

Gujarat High Court

4 Whether This Case Involves A ... vs State Of Gujarat & 3 on 29 July, 2015

C/SCA/7558/2015

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 7558 of 2015
 With
 SPECIAL CIVIL APPLICATION NO. 7559 of 2015
 With
 SPECIAL CIVIL APPLICATION NO. 7560 of 2015
 With
 SPECIAL CIVIL APPLICATION NO. 7561 of 2015
 With
 SPECIAL CIVIL APPLICATION NO. 7562 of 2015
 With
 SPECIAL CIVIL APPLICATION NO. 7563 of 2015
 With
 SPECIAL CIVIL APPLICATION NO. 3058 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE
 MR. VIJAY MANOHAR SAHAI
 and
 HONOURABLE MR.JUSTICE R.P.DHOLARIA

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1 Whether Reporters of Local Papers may be allowed YES to see the judgment ?

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of NO
the judgment ?

4 Whether this case involves a substantial question of NO

law as to the interpretation of the Constitution of India or any order made thereunder ?

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NATHUBHA BHIKHUBHA PARMAR & others....Petitioners Versus STATE OF GUJARAT &
 3 R e s p o n d e n t s
 =====

Appearance:

MR DILIP B RANA, ADVOCATE for Petitioners MR MITUL K SHELAT, ADVOCATE for Respondent No. 3 MR MIHIR JOSHI, SR. ADVOCATE with MR KEYUR GANDHI for NANAVATI
===== CORAM:
HONOURABLE THE ACTING CHIEF JUSTICE MR. VIJAY MANOHAR SAHAI and
HONOURABLE MR.JUSTICE R.P.DHOLARIA Date : 29/07/2015 (PER : HONOURABLE THE
ACTING CHIEF JUSTICE MR. VIJAY MANOHAR SAHAI)

1. As these writ-petitions raise a common question of law, they are being decided together by this common judgment.

2. The petitioners in all these writ petitions have prayed for a writ of certiorari or any other appropriate writ, direction or order quashing and setting aside the acquisition proceedings qua the land of the respective petitioners as, according to the petitioners no procedure had been followed under Section 44-A of the Land Acquisition Act, 1894 (for short "the Old Act, 1894"). The petitioners have also prayed that their lands which were acquired should be returned to them in original position under the provisions of Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the New Act, 2013"). The petitioners have further prayed that the respondent authority be directed that in view of the provisions of Sec. 24(2) of the New Act, 2013 the proceedings under the Old Act, 1894 with regard to the lands of the petitioners have lapsed. Pending the hearing and final disposal of the petitions, the petitioners have prayed for an injunction restraining the respondents from proceeding further pursuant to the acquisition of the lands in question and from making any construction on the lands acquired under the Old Act, 1894.

3. As the facts of each of the writ petitions are common and similar, the facts are taken from Special Civil Application No. 7558 of 2015 for the sake of brevity.

3.1 The petitioners were the owners of the respective lands situated in village Moti-Khavdi, Taluka and District, Jamnagar. On 21.1.1993 Bharat Petroleum Corporation Ltd., Mumbai sent a proposal to Collector, Jamnagar for acquisition of land in village Moti Khavdi, Jamnagar for their Crude Oil Terminal Station to be established in Jamnagar District, and for the incidental work such as manufacturing, storage, marketing etc. In pursuance of the proposal, on 15.2.1993 the Special Land Acquisition Officer published a notification under Section 4 which was followed by the publication of notification on 15.2.1994 under Section 6 of the Old Act, 1894. The Deputy Collector, Mid-day Meal, Jamnagar passed an award under Section 11 of the Old Act, 1894 on 12.12.1994 in LAQ Case No.8/1993. It is admitted by the petitioners that after the award under Section 11 of the Old Act, 1894 the possession was taken from the petitioners on 23.12.1994 and compensation was paid on 9.1.1995 which was accepted without any protest by the petitioners. From 1994 till date the respondents are in possession of the acquired land. The name of Bharat Petroleum Corporation Ltd. was mutated in the revenue record on 18.1.1995.

3.2 On 13.12.2013 one Shri Bharatbhai Dhanabhai Nangesh applied to the Land Acquisition Officer to supply details and documents under the Right to Information Act pertaining to the acquisition of land under LAQ No.8/93 as the same acquisition proceeding also applies to the lands of the

petitioners. On 3.1.2014, the Public Information Officer and Chitnis to Collector, Jamnagar, forwarded the request made by Shri Bharatbhai Dhanabhai Nangesh under the RTI Act to the Public Information Officer and Deputy Collector, Mid-day Meal Scheme, Jamnagar. The said Bharatbhai Dhanabhai Nangesh again made an application on 12.12.2014 under the RTI Act, specifically requesting to supply the details about the transfer of the land in favour of Reliance Industries Ltd. and the order/award passed by the competent authority.

4. Mr. Dilip B. Rana, learned counsel appearing on behalf of the petitioners in these petitions has urged that the prayer made in these writ petitions to quash the acquisition proceedings deserves to be allowed and the lands which were acquired in the year 1994 should be returned back to the petitioners, as the lands have not been utilized by the respondent no.3 for the purpose for which they were acquired. Mr. Rana further urged that in view of Section 44A of the Old Act, 1894, since respondent no.3 has transferred possession of the lands to respondent no.4 without permission of the State Government, the rights, if any of respondent no.3 would come to an end and the lands are required to be returned back to the farmers. Learned counsel has further urged that in view of Section 101 of the New Act, 2013, as the lands have remained unutilized for more than five years, therefore, the same have to be returned back to their respective owners from whom the lands were acquired.

5. Mr. Vandan Baxi, learned Assistant Government Pleader, appearing on behalf of respondent nos. 1 and 2 has drawn our attention to para-9 of the affidavit filed by one Ketan Prabhashanker Joshi, District Supply Office and Deputy Collector (I/c.) Jamnagar on behalf of the State Government and submitted that the contention of the petitioners that the Deputy Collector, Jamnagar had written a letter to the petitioners on 19.4.2008 stating that the lands are handed over to Reliance Industries Limited. It is stated in the said paragraph of the affidavit that inadvertently it had been written by the Deputy Collector that possession had been handed over to Reliance Industries Ltd. It is stated by the said deponent that even on the date of the affidavit, possession of the lands in question was with respondent no.3, i.e. Bharat Petroleum Corporation Ltd. In support, the deponent has placed on record the copies of 7 x 12 extracts of village Moti Khavdi of Jamnagar District to show that the lands in question continue to be in possession of respondent no.3, i.e. Bharat Petroleum Corporation Ltd.

6. Mr. Mitul Shelat, learned counsel appearing on behalf of respondent no.3, the Bharat Petroleum Corporation Ltd. has opposed the contentions of the learned counsel for the petitioners and submitted that the lands cannot be returned back to the petitioners in view of various decisions of the Apex Court which lay down that once the land had vested in the State Government, it cannot be returned back to the original landowners. He further urged that Section 44A of the Old Act, 1894 would not be applicable to the facts of this case as respondent no.3 is a Government Company as defined in Section 617 of the Companies Act, 1956. So far as applicability of Section 101 of the New Act, 2013 is concerned, Mr. Shelat urged that this section would not be applicable to the facts of the present case as the lands were not acquired under the provisions of the New Act, 2013.

7. Mr. Mihir Joshi, learned Senior Advocate, assisted by Mr. Keyur Gandhi, learned counsel appearing for Nanavati Associates for respondent no.4, the Reliance Industries Ltd. has urged that

ingredients of Section 44A of the Old Act, 1894 were not satisfied nor any such foundation has been laid in the writ petitions. Section 44A would apply only to cases where a company voluntarily transfers the acquired land to another person or a company by way of sale, mortgage, gift, lease or by any other method of transfer. No material has been placed on record to establish that the land has been transferred to respondent no.4 by respondent no.3. Mr. Joshi has relied upon a decision of Division Bench of this Court dated 30.3.2006 rendered in Special Civil Application No. 8834 of 1995 Haribhai Ranchhodbhai Soni and others v. State of Gujarat and others. 7.1 The learned senior counsel further submitted that acquisition proceedings cannot be challenged after prolonged period of 21 years. He also relied on the Division Bench decision in Kasharaji Rupsang Jadeja v. State of Gujarat and 2 others in Special Civil Application No.17809 of 2014, which was dismissed by the Division Bench of this Court on 13.3.2015, wherein acquisition proceedings in pursuance of the award dated 12.12.1994 in LAQ No.8/1993 was challenged.

8. We may first consider the question of delay in challenging the validity of acquisition proceedings and award dated 12.12.1994 in LAQ No.8/1993. The Division Bench in Kasharaji Rupsang Jadeja v. State of Gujarat and 2 others in Special Civil Application No.17809 of 2014, wherein the acquisition proceedings in pursuance of the award dated 12.12.1994 in LAQ No.8/1993 was challenged, after hearing the arguments of Mr. Dilip B. Rana, counsel for the petitioner, the Division Bench dismissed the writ petition on 13.3.2015, and in paragraphs 5 and 6 held as under :-

"5. Heard learned advocates for both the sides. Going by the records of the case, it is clear that there is a delay of around 21 years in challenging the acquisition proceedings. The name of the acquiring body i.e. Bharat Petroleum Corporation Ltd. came to be mutated in the revenue record on 18.01.1995 which is after passing of the award under section 11 of the Act. The petitioner has never objected to or challenged the mutation entry and the panchnama. Therefore, after such a long period it shall not be open for the petitioner to contend that he is in legal possession of the land in question. The petitioner is not in a position to point that the land acquisition proceedings were not carried out in accordance with law. We have gone on the basis of the documents and affidavit produced by the competent authority in this regard.

6. In the premises aforesaid, petition being devoid of merit is dismissed. Notice is discharged."

9. The next argument made by Mr.Rana is that in view of Section 101 of the New Act, 2013, since the lands acquired by respondent no.3 remained unutilized for a period of five years or more, it should be returned back to the farmers. In this connection, it would be profitable to extract Section 101 of the New Act, as under:-

101. Return of unutilised land.-- When any land, acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation.-- For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use.

9.1 Section 101 of the New Act, 2013 applies only to those land acquisitions which have been undertaken under the New Act, 2013. Section 101 of the New Act, 2013 is not applicable to the land acquisition proceedings undertaken under the Old Act, 1894. Therefore, we do not find any merit in the submission of the learned counsel for the petitioners that Section 101 of the New Act, 2013 is applicable to the land acquisition proceedings of the lands in question. The argument of Mr. Rana is that since the lands remained unutilized, even under the Old Act, 1894, the State Government can take back the lands and hand over possession to the original landowners from whom such lands were acquired. This argument cannot be accepted in view of the law laid down by various decisions of the Apex Court. It is required to be noted that the lands in dispute were and are in possession of respondents since 23.12.1994 even as on today and the name of respondent no.3 was mutated on 18.1.1995 in the revenue record. The Apex Court in V. Chandrasekaran and another v. Administrative Officer and others, (2012) 12 SCC 133 in paras 25 and 26 held as under:-

"25. It is a settled proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period (Vide Awadh Bihari Yadav v. State of Bihar (1995) 6 SCC 31, U.P. Jal Nigam v. Kalra Properties (P) Ltd., (1996) 3 SCC 124, Allahabad Development Authority v. Nasiruzzaman, (1996) 6 SCC 424, M. Ramalinga Thevar v. State of T.N. (2000) 4 SCC 322 and Govt. of A.P. v. Syed Akbar, (2005) 1 SCC 558.

26. The said land, once acquired, cannot be restored to the tenure-holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide State of M.P. v. Vishnu Prasad Sharma, AIR 1966 SC 1593, Lt. Governor of H.P. v. Avinash Sharma - (1970) 2 SCC 149, Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369, Rajasthan Housing Board v. Shri Kishan, (1993) 2 SCC 84 and Dedicated Freight Corridor Corpn. Of India v. Subodh Singh, (2011) 11 SCC 100."

9.2 Similarly, the Apex Court in Andhra Pradesh Industrial Infrastructure Corporation Limited v. Chinthamaneni Narasimha Rao and others, (2012) 12 SCC 797 in para 13 has held that if the landowners are aggrieved by the acquisition proceedings, they must challenge the same at least before an award is made and the possession of the land in question is taken by the government authorities. In view of the aforesaid decisions, law is clear that land vested in the State Government cannot be re-granted to the original landowners or persons having interest therein. Therefore, the prayer made by the petitioners that the lands in dispute be returned back to the petitioners cannot be accepted. 9.3 Learned counsel for the petitioners has placed reliance on the decision of the Apex

Court in the case of Raghubir Singh Sherawat v. State of Haryana & Ors., (2012) 1 SCC 792. The proposition of law laid down in the said judgment is not applicable to the facts of the present case as admittedly in this case possession was taken over by respondent no.3 in the year 1995 and compensation has been paid to the landowner which was accepted by them without any protest.

9.4 A Division Bench of this Court in Special Civil Application No. 8834 of 1995 Haribhai Ranchhodbhai Soni and 25 others v. State of Gujarat and 2 others, wherein the validity of land acquisition proceedings and award dated 12.12.1994 in LAQ No.8/1993 was challenged had clearly held as under :-

"It is not disputed that the award has been made in favour of the petitioners and the petitioners have received compensation awarded to them without protest. It is also not in dispute that the proposed marketing terminal has already been set up and has become functional for more than ten years."

9.5 The aforesaid decision dated 30.3.2006 of the Division Bench had become final and binding and cannot be reopened in these proceedings. From the aforesaid decision, it is clear that the petitioners and others had received compensation without any protest and the proposed marketing terminal had already been set up and the same had become functional for more than 10 years in 2006. Therefore, the argument of the learned counsel for the petitioners that the lands have not been utilized for the purpose for which it was acquired could not be substantiated by any material on record.

10. The other contention raised by the learned counsel for the petitioners is that in view of Section 24(2) of the New Act, 2013 proceedings undertaken under the Old Act, 1894 with regard to the land of the petitioners have lapsed is not tenable for the simple reason that the award under Section 11 of the Old Act, 1894 was passed on 12.12.1994, thereafter, possession was also taken over on 23.12.1994 and compensation was paid on 9.1.1995. Since the proceedings, such as passing of award, taking over physical possession as well as payment of compensation were completed in the year 1994-95 itself, acquisition proceedings cannot be treated to have lapsed as contended by the learned counsel for the petitioners as the lands in dispute were in possession of the respondents.

11. The last contention of the learned counsel for the petitioners Mr. Rana is that respondent no.3 has transferred the lands to respondent no.4 in violation of Section 44A of the Old Act, 1894 without seeking prior permission from the State Government is not supported by any documentary evidence in the nature of any instruments of transfer of land from respondent no.3 to respondent no.4. Even otherwise also, the documentary evidence in the nature of revenue record produced by the petitioners indicates that on 25.3.2015, in the spot inspection, panchnama was carried out by the revenue authorities which is indicative of the fact that the aforesaid lands were acquired for respondent no.3 and which have been in ownership and possession of respondent no.3 and the respondent no.3 has grown mango trees upon it. Even according to the affidavit of the State Government, the lands in question are in possession of respondent no.3.

12. It will be useful to extract Sections 3(cc), 3(e) and 44A of the Land Acquisition Act, 1894 as under :-

"3(cc)the expression "corporation owned or controlled by the State: means anybody corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co- operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per centum of the paid- up share capital is held by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;"

"3(e) the expression "company" means--

(i) a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), other than a Government company referred to in clause (cc);

(ii) a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc);"

44A. Restriction on transfer, etc.-- No company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government."

12.1 On perusal of Section 3(cc), it is clear that respondent no.3 is a government company as defined in Section 617 of the Companies Act, 1956 and such a company could be referred to as a corporation owned or controlled by the State. Section 3(e) clearly defines "company" to mean a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) other than a Government company referred in clause (cc). Essential ingredients of Section 44A are not satisfied in this case as there is no material on record to establish that respondent no.3 has indulged in transfer of land or part thereof by sale, mortgage, gift, lease or in any other manner. Therefore, there is no question of obtaining any sanction from the appropriate government. The argument of learned counsel for the petitioners that Section 44A of the Old Act, 1894 is applicable to the facts of this case cannot be accepted as in our considered opinion Section 44A is not applicable to the facts of the instant cases.

13. The Bharat Petroleum Corporation Limited in its affidavit- in-reply in paragraph 5 had stated as below:-

"5. I state that the Answering Respondent has not transferred any land in favour of the Respondent No.4 Company. I state that in fact in reference to certain parcels of lands disputes are pending between the Answering Respondent and the Respondent No.4 and the case of the Answering Respondent is that the Respondent No.4 has encroached upon certain lands of the Answering Respondent. I state that the disputes are pending adjudication before the competent civil court. I state that in view of the above, it is most respectfully submitted that the edifice of the petitioner regarding the land having been transferred by the Answering Respondent does not exist. The writ petition is therefore devoid of merits and is required to be rejected as such."

14. In view of facts stated in paragraph 5 as mentioned above since a civil suit is pending adjudication with regard to inter-se dispute between Bharat Petroleum Corporation Limited and Reliance Industries Ltd. In these proceedings we are concerned with the challenge to the acquisition proceeding concluded as far back as in 1995. We do not see any merit in any of the contention of the petitioners. We make it clear that any finding recorded by us on facts and law has been made only for deciding issues in these writ petitions. The scope of the dispute pending in the civil court may be distinct from the issues in these proceedings and the civil court shall be free to decide the suit by applying its own independent mind to the issues in the suit without being influenced by our findings.

15. For the foregoing reasons, these petitions have no merits and are accordingly dismissed. We make it clear that any finding recorded by us on facts and law has been made for deciding the writ petitions but the findings recorded in this judgment shall not be binding on the civil court and the civil court without being influenced by this judgment shall be free to decide the suit by applying its own independent mind to suit. Notice is discharged. No order as to costs.

(V.M.SAHAI, ACJ.) (R.P.DHOLARIA, J.) pirezada