

## STATE OF GUJARAT &amp; ORS.

v.

AMBALAL HAIDERBHAI ETC.

April 14, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

*Land Acquisition (Companies) Rules 1963—Enquiry under R. 4 whether compliance with principles of natural justice required.*

The appellant initiated proceedings under the Land Acquisition Act, 1894, for acquiring the lands of the respondents for the Sardarnagar Co-operative Industrial Society Ltd., in order to establish an industrial estate for small scale industries. A notification was issued under s. 4 of the Act after following the provisions of Part VII of the Act, and in due course the final notification under s. 6 of the Act was issued. The respondents challenged both the notifications before the High Court, under Art. 226 of the Constitution on the ground that at the enquiry held by the Special Land Acquisition Officer, Baroda, under R. 4 of the Land Acquisition (Companies) Rules 1963, they had not been heard in accordance with the principles of natural justice. The High Court allowed the writ petitions. The question for decision before this Court was whether the enquiry under Rule 4 requires compliance with the rules of natural justice.

Dismissing the appeals, the Court,

**HELD:** In conducting the enquiry, the Collector has, in the interest of fair play, to observe the principles of natural justice by affording the persons interested in the land a reasonable opportunity of being heard and of adducing material before the Collector to refute the allegations of the company. [37 C-D]

*State of Gujarat and Anr. v. Patel Chaturbhai Narsibhai & Ors.* [1975] 3 SCR 284, followed.

*Suresh Koshy George v. The University of Kerala and Ors.* [1969] 1 SCR 317 and *A. K. Kraipak & Ors. v. Union of India and Ors.* [1970] 1 SCR 457 referred to.

**CIVIL APPELLATE JURISDICTION:** Civil Appeals Nos. 967 to 969 of 1971.

Appeals by Special Leave from the Judgment and Order dated April 17/18, 1970 of the Gujarat High Court in Special Civil Applications Nos. 116, 1621 and 1622 of 1967.

*D. V. Patel, M. C. Bhandare, M. N. Shroff for the Appellants in all the appeals.*

*I. N. Shroff for Respondents Rr. 1 and 2 in 967 and R 1 in CAs. 968-969.*

*P. H. Parekh and Miss Manju Jetley for Respondent 3 in 967, R. 2 in 968, 969.*

A The Judgment of the Court was delivered by

B JASWANT SINGH, J.—These three appeals Nos. 967 to 969 of 1971 by special leave which are directed against the common judgment of the High Court of Gujarat dated April 17/18, 1970 in Special Civil Application Nos. 116 of 1967, 1621 of 1967 and 1622 of 1967 arise thus :

C Proceedings under the Land Acquisition Act, 1894, (hereinafter referred to as 'the Act') for acquisition of certain lands in villages Sayajipuri, Bapow and Savad, District Baroda, Taluka Baroda were initiated by the Government of Gujarat at the instance of Sardarnagar Co-operative Industrial Society Limited registered under the Gujarat Co-operative Societies Act 1961 (hereinafter referred to as 'the Company') for the purpose of establishing an industrial estate for small scale industries. The acquisition being for the Company a notification was issued under section 4 of the Act on July 2, 1964 after following the provisions of Part VII of the Act. An agreement under section 41 of the Act between the State Government and the Company was entered into on April 2, 1965 and was published on October 15, 1966. The final notification under section 6 of the Act was issued on October 18, 1966. The owners of the aforesaid lands who are contesting respondents herein challenged the aforesaid notifications issued under section 4 and 6 of the Act by filing petitions under Article 226 of the Constitution of India *inter alia* on the ground that the provisions of the Rule 4 of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as 'the Rules') made by the Central Government in exercise of the powers conferred under section 55 of the Act, which by virtue of Rule 1(2) of the Rules apply to acquisition of land for all companies under Part VII of the Act, have not been complied with particularly as they had not been given a right to be heard in accordance with the principles of natural justice at the enquiry held by Special Land Acquisition Officer, Baroda, appellant No. 2 herein. The plea raised by the owners of land found favour with the High Court which allowed the petitions, set aside the notification under section 6 of the Act, and issued a *mandamus* commanding appellant No. 2 to complete the statutory enquiry under Rule 4 of the Rules in accordance with the principles of natural justice.

G The short but important question which we are called upon to decide in these appeals is whether the enquiry under Rule 4 of the Rules requires compliance with the rules of natural justice.

H As observed by this Court in *Suresh Koshy George v. The University of Kerala & Ors.*<sup>(1)</sup> and reiterated in *A. K. Kraipak & Ors. v. Union of India & Ors.*<sup>(2)</sup> rules of natural justice are not rules embodied

(1) [1969] 1 S. C. R. 317.

(2) [1970] 1 S. C. R. 457.

always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its content should be for a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held, and the constitution and nature of duties of the Tribunal or the body of persons appointed for that purpose. Let us, therefore, advert to the provisions of Rule 4 of the Rules which requires the appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings. The rule is in these terms :—

“4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.—

(1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely :—

- (i) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;
- (ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;
- (iii) that the land proposed to be acquired is suitable for the purpose;
- (iv) that the area of land proposed to be acquired is not excessive;
- (v) that the Company is in a position to utilise the land expeditiously; and
- (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall,—

- (i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

- A** (ii) determine, having regard to the provisions of sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which, in the opinion of the Collector, should be acquired for the Company; and
- B** (iii) ascertain whether the Company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

**C** *Explanation.*—For the purpose of this rule “good agricultural land” means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

**D** (3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government under section 6 of the Act unless—

- E** (i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under section 5A of the Act; and
- (ii) the agreement under section 41 of the Act has been executed by the Company”.

**F** To sum up, sub-rule (1) of the above quoted rule requires the appropriate Government to which an application is made by a Company for acquisition of land to direct the Collector to submit a report on six matters set out therein.

**G** Sub-rule (2) of the said rule re-emphasizes what is contained in sub-rule (1) by making it obligatory for the Collector to hold an enquiry into six matters referred to in sub-rule (1). It also makes it obligatory for the Collector while holding the enquiry (1) to consult the Senior Agricultural Officer of the District in case the land is agricultural land, (2) to determine the approximate amount of compensation likely to be payable in respect of the land in question keeping in view the provisions of sections 23 and 24 of the Act and (3) to ascertain whether the Company offered a reasonable price (which is not less than the compensation so determined) to the persons interested in the land which is proposed to be acquired.

**H** A conjoint reading of sub-rules (1) and (2) leaves no room for doubt that the enquiry by the Collector, which is meant *inter alia* to

find out whether all reasonable efforts have been made by the Company to get the land by negotiation on payment of reasonable price and such efforts have not fructified and to determine the approximate amount of compensation likely to be payable in respect of the land keeping in view the provisions of sections 23 and 24 of the Act, is of vital importance to the persons interested in the land.

Sub-rule (3) of the rule requires the Collector to submit his report to the concerned Government which in turn is required before making a declaration under section 6 of the Act to consider that report as well as the report, if any, submitted by it under section 5A of the Act after ascertaining the view of the Committee constituted under Rule 3 of the Rules in regard to the Collector's report under Rule 4 of the Rules.

Although the above mentioned rule is silent regarding the mode and method of the enquiry to be held by the Collector and the report of the Collector is of a recommendatory character, yet regard being had to the legislative history and purpose of the rule, and the mischief sought to be prevented, we have no hesitation in holding that, in conducting the enquiry, the Collector has, in the interest of fair play, to observe the principles of natural justice by affording the persons interested in the land a reasonable opportunity of being heard and of adducing material before the Collector to refute the allegations of the Company. The concept of natural justice which as evident from the observations made in *A. K. Kraipak's* case (*supra*), has undergone a great deal of change in recent years. The dividing line between an administrative and quasi-judicial function is often blurred.

Our view is reinforced by the following illuminating observations made by the learned Chief Justice in *State of Gujarat & Anr. v. Patel Chaturbhai Narsibhai & Ors.*(<sup>1</sup>).

"The contention of the State that the enquiry under rule 4 is administrative and that the owner of the land is not entitled to be given an opportunity to be heard at the enquiry cannot be accepted for these reasons. The enquiry under rule 4 shows that the Collector is to submit a report among other matters that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed. The persons interested therein are the owners of the land which is proposed to be acquired. The company at such an enquiry has to show that the company made negotiations with the owners of the land. The owners of the land are, therefore, entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to get such land by negotiation. The contention on behalf of the State that the owners of the land will get an opportunity when an enquiry is made under section 5-A of the Act is equally unsound. Section 17 of the Act provides that the appropriate Government may

(1) [1975] 3 S. C. R. 284

**A** direct that the provisions of section 5-A shall not apply, and if it does so direct a declaration may be made under section 6 at any time after the publication of the notification under section 4 of the Act. Therefore, the enquiry under section 5A may not be held.”

**B** For the foregoing reasons, the question is answered in the affirmative and the appeals are dismissed. The parties are left to bear and pay their own costs in these appeals.

M.R.

*Appeals dismissed.*