 5-A of the Land Acquisition Act was vitiated because the Collector had not granted an opportunity to the appellant to cross-examine the officers of the Corporation for the purpose of showing that the purpose for which the Corporation sought to acquire the lands was not a public purpose and there was no need to acquire the appellant's land. The High Court relying on its earlier decision in *Gandalal v. State*(2) held that "the inquiry under Section 5A(2) is an administrative inquiry and objector is not entitled to cross-examine any officers or members of the acquiring body."

C

D

E

Under Section 55 of the Land Acquisition Act certain rules have been made for the guidance of officers in dealing with objections lodged under Section 5-A of the Act. These rules are as follows :

F

G

H

"1. Whenever any notification under Section 4 of the Act has been published but the provisions of Section 17 have not been applied and the Collector has under the provision of Section 4(1) issued notice to the parties interested ; and on or before the last day fixed by the Collector in those notices in this behalf any objection is lodged under section 5-A(2), firstly, the Collector shall record the objection in his proceedings, secondly, the Collector shall consider whether the objection is admissible according to these rules.

(1) A. I. R. 1970 S. C. 1771.

(2) (1963) 4 Gujarat Law Reporter 326

2. To be admissible (a) an objection must be presented in writing by a party interested in the notified land and must be presented within thirty days after the date of publication of the notification under Section 4 or within such period as may be fixed by the Collector ; (b) it must allege some specific objections, such as these ;

- (i) the notified purpose is not genuinely or properly a public purpose ;
- (ii) the land notified is not suitable for the purpose for which it is notified ;
- (iii) the land is not so well suited as other land ;
- (iv) the area proposed is excessive ;
- (v) the objector's land has been selected maliciously or vexatiously ;
- (vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort ; will take away important public rights of way or other conveniences or will desecrate religious buildings, graveyard and the like.

3. After admitting an objection and after having given the objector an opportunity of being heard either in person or by pleader, the Collector shall decide whether it is desirable to hear oral or documentary evidence, which under Section 14 or Section 40 of the Act, he has power to call for. If evidence tendered by the objector is admitted, the Collector shall also afford the other party an opportunity of rebutting it by other evidence or of cross-examining the witnesses :

If he admits evidence, he will fix a time and place of hearing it ; and will hear and record it in his proceedings.

4. Agents, other than pleaders, will not be allowed to appear on behalf of persons interested in any enquiry under Section 5-A of the Act.

5. After completing the record of evidence, the Collector shall submit his report and recommendations as to each objection, whether inadmissible or admissible for the orders of Government under Section 5A(2) of the Act."

It seems to us that the rules have been complied with. The appellants were given an opportunity to be heard personally. They chose not to avail themselves of that opportunity. The appellants

- A** cannot under these rules claim to cross-examine officers of the Corporation, and in our opinion the prayer to cross-examine officers was rightly rejected. Indeed it was a strange request. The officers had not given any evidence before the Collector and we are unable to see what principle entitles the appellant to claim this right. When rules have been framed regulating the enquiry under Section 5A of the Land Acquisition Act, it is not necessary to consider whether the enquiry is administrative or quasi-judicial and whether rules of natural justice have been complied with, and accordingly we say nothing on this point.
- B**

In the result the appeal fails and is dismissed with costs.

- C** V.P.S.

Appeal dismissed.