

(1980) 03 BOM CK 0038

Bombay High Court

Case No: Writ Petition No. 2864 of 1979

Roosi K. Modi and
Another

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: March 4, 1980

Acts Referred:

- Land Acquisition Act, 1894 - Section 48, 6
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10(3), 42

Citation: AIR 1982 Bom 22

Hon'ble Judges: Mody, J; Deshpande, J

Bench: Division Bench

Advocate: S.H. Kapadia, for Gagrut and Co, for the Appellant; C.J. Sawant, Addl. Govt. Pleader and D.P. Hegde, Asst. Govt. Pleader, for the Respondent

Judgement

Deshpande, J.

The petitioners in this writ petition under Arts. 226 and 227 of the Constitution , challenge the validity of the award dated 23-11-1979 made by the Land Acquisition Officer under S 11 of the Land Acquisition Act, hereinafter referred to as " the L.A. Act" . The award fixes a compensation for an area measuring 5, 967.12 sq metres out of C.S. No. 42 known as " Ashley House" situated at Bund Garden and Sassoon Road, Pune -1. The petitioners have become the owners of the property under a settlement Deed dated 7-7- 1960 and a transfer deed dated 26-3-1974. A notification under S. 4 of the L.A. Act was issued by the Commissioner on 1-9-1962 indicating Governments proposal to acquire the entire land measuring in all 47,396 sq metres for the public purpose of the construction of the residential quarters for the employees in the income- tax and Excise Department of the Central Government and office building for the Excise Department. The proposal was then finalised and a notification under S 6 was issued on 14-5-1963 after disposal of the objections of the

interested persons. The trustees of the property instituted a suit being Suit No. 27 of 1966 during petitioners minority , challenging the validity of the said acquisition proceedings . This suit was decreed by the trial court on 12-3-1972. But dismissed in appeal (F.A. No. 529 of 1972) by a Division Bench of this court on 18-3-1973 . A leave to a appeal petition under article 136 of the constitution was rejected by the Supreme Court on 25- 11 -1974 . The present petitioners, on whom the property was settled, became its absolute owners on attaining majority on 28-8-1974. The petitioners then instituted another suit on 13-8-1975 along with one Thirty Modi challenging the said land acquisition proceedings again in a suit no. 1497 of 1975. This suit was dismissed on 16-7-1977 as also the appeal against the same .

2. In the meanwhile the urban land (Ceiling and Regulation) Act, 1976 hereinafter referred to as " the U.L.C. Act" was enforced on 17-2-1976 placing a ceiling limit on the holdings of vacant land as defined under the said Act. The Act contemplated enquiry into the total holdings of each one of the holders and for that purpose holders were required to submit a statement of the holding under Sec 6 . of the U.L.C. Act . The Petitioners also submitted such statement on 13-8-1976 . The competent authority declared the petitioners to be a surplus holder to the extent of 41, 396 .83 sq metres by his order dated 29-9-1977, their total holding having been found to be 49,396.83 sq metres including C.S. No.42 and another peice of land . Petitioners appeal against the same was dismissed on 20-1-1979. A notification u/s 10 (3) of the U.L.C. Act was issued eventually on 7-6-1979 for the acquisition of the surplus holdings of the petitioners measuring 41,396.83 sq metres out of C.S. No. 42 as per the details indicated in the notification excluding the remaining area of 5967 .12 sq metres of C.S. No. 42 covered by old residential quarters .

3. Immediately after the issuance of Section 6 notification on 14-5- 1963 under L.A. Act, notices under S. 9 of the Act were served and the trial of the claim for compensation at the market rate as on 1-9- 1962 was concluded by the time , U.L.C. Act was enforced. The passing of the award was withheld due to the proceedings under the U.L.C. Act. Consequent on the acquisition of the surplus 41,396.83 sq metres of the land of C.S. No.42 under S. 10(3) of the U.L.C.Act , only residential area of 5,967 sq metres of C.S. No.42 was left for acquisition in the pending proceedings under the L.A. Act. The Land Acquisition Officer proceeded to fix the price of this remaining land , namely, 5,967.82 sq metres and take further necessary steps . He did not think it necessary to issue fresh notice under S. 9 of the L.A. Act to the present petitioners as the trustees has already appeared before him after notice under sec 9 and had set up their claim of compensation and led evidence in support thereof. He accordingly fixed compensation and passed the award. After the award was pronounced on 23-11-1979, a notice was issued by him on that very day calling upon the petitioners to deliver possession of the land to him. The petitioners thereupon filed this writ application on 3-12-1979 and obtained the stay of further proceedings.

4. Mr. Kapadia, the Learned Advocate appearing for the petitioners contends that the award is void and invalid on the following grounds:-

(i) Land Acquisition Officer being merely the agent of the appropriate Government, he cannot himself proceed to pass award for any lesser area than the one indicated in the notification under S. 6 of the L. A. Act.

(ii) No authority from appropriate Government for making award for any lesser area can be effective, without first withdrawing from the acquisition proceedings u/s 48 of the L. A. Act or cancelling the earlier notification under S. 6 of the L.A. Act and issuing fresh notification there under in respect of the reduced area.

(iii) Acquisition proceedings under L. A. Act become ineffective and invalid in their entirety due to their inconsistency with U. L. C. Act, after finalisation of the statement of surplus land under S. 9 and acquisition thereof under S. 10 (3) thereunder.

(iv) Such reduction in the available area for acquisition is destructive of the original public purpose and invalidates the notification under S. 5 of the L. A. Act based thereon.

(v) Fresh notice under S. 9 and opportunity to the owner of the land to claim compensation in the changed situation, was obligatory.

5. Now Mr. Kapadia may be right in contending that, it is for the Central Government of whose instance the land is being acquired for construction of quarters and not for the the L. A. Officer to decide whether, reduced area, would still serve the purpose and further steps in acquisition proceedings should be taken after the non-availability of the major portion of the intended area due to the notification under S. 10 (3) of the U. L. C. Act. The land acquisition Officer is empowered under the L. A. Act firstly to take the measurements, hear the objections of the interested parties and report to the competent authorities the result of his investigation and, proceed to determine the claims of compensation after notice to the interested parties, pass the award and implement the proposal of acquisition finally under S. 6 of the L. A. Act. The Land Acquisition Officer thus cannot of his own decide to restrict or expand the area of acquisition. That decision is left to the appropriate Government under the Land Acquisition Act.

6. The assumption, however, of Mr. Kapadia that the Land Acquisition Officer in this behalf acted on his own initiative is not well founded. The affidavit in reply sworn in by the Land Acquisition Officer shows that he was instructed by the State Government, after consultation with the Central Government, to proceed further with the acquisition proceedings of the area of 5,967.82 sq. Metres out of C. S, No. 42 left with the petitioners, after acquisition of the major portion thereof u/s 10 (3) of the U. L. C. Act. In fact Mr. C. J. Sawant had brought to the notice of the correspondence between the State Government, the Central Government and the Land Acquisition

Officer in this behalf, and had offered the same for our inspection. It is clear to us that situation arising out of the acquisition of the land under S. 10 (3) of the U. L. C. Act and reduction in the size of the area available for the acquisition under the U. L. C. Act and was brought to the notice of the Central Government and the Central Government ultimately decided to proceed with the acquisition proceedings even of the acquisition proceedings even of the smaller area in terms of its earlier decision to acquire the same.

7. It is pertinent to note that the Central Government is empowered to delegate its statutory functions to the State Government or its officers under Art 258 of the Constitution, Mr. C. J. Samant, the learned Additional Government Pleader drew our attention to. (1) a notification in this behalf under which its functions under the L. A. Act are delegated to the State Government and its officers by reference to art, 258 of the Constitution r./w/ S. 3(ee) of the L.A. Act. (2) as also to the provisions of the Bombay Commissioners of the Divisions Act, 1957 under which commissioners can perform the functions of the State Government. We are unable to see any illegality or infirmity in this procedure adopted by the Land Acquisition Officer after the notification under S. 10 (3) of the U. L. C. Act.

8. Coming to the second contention of Mr. Kapadia it is true that, the extent of the area to be acquired is one of the main ingredients of any acquisition proposal and the eventual notification under S. 6 of the L. A. Act. The existence of the need and the public purpose with reference thereto, cannot be divorced from such extent of the area to be acquired. Requirements of any notification under S. 6(2) of the Act, have to be weighed in this context. Relying on this Mr. Kapadia contends that the proceedings for acquisition for the remaining area of 5,967 sq. Metres cannot be valid unless the earlier notification dated 14-5-1963 is completely nullified and fresh one covering the area of 5.967 sq, metres is issued after holding enquiry under Sec. 5-A. Of the L.A. Act. According to Mr. Kapadia, the earlier notification being only partly invalidated it can be unlined only be cancelling it or withdrawing from it u/s 48 of the L. A. Act De have proceedings from the stage of S. 5-A. Enquiry are indispensable for any valid award for the reduced area.

9. This contention appears to us to be wholly untenable. It is necessary to bear in mind that reduction of the area of acquisition from 47.369 to 5.967 sq. Metres is the direct consequence of the notification issued under consequence of the notification issued under S. 10 (3) of the U. L. C. Act and not of any act or omission involving any volition on the part of the appropriate Government. Section 42 of the U. L. C. Act gives overriding effect to the provisions thereof, notwithstanding anything contrary in any enactment or contract etc. Even the notification and orders passed thereunder are bound to have such overriding effect on the notification or orders passed thereunder are bound to have such overriding effect on the notification or orders passed under any other such enactment, provisions of which have to yield to the provisions of this Act in terms of the mandate of S. 42 The

notification thus issued under S. 42 The notification thus issued under S. 42. The notification thus issued under S. 10 (3) of the U. L. A. Act acquiring 41,396. Sq. Metres out of C. S. No. 42 is bound to have such overriding effect on the earlier notification dated 14-5-1963 under S. 6 of the L. A. Act. Because of its patent inconsistency and consequentially the latter becomes ineffective to the extent of such 1,369 sq. Metres. It is this inconsistency and consequential partial invalidity that has driven the authorities acting under the Land Acquisition Act to restrict the acquisition proceedings thereunder only to the area of 5.967 sq. Metres left untouched by the acquisition under S. 10 (3) of the U. L. C. Act. The notification dated 14-5-1963 to the extent of 5,967 sq. Metres remains still unimpaired and there is no reason why it could not be acted upon to that extent.

10. Any question of withdrawing from the acquisition of any part of the land under Sec. 48 of the L. A. Act or cancellation of the notification dated 14-5-1963 does not arise in such a case. In either of these situations continuation of the acquisition proceedings is not obstructed by any legal impediment, and discontinuation of the proceedings is entirely the choice of the appropriate Government. These considerations can have no application where partial invalidity is the creation of the Statute and nothing in any such Statute prevents proceeding with the valid part of the declaration and the acquisition proposal. That withdrawing from proceedings under Sec. 48 of the L. A. Act is not the only way of relieving the Government of its rights and obligations under S. 6 notification is emphasised by the Supreme Court in the judgment of the Supreme Court in [State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others](#), . In that case the notification had become invalid consequent to the decision of the Court to that effect. Invalidity resulting from the operation of an overriding provision of any other enactment. In our opinion, does differ in quality.

11. This again is not a case where the appropriate Government is called upon to consider any question of fresh acquisition or reduction of the area of acquisition already decided. As discussed earlier the reduction in the area is the result of the impact of another order under another overriding enactment. The appropriate Government is driven to give effect to the partial invalidity created thereby. It had only to decide if acquisition of the remaining area under the valid and subsisting part of the notification still serves its purpose to any extent or not. It seems to have thought that it does. It, therefore, directed the L. A. Officer to proceed ahead with the fixation of the compensation with regard to the portion of the land left untouched by the notification under S. 10 (3) of the U. L. C. Act This obviously does not involve any process of fresh proposal and fresh investigation or issuance of such notification under S. 6 of the Act. It is merely a question of implementing the valid part of the notification already issued on 14-5-1963 unaffected by the notification under S. 10 (3) of the U. L. C. Act. Question therefore of issuing any fresh notification under S. 6 of the Act cannot arise in the present case. The contentions raised by Mr. Kapadia in this behalf appear to us to be thoroughly misconceived and

unacceptable.

12. Mr. Kapadia drew our attention to the judgments reported in the cases of [Girdharilal Amratlal Shodan and Others Vs. State of Gujarat and Others](#), [State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others](#), : [Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others](#), : *Streenivasa Shenoy v. State of Kerala* AIR 1968 Ker 325; *Girdharilal v. State of Gujarat* (1965) 6 Guj LR 569. We are unable to see any relevance of the points decided therein to the point under consideration, *Girdharilal's* case (supra) is an authority for the proposition that withdrawal from the land acquisition proceedings under Sec. 48 of the L. A. Act is not the only way, to put S. 4 notification out of the way. The same object can be achieved by cancelling it and power to cancel can be traced in S. 21 of the General Clauses Act. *Vishnu Prasad Sharma's* case (supra) lays down that if under S. 6 notification, lesser area is acquired than indicated in Sec. 4 notification the appropriate Government cannot proceed to acquire remaining portion of that land treating S. 4 notification as reservoir, and a decision to abandon acquisition of the remaining land can be inferred from such notification. The authority of this judgment is now shaken due to the subsequent amendment of the L. A. Act In *Mahendra Lal's* case (supra) it is held that mere intention indicated in the correspondence between the Government Officers. To drop any part of the land covered by S. 4 notification cannot have the effect of modifying the S. 4 notification in any manner whatsoever unless fresh notification under S. 4 is issued afresh so modifying the earlier notification. In *Shenoy's* case (supra), the Kerala High Court held that withdrawal from the proceeding only of a portion of the land notified for acquisition is not permissible under S. 52 of the Local Act corresponding to S. 48 of the Central L. A. Act. In *Girdharilal's* case the Gujarat High Court held that fresh notification under S. 6 of the L. A. Act is permissible if the earlier such notification is found to be legally invalid. It is not necessary to initiate proceedings afresh with S. 4 notification in that case. There is nothing in any of these cases. Militating against what we have held earlier.

13. It is true that in the case *Ganehs v. Spl land acqui. Officer. Pune* reported in 1979 Mh LJ 786 a Division Bench of this Court had held that proceedings under the Land Acquisition. Act become inconsistent with the proceedings under the U. L.C. Act as soon as the statement under S. 9 is finalised and the area of the surplus land is ascertained for acquisition under S. 10 (3) of the U. L. Act and it includes the land sought to be acquired under the L. A. Act But the judgment also makes it clear that inconsistency is restricted only to the area of the land sought to be acquired under S. 10 (3) of the U. L. C. Act In other words this judgment is no authority for the proposition, sought to be canvassed before us by Mr. Ksapadia, that the finalised statement under S. 9 or notification under S. 10 (3) of the U. L. C. Act. Results in invalidating L. A. Proceedings in their entirety. There is nothing in the U. L. C. Act to prevent the land acquisition officer from proceeding with the acquisition proceedings under the L. A. Act in respect of the land or any portion thereof not covered by the statement under S. 9 or notification under S. 10 (3) thereon.

14. It is true that the land was sought to be acquired for raising quarters for office of the Excise Department and quarters for Income Tax and excise department servants on the entire c. S. No. 42 measuring 47369 sq. Metres. This was the public purpose for which acquisition proceedings were initiated in 1962. The objections of the interested persons in the course of hearing u/s 5-A of the Act were overruled by reference to this public purpose. No property can be acquired compulsorily without the existence of any such public purpose. Mr. Kapadia relies on this and contends that the reduction in the area available for acquisition from 47369 to 5967.82 sq. Metres must necessarily result in making achievement of the notified public purpose impossible and that continuation of the proceedings under the L. A. Act has become illegal.

15. This contention of Mr. Kapadia is no doubt attractively plausible, It is in however not permissible for any Court at this last stage to go behind the declaration under S. 6 of the L. A. Act which had become final for all purposes. The stage of any such challenges in enquiry under S. 5-A. Of the L. A. Act was crossed long back when notification under S. 6 was issued on 14-5-1963. The L. A. Act neither contemplates any challenge to the existence of the public purpose at any later stage nor does it contemplate taking notice of the subsequent development on this count. The failure of the challenges thereto in the two successive suit proceedings also further confirmed their finality as far as this case is concerned. This apart. It cannot be said that residential quarters cannot be raised on the reduced area of 5967.82 sq. Metres in the manner in which the same could have been raised on the larger area of 47,396.83 sq. Metres. The fact that smaller area may not be sufficient to satisfy the needs to the same extent as the area 47,396,83 sq. Metres could have done, is altogether a different matter. The purpose can still be fulfilled to a ;o,oted extent and cannot be said to have become impossible of fulfilment as urged by Mr. Kapadia. The contention raised by Mr. Kapadia is thus untenable.

16. Mr. Kapadia lastly contends, that it was obligatory on the J. A. Officer to issue notices under S. 9 of the L. A. Act to the petitioners when he was directed to determine the compensation of lesser area of 5946 sq. Metres, According to Mr. Kapadia, the reduction in the area. Enables the owners to claim compensation at higher rates and also additional compensation on account of damages caused by severance. Unfortunately the petition does not disclose the necessary details to enable as to get any idea as to the basis for higher compensation. In the absence of any of these particulars what the basis of additional claim could be. The question of compensation on account of severance cannot arise in this case as severance was effected by acquisition u/s 10 (3) of the U. L. C. Act. And entire land left thereafter is being acquired under L. A. Act. It is also not in dispute that the petitioners have already made an application for reference under S. 18 of the L. A. Act after the impugned award was notified to the petitioners and the same is still pending before the L. A. Officer. We are unable to see why petitioners cannot raise all these claims therein,. Mr. Kapadia's fear. However, is that S. 22(2) of the L. A. Act will prevent the

petitioners from claiming any higher compensation on any basis which was not and could not be set up by them before the Land Acquisition Officer. This also does not appear to be correct. Section 25(2) merely prohibits claiming higher amount than claimed and does not prohibit furnishing additional basis for the same. Market price in either case is liable to be determined by reference to the prices that prevailed on 1-9-1962 when S. 4 notification was issued and not by reference to the prices on 7-6-1979 when area stood reduced due to notification u/s 10 (3) of U,L,C. Act.

17. Mr. Kapadia, however, contends that he has already made applications for exemption under S. 21 of the U. L. C. Act and though the same is rejected by the competent Officer on 13-8-1979. An appeal against the same is still pending. Mr. Kapadia, therefore, contends that possibility of his exemption application being granted, and the notification under S. 10 (3) of U, L . C. Act being cancelled consequentially, cannot be ruled out outright at this stage. Petitioners in that case would not lose the area of 41,657,09 sq. Metres and acquisition of the pocket of 1967 sq. Metres may assume a different complexion enabling the claimant to demand compensation at higher rate. We do not think it proper to set aside the award on this highly speculative contingency. The claim of the petitioners for any such higher compensation, assuming the claim to be well founded. Can be protected otherwise than by setting aside the award. Mr. C. J. Sawani the learned Additional Government Pleader made a statement at the Bar that in the event of, such exemption applied for being allowed and any occasion arising for claiming additional compensation on that account, the Government would waive those objections u/s 25(2) of the L. A. Act and will not oppose the reference of the claim in the Court on the basis of Section 25(2) of the L. A. Act without prejudice to Government's other objections thereto. We also direct that in the event of petitioners application of exemption being granted, and petitioners raising any claim for additional compensation on account of the situation arising out of the same. The authority or the Court entertaining the same will not deny it on account of the petitioners failure to set up such claim under S. 25(2) of the Land acquisition Act. The result is that the application falls, Rule is accordingly discharged. There will be no order as to costs in the circumstances of the case.

18. Mr. Kapadia applies for leave to appeal to the Supreme Court under Art 133 of the Constitution. Leave refused. Mr,Kapadia requests that the operation of the judgment delivered by us should be stayed for three weeks from today, We direct that the operation of this judgment will be stayed for three weeks from today.

19. Order accordingly.