A

STATE OF GUJARAT & ANOTHER

v.

SANKALCHAND KHODIDAS PATEL

(DEAD) BY L.Rs.

November 9, 1977

B [N. L. UNTWALIA AND P. N. SHINGHAL, J.]

Land Acquisition Act 1894—*Section* 4 *and* 6—*Public purpose—Abandonment of intention to contribute part of the compensation to be awarded—Whether High Court in first appeal by deciding a question without any pleading and issue can set aside the judgment of trial court.*

The State of Gujarat issued a notification under s. 4 of the Land Acquisition Act on 23-5-1958. The public purpose mentioned was for the construction of houses for co-operative society. An erratum was issued pointing out that the C Co-operative Society was of the backward class people. Thereafter, notification under s. 6 was issued on 13-8-1960 in which also it was declared that the land was required for the public purpose of providing housing facilities for the backward class people. The respondent filed a suit on 8-2-1961, challenging the validity of the notification under s. 4 and 6 and praying for perpetual injunction.

The City Civil Court dismissed the suit. The High Court, however, allowed the respondent's appeal on the ground that the acquisition was not for a D public purpose within the meaning of s. 6 of the Act as the intention declared by the Government to pay the amount of subsidy in respect of the acquisition was, by necessary implication, abandoned.

Allowing the appeal by certificate,

HELD : (1) Before the trial court no plea was taken that the appellant abandoned its intention to pay part of the compensation to be awarded for the acquisition. It was therefore not permissible for the High Court to decide the controversy on a plea which was not taken at all and which was not E the subject matter of any issue at the trial. In fact the six contentions raised before the High Court also did not include the question of abandonment. The High Court therefore committed an error of law in deciding the appeal on the finding of abandonment of the original intention of the State Government to pay a part of the compensation. Even otherwise there was no real basis for the High Court's finding about the abandonment of the intention of the State Government to pay a part of the compensation. [180 B-D]

(2) The High Court committed obvious error of law in arriving at its F finding and its finding of fact could not be sustained. [180 D]

(3) The High Court was wrong in relying on the non-publication of the award because, as early as 1961, the respondent had filed a suit and an order was made by the trial court restraining the appellants from disturbing and obstructing the possession of the respondent. The evidence clearly showed that the State Government had taken a clear decision to pay a part of the compensation for the cost of acquisition. The fact that the State had preferred the present appeal clearly showed that it had not abandoned its intention to make G the acquisition on payment of a part of the compensation out of public revenue. [180 F-G, 182 D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 177 of 1973.

From the Judgment and Decree dated the 17th/18th February 1972 of the Gujarat High Court in First Appeal No. 275 of 1966.

S. T. Desai, P. H. Parekh and *M. N. Shroff* for the Appellants.

H *D. V. Patel, Vasuben P. Shah, S. K. Dholakia* and *Raju Ramachandran* for the Respondents.

Hamid Kureshi for the Intervener

The Judgment of the Court was delivered by

SHINGHAL J.,—This is an appeal by the defendant State of Gujarat and another against the appellate judgment and decree of the Gujarat High Court dated February 17/18, 1972, on a certificate under Article 33(1)(b) of the Constitution as it stood before the Constitution (Thirtieth Amendment) Act, 1972.

The case arose on a suit instituted by the plaintiff Sankalchand Khodidas Patel on February 8, 1961, to challenge the validity of the notifications issued by the defendant—State under section 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in respect of land bearing survey number 146, in Dariapur-Kazipur area of Ahmedabad City. The notification under section 4 was issued on May 23, 1958, in respect of 1 acre 36 gunthas of land. It was stated in the notification that the land was likely to be needed for a "public purpose, viz., for the construction of houses for New Sarvodaya Cooperative Housing Society Ltd., at Dariapur-Kazipur, Ahmedabad." An erratum was issued on August 20, 1959, by which it was further clarified that the land was required for "providing housing facilities of New Sarvodaya Co-operative Housing Society, Ltd., for Backward Class People at Duriapur-Kazipur, Ahmedabad." The notification under section 6 of the Act was issued on August 13, 1960, in which it was declared, *inter alia*, that the land was required for the "Public purpose" specified in column 4 of the Schedule, namely, for providing housing facilities for the backward Class people referred to above. The plaintiff prayed for a declaration that the notifications were illegal and null and void, and for a perpetual injunction restraining the defendants and their agents etc. from taking possession of the land or disturbing the plaintiff's possession.

The defendant traversed the claim in the plaint and specifically pleaded that the acquisition was for a public purpose and that it had (as the acquiring body) "agreed to pay the amount of compensation when asked for to the plaintiff". The City Civil Judge dismissed the suit by his judgment dated March 1, 1966. The High Court however allowed the plaintiff's appeal, set aside the Trial Court's decree, declared the notification under section 6 of the Act to be bad in law and void, and perpetually restrained the defendants from enforcing the notification and from taking any further steps in pursuance thereof. This is why the State has come up in appeal to this Court.

A perusal of the impugned judgment of the High Court shows that while it decided some of the points in controversy against the plaintiff, it allowed the appeal because it took the view that the acquisition was not for a public purpose within the meaning of section 6 of the Act as "the intention declared by the Government to pay the amount of subsidy to the Additional Special Land Acquisition Officer in respect of the land under acquisition has been by necessary implication abandoned." The short question for consideration in this appeal is whether this finding has been arrived at according to the law.

We have gone through the pleadings of the parties and the points on which they were at issue in the trial court. We find that while issue

A number (3) raised the question whether the State Government had agreed to contribute towards the cost of acquisition and issue number (8) dealt with the question whether the acquisition was for a public purpose, a plea was not taken in the Trial Court that the defendant State abandoned its intention to pay a part of the compensation, to be awarded for the property wholly or partly out of public revenues. It was therefore not permissible for the High Court to decide the con-
B troversy on a plea which was not taken at all and which was not the subject matter of any issue at the trial. There is nothing in the record to show that the parties knew that the question of abandonment of the original intention was a point for trial, or that they had any opportunity to lead their evidence in regard to it and availed of that opportunity. Our attention has in fact been invited by Mr. Desai, on be-
C half of the appellant, to the six contentions which were raised by counsel for the plaintiff in the High Court, but none of them dealt with the question of abandonment. The High Court therefore committed an error of law in deciding the appeal on the finding of abandonment of the original intention of the State Government to pay a part of the compensation to be awarded to the plaintiff for the acquisition.

D Even otherwise, we find that there was no real basis for the High Court's finding about the abandonment of the intention of the State Government to pay a part of the compensation. The High Court arrived at its finding on the basis of the documentary and oral evidence referred to by it in the judgment but, here again, we find that it committed obvious errors of law for which its finding of fact cannot be sustained and has to be set aside.

E The High Court has, in this connection, referred to the "first fact" that even though the award of compensation under section 16 was ready for publication as early as 1961, it was not published because the amount of subsidy in respect of which the Government "had declared its intention as evidenced by Ex. 54 had not been placed at the disposal of the Land Acquisition Officer" or the Registrar of Co-operative Societies. Now in so far as the question of non-publication of
F the award is concerned, it will be sufficient to say that the plaintiff did not base his claim on that basis, so that the defendants had no opportunity to explain why the award was not published over a long period of time. It has however been clearly established on the record, and was within the notice of the High Court, that the suit was filed on February 8, 1961, and soon after the publication of the notice under section 6 on August 13, 1960, an order was made by the trial court
G restraining the defendents, their agents and officers from disturbing and obstructing the possession of the plaintiff and from taking over possession of the suit land etc. No. useful purpose could therefore be served by notifying the award and there was no justification for arriving at the finding of "abandonment" simply because of the "non-publication" of the award.

H We have also gone through the evidence of the parties and we find that the statement of Rameshchandra Jethalal Mehta, who was the concerned Senior Assistant in the Industries and Co-operative department, and letter Ex. 54 of the State Government, make it quite clear

that the State Government had taken a clear decision that it will contribute towards the cost of acquisition of the land in question at the rate of Rs. 5/- per square yard. In fact it was clearly stated in the letter that the State shall, on that basis, contribute Rs. 45,980/- and that the expenditure on that account would be debitable to the head mentioned in the letter and would be met from the grants which had been sanctioned in the budget. Rameshchandra Jethalal's statement about the government resolution to that effect, has not been shaken in cross-examination. It was therefore quite sufficient to prove that the Government did not go back upon that decision and that the sanction did not lapse with the expiry of the year. It is another matter that, because of the protracted litigation, it may have become necessary for the authorities concerned to obtain a fresh order of allocation of the funds for the payment of the government's contribution of Rs. 45,980/- in pursuance of its decision contained in Ex. 54, but there is nothing on the record to show that the decision ceased to be operative after it had been made, or was ever withdrawn. We do not therefore find anything on the record which could justify the High Court's finding that that sanction or resolution was withdrawn, rescinded or abandoned at any time.

It appears that the High Court arrived at its finding about the abandonment for the further reason that the agreement Ex. 104 was executed by the co-operative society concerned on June 17, 1960. It is however not disputed before us that the agreement was obtained under the impression that the land had been acquired for a company under Part VII of the Act. But this was not so because it had been made quite clear in the notification Ex. 58, which was issued under section 4 of the Act, that the acquisition was for a "public purpose" namely, for the construction of houses for New Sarvodaya Co-operative Housing Society Ltd. and there was nothing to show that the acquisition was for any company. The notification under section 6 of the Act was also to the same effect, and in that notification it was stated at four important places that the land was needed for the "public purpose" specified in column No. 4 thereof. There was therefore nothing in the two notifications to show that the notification was for a company, and there was no justification for arriving at a contrary decision merely because of the execution of agreement Ex. 104 by the Society under a mistaken impression.

The High Court has gone on to the State that as the words "or at the expense of a local body or corporation or company as the case may be" were not scored off from the notification under section 6 of the Act, the language of the notification supported its finding that the acquisition was for a company, and not for a public purpose. It is true that the unnecessary words were not scored off, but the very fact that it was stated at as many as four places in that very notification that the acquisition was for a public purpose, was sufficient to show that the omission was inadvertent and could not justify the finding that the land was not acquired for a public purpose but for a company.

The High Court has made a reference to paragraph 9 of the written statement also in support of its finding against the defendant. Here

A again the High Court failed to appreciate that that averment was made in reply to the plaintiff's contention in paragraph 6 of the plaint on a question of law regarding the making of contribution out of public revenues or funds controlled or managed by a local authority. It was in that connection that the defendant stated in paragraph 9 of the written statement that the 'acquiring body has agreed to pay the amount of compensation when asked for to the plaintiff" There is nothing in B the averment to show that the payment was to be made by the Co-operative Society and not by the State Government. The High Court lost sight of the fact that the "acquiring body" was the State, and could not be the Co-operative Society or any company.

It could thus appear that the High Court committed the aforesaid illegalities and misread the evidence on record in setting aside the C finding of the Trial Court in favour of the defendant. It may be that the amount of compensation, which was to be paid by the State Government on account of compensation to be awarded for acquiring the property out of the public revenues, was not paid, but there can be no doubt that, as has been stated, a decision had been taken that it was to be so paid by the Government as required by the second proviso to sub-section (1) of section 6 of the Act. As we have stated, D the actual payment was not made because of the protracted litigation, but the State Government's anxiety to acquire the land for the public purpose could well be appreciated from the fact that it has adhered to its intention to acquire the land according to law, and to make its contribution towards the compensation, as and when necessary. The fact that the State has preferred the present appeal also goes to show that it has not abandoned its intention to make the acquisition on E payment of a part of the compensation out of public revenues. It may also be mentioned that Mr. S. T. Desai appearing on behalf of the State has categorically stated at the Bar that the State Government will contribute Rs. 45,980/-, from the public revenues, towards compensation at the appropriate time. The position would no doubt have been different if it had been shown that the Government had abandoned the intention to do so or had decided not to pay any part of the F compensation out of the public revenues, for then the requirement of the second proviso to sub-section (1) of section 6 would not have been fulfilled but, as has been shown, this was really not so.

It would thus appear that the High Court committed an error of law interfering with the judgment of the trial court. The appeal is allowed with costs and the impugned judgment and decree are set G aside and the decree of the trial court is restored.

P.H.P. *Appeal allowed.*