(1979) 10 BOM CK 0017

Bombay High Court

Case No: Special Civil Application No. 3216 of 1975

Yesho Nathu Mahajan and Another		APPELLANT
	Vs	
The State of Maharashtra and Others		RESPONDENT

Date of Decision: Oct. 11, 1979

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Land Acquisition Act, 1894 - Section 4, 4(1), 5

Citation: AIR 1980 Bom 221

Hon'ble Judges: Sharad Manohar, J; Pratap, J

Bench: Division Bench

Advocate: G.M. Bhokarikar, for the Appellant; R.D. Rane, Asstt. Govt. Pleader, for the Respondent

Judgement

Pratap, J.

By this petition under Articles 226 and 227 of the Constitution, the petitioners challenge the validity of notifications issued u/s 4 and Section 6 of the Land Acquisition Act in July 1975 and October 1975 respectively and the proposed acquisition of 1 hectare and 72 acres of land out of Gat No. 613, situated at village Vaghode Budruk, taluka Raver, District Jalgaon, for a public purpose viz., provi- of house sites for landless workers and their families and for extension of gaothan.

2. On 26th July 1971, the Grampanchayat of village Vaghode Budruk passed an unanimous resolution recommending acquisition of Survey Nos. 133 and 134 for the purpose of providing house sites to houseless persons. By another resolution dated 28th July 1972, also passed unanimously, the said Grampanchayat recommended acquisition (for the same purpose) of two additional lands Survey Nos. 129/2/5 and 129/1/2/2. However, the State Government on 25th July 1975 issued notification u/s

4 of the Land Acquisition Act, declaring that an altogether different property viz., part of petitioners'' land Gat No. 613 was needed or was likely to be needed for the said purpose viz., provision of house sites for landless workers and their families and for extension of gaothan. This notification further declared that the provisions of Section 5A of the said Act shall not apply-This was followed on 7th October 1975 by Section 6 notification under which urgency clause was applied. Next came Section 9 notice. Hence this petition challenging the aforesaid notifications and the impugned acquisition thereunder.

3. In support of this petition, we have heard Mr. G. M. Bhokarikar, the learned Advocate for the petitioners. The State is represented by the learned Assistant Government Pleader, Mr. R. D. Rane.

4. Mr. Bhokarikar, the learned Advocate, contended that this was not at all a case where the application of urgency clause could be said to be in any way warranted. As a result thereof, the petitioners were deprived of the opportunity of putting forth their objections before the acquiring authority and the latter, in turn, was also correspondingly absolved of its duty to hear the petitioners. He further urged that the tests involved for the application of urgency clause do not stand fulfilled in the present case. Mr. R. D. Rane, the learned Assistant Government Pleader, countered these submissions contending that the State was entitled to apply the urgency clause to a given case and in this particular case, according to him, the application was more than justified and this Court, therefore, should not interfere with the impugned acquisition. Considering the rival submissions of the respective Advocates in the light of the record, we are of the view that the contentions raised before us by the learned Advocate for the petitioners are sound and justified and accepting the same, this petition deserves to be allowed.

5. Now, none can dispute the position that acquisition of land for the purpose of providing house sites to landless workers and their families and for extension of gaothan would, indeed, be an acquisition pre-eminently for a public purpose nor can there be two opinions on the fact that this public purpose particularly providing house sites to landless workers and their families is, indeed, one which all would desire to be implemented efficiently and even expeditiously. But this, therefore, cannot per se justify stamping a land acquisition notification in that behalf with the impress and insignia of an urgency clause. That a given purpose is laudable is not by itself sufficient to vindicate the application of urgency clause so as to obviate even the minimum requirement of a hearing. Purpose such as providing house sites or extension of gaothan cannot be said to spring into existence overnight unless, of course, it is a result of some unexpected, exceptional or extraordinary situation or development such as, for instance, an earthquake or flood or some specific clear-cut time-bound project likely to be rendered ipso facto nugatory and infructuous by even such lapse of time as would occur in the case of an acquisition sans or without the urgency clause. While applying the urgency clause, the State should, indeed, act

with considerable care and responsibility.

6. Citizen''s or person''s property can be acquired in accordance with law but in the absence of a real and genuine urgency which is the heart and the ABC of an urgency clause--would it be too much to require the State to permit the aggrieved party or person a fair and just opportunity of putting forth his or its objections for due consideration of the acquiring auth-ority? The impugned acquisition herein is not shown to be of such an exceptional nature as cannot await even the minimal requirement of a hearing contemplated under the Land Acquisition Act. Indeed, in this very case, one finds that though need for acquisition was felt right from the year 1971, even so for years together the State itself did not at all actively move in the matter with any urgency till it chose to issue in its own sweet time Section 4 notification four years thereafter. Application of urgency clause cannot be a substitute for the laxity on the part of the State administration in expeditiously initiating acquisition proceedings. Nor can it be invoked to make up for the delay caused only because of the lethargy on the part of the administration. Again, if, instead of contesting this petition, the State had deleted the urgency clause, even the presently impugned acquisition proceedings would have seen its expeditions end a long time back.

7. Mr. Bhokarikar, the learned Advocate, relied upon a decision of the Supreme Court in the case ot Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, , and the following observations therein:--

"Where certain lands are sought to be acquired and the public purpose indicated in the notification is the development of area for industrial and residential purposes that in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry u/s 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries u/s 5A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry u/s 5A of the Act."

"Section 17(4) cannot be read in isolation from Sections 4(1) and 5A of the Act. The immediate purpose of a notification u/s 4(1) of the Act is to enable those who may have any objections to make to lodge them for purposes of an enquiry u/s 5A of the Act. It is true that, although only 30 days from the notification u/s 4(1) are given for the filing of these objections u/s 5A of the Act, yet sometimes the proceedings u/s 5A are unduly prolonged. But, considering the nature of the objections, which are capable of being successfully taken u/s 5A, it is difficult to see why the summary enquiry should not be concluded quite expedi-tiously."

These are, indeed, weighty observations and, in our view, fully applicable to the present case. Mr. Rane, the learned Assistant Government Pleader, made a valiant attempt to justify the application of urgency clause by reference to the return filed to this petition by the State. Unfortunately for him, however, going through the said return, one finds that there is hardly any attempt to disclose facts and circumstances and factors and elements which went into the decision of the acquiring authority to invoke and apply the urgency clause. The return is not only blissfully vague but indeed woefully silent on this crux of the challenge to the impugned acquisition. Apart from such inadequate and deficient return, the learned Assistant Government Pleader was even otherwise unable to satisfy us as to what were even generally the facts and considerations that weighed with the authority while applying the urgency clause. It would normally not be open to this Court to substitute its own judgment in place of that of the acquiring authority on the question of existence of urgency and the consequent application ot urgency clause if the Court finds that there were present before the acquiring authority factors and considerations relevant thereto. The acquiring authority is after all the best judge of the situation and its decision, basically subjective, would normally not be interfered with by this Court. But where no factor is disclosed and no consideration revealed, where the Court is left in the dark and the aggrieved person left in the lurch, application of urgency clause is put in serious jeopardy; it stands exposed to Court''s interference; and renders itself liable to be struck down. The very sine qua non for sustenance of urgency clause is absent.

8. Mr. Rane, the learned Assistant Government Pleader, invited our attention to a Division Bench ruling of this Court in the case of Jamnadas Devsibhai Bhate and Others Vs. The Commissioner, Nagpur Division, Nagpur and Another, , in support of his contention that the urgency clause had been rightly applied in the present case. Well established position is that a case is an authority for the point it actually decides and the point it decides must be considered in the light of the facts and circumstances present in that case. Delinking the question decided from the facts giving rise to the said question would not be a correct reading of a cited ruling. Now, going through the above ruling and carefully considering the same, one finds several relevant facts predominant therein totally absent in the instant case. Cumulative effect thereof and the emerging position therefrom clinched the issue ot urgency there in favour of the State. Hopelessly weak indeed is the position here. The two cases stand poles apart. The cited ruling is clearly distinguishable. It was a case where the facts already on record along with those disclosed through the very detailed return of the State showed that the scheme for which acquisition proceedings were initiated was a clear cut, well planned and time-bound programme; Government resolution dated 11th July 1973 itself clearly contemplated completion of the said scheme before 31st March 1976; the scheme envisaged not merely acquisition of land but also construction of huts thereon; a pilot programme was also ready; and what is equally significant was the further fact that financial

sanction for the said scheme was given only up to the end of the then current financial year 31st March 1976. These, indeed, are relevant, pertinent and significant facts which would prevent a Court from interfering with an acquisition proceeding with an urgency clause.

9. In the case supra, there was thus a clear and full-fledged disclosure of the factors and circumstances which went into the decision applying the urgency clause. It was not any mechanical application simplicities without any substratum or foundation or without any disclosure to the Court upon a challenge in that behalf. Such, indeed, is not the case here. As indicated, there is here no disclosure at all qua the facts and circumstances, it any, in existence before the acquiring authority while deciding to apply the urgency clause. We are not oblivious of the position that extension of gaothan can in a given case, be an urgent requirement nor are we oblivious of the position that providing house sites to landless workers and their families can also, in a given case, be an urgent requirement. But when application of urgency clause is challenged, the minimum expected from the State is a disclosure of the circumstances that weighed with it while doing so. Abstract justification replete with conjectures is no answer. In the absence of such disclosure and in the absence of any such relevant tacts and circumstances of which the Court even otherwise could have taken judicial notice, conclusion would follow that the urgency clause was applied without any warrant. It is not possible to successfully sustain the State action in that behalf.

10. As observed by a Division Bench of this Court in the case of Narayan Govind v. The State of Maharashtra, (1971) 73 Born LR 872 , (judgment wherein was upheld by the Supreme Court in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others,):

".....When the existence of circumstances on which an opinion has been arrived at has to be proved at least prima facie, it would not be sufficient for the authority which arrived at that opinion to assert that circumstances existed but give no clue whatever as to what such circumstances were...."

And further at page 879:

"..... the burden of proving such circumstances, at least prima facie, is on the respondents. As the respondents have brought no relevant material on the record, the respondents have failed to discharge that burden. We must, in conclusion, hold that the urgency provision u/s 17(4) was not validly resorted to." Same, indeed, is the position in the present case. The quest and search for circumstances in support of the urgency clause has been a dismal failure. The ex post facto research in that field has here been akin to chasing a shadow devoid of reality. The clause in question has fallen into a melting point.

11. In the result, this petition succeeds. The impugned notification dated 7th October 1975 u/s 6 of the Land Acquisition Act relating to the acquisition of 1

hectare and 72 acres of land out of Gat No. 613, situated at village Vaghode Budruk, taluka Raver, District Jalgaon, and published on 16th October 1975 is set aside and quashed. Notice dated 23rd October 1975 u/s 9 of the Land Acquisition Act is also set aside and quashed. The urgency clause from the notification dated 25th July 1975 issued u/s 4 of the Land Acquisition Act relating to the aforesaid land is deleted and cancelled. The matter will now stand relegated to the stage immediately after Section 4 notification but without the urgency clause. The acquiring authority may, if still so advised, proceed further with the acquisition proceedings (but without the urgency clause) on its own merits and in accordance with law.

12. Rule earlier issued on this petition is made absolute with costs.

13. Ordered accordingly.