STATE OF GUJARAT & ANR.

v.

PATEL CHATURBHAI NARSIBHAI & ORS.

January 21, 1975

[A. N. RAY, C.J., H. R. KHANNA AND P. K. GOSWAMI, JJ.]

Land Acquisition Act, as amended by Land Acquisition (Gujarat Unification and Amendment) Act, 1963, Sections 39, 40 and 41 and Land Acquisition (Companies) Rules, 1963, Rule 4—Acquisition of land for a company—Enquiry by Collector in respect of application by company to Government for acquisition of land—Land owner, if entitled to be heard.

In 1960, there was a request by the respondent Baroda Industrial Development Corporation (the company) to the State for acquiring land for expansion of the Industrial Estate of the Company. The Special Land Acquisition Officer, Baroda, expressed the opinion that the acquisition was necessary as the land was adjoining the occupied land of the Company and that was the only land available. There was an enquiry by the State Government under Rule 4 of the Land Acquisition (Companies) Rules. The enquiry was held prior to the notification dated 4 March, 1961.

There was an agreement between the State Government and the Company. This agreement was after the State Government had given consent to the acquisition. The notification under s. 4 was, however, cancelled on 28 September, 1956. On 29 September, 1956, there was a fresh notification under s. 4 of the Act. Subsequent to that notification there was an enquiry under s. 5-A of the Act. The respondent, viz., the owner of the land filed objections. There was a report on 11 December, 1968 on that enquiry under s. 5-A of the Act that the land sought to be acquired was suitable for the company and was not in excess of its requirements.

On January 18, 1969 there was a notification under s. 6 of the Act. Along with the notification under s. 6 of the Act an agreement dated 13 January, 1969 between the company and the State as contemplated in s. 41 of the Act was published on 18 January, 1969. The respondent land owner challenged the notifications under ss. 4 and 6 of the Act. The High Court allowed the petition. This appeal has been preferred by certificate granted by the High Court.

On behalf of the State it was contended that the High Court was wrong in holding that the notification under s. 6 of the Act was bad for these reasons. The enquiry under r. 4 is an administrative enquiry and the owner of the land is not entitled to be heard in that enquiry. Second, the satisfaction under s. 4 of the Act is subjective and is formed on the basis of the report pursuant to an enquiry conducted under r. 4. Third, the enquiry under r. 4 is to determine the bonafides of the Company, and, therefore, in such enquiry the owner of the land need not be heard. Fourth, after the report under r. 4 is made the Government may or may not issue a notification under s. 4. Fifth, if a notification under s. 4 is issued the person concerned viz., the owner of the land will get an opportunity under s. 5-A of the Act to make objections. Finally, the enquiry under r. 4 is a preliminary enquiry in exercise of executive power. This enquiry is for collecting data to form an opinion for or against the issuing of notification. In such enquiry for collecting data the question of violating any rights of the land owner does not arise.

Rejecting the contentions and dismissing the appeal,

HELD : The enquiry under r. 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

A 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 s. 5-A of the Act is equally unsound. S. 17 of the Act provides that the appropriate Government may direct that the provisions of s. 5-A shall not apply, and if it does so direct a declaration may be made under s. 6 at any time after the publication of the notification under s. 4 of the Act. Therefore the enquiry under s. 5-A may not be held. [287 H-288]

B The nature of objections under rules framed in pursuance of the powers conferred by s. 55 of the Act shows that the matters which are to be enquired into under r. 4, and in particular, that the Company made all efforts to get such land by negotiation with the persons interested thereon on payment of price and such efforts failed is not one of the objections which can be preferred in an enquiry under s. 5-A. It is true that in the present case there was an enquiry under s. 5-A of the Act but the enquiry was also before the agreement between the State and the Company under s. 41 of the Act and without any enquiry under s. 40 of the Act to enable the Government to give its consent. In view of the Gujarat Amend-
C ment Act, 1963, deleting the words "either of the report of the Collector under s. 5-A of sub-s. (2) or" in sections 40 and 41 of the Act, the enquiry under s. 5-A is not an enquiry within the meaning of s. 40 of the Act. [288 E-G, 289 E-F]

R. L. Arora v. *State of U.P.* [1962] 2 Supp. S.C.R. 149, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1508 of 1971.

From the Judgment and Order dated the 30th March 1971, of the
D Gujarat High Court in Spl. C. Appln. No. 622 of 1969.

R. H. Dhebar and *M. N. Shroff*, for the appellants.

I. N. Shroff, for respondent Nos. 1-3.

M. C. Bhandare and *Urmila Sirur*, for respondent no. 4.

The Judgment of the Court was delivered by

E RAY, C.J. This appeal by certificate raises the question whether the notifications dated 29 September, 1965 and 18 January, 1969 issued under sections 4 and 6 respectively of the Land Acquisition Act hereinafter referred to as the Act are lawful.

In 1960 there was a request by the respondent Baroda Industrial Development Corporation hereinafter referred to as the Company to
F the State for acquiring land for expansion of the Industrial Estate of the Company. The Special Land Acquisition Officer, Baroda expressed the opinion that the acquisition was necessary as the land was adjoining the occupied land of the Company and that was the only land available.

On 4 March, 1961 there was a notification under section 4 of the
G Act. On 22 August, 1961 there was an agreement between the State Government and the Company in accordance with the provisions contained in section 41 of the Act.

It may be stated here that the decision of this Court in *R. L. Arora* v. *State of U.P.*(1) was that in case of acquisition for a Company, the Government could give its consent if the acquisition was
H needed for the construction of some work which was likely to prove useful to the public.

(1) [1962] 2 Supp. S.C.R. 149.

In 1962 Section 40 of the Act was amended to the effect that the Government could not give consent to the acquisition of land for a company unless the Government was satisfied by holding an enquiry as fully mentioned in the section.

In the context of the decision of this Court in *Arora's* case (supra) the Central Government in 1963 in exercise of powers conferred by section 55 of the Act made rules for the guidance of the State Governments known as the Land Acquisition (Companies) Rules, 1963 hereinafter referred to as the Companies Acquisition Rules.

Rule 4 of the Companies Acquisition Rules provides that 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 on the matters mentioned therein. Those matters are (1) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition; (2) 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; (3) that the land proposed to be acquired is suitable for the purpose; (4) that the area of land, proposed to be acquired is not excessive; (5) that the Company is in a position to utilise the land expeditiously; and (6) 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.

Sub-rule (2) of Rule 4 aforesaid further provides that 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 above. The Collector under sub-rule (3) of Rule 4 aforesaid shall submit a report to the appropriate Government. Sub-rule (4) of Rule 4 aforesaid provides that no declaration shall be made by the appropriate Government under section 6 of the Act unless (i) the appropriate Government has consulted the committee and has considered the report under this Rule and the report, if any, submitted under Section 5-A of the Act; and (ii) the agreement under section 41 of the Act has been executed by the Company.

Gujarat Act 20 of 1965 came into effect on 9 July, 1965. By section 18 of the Gujarat Act called the Land Acquisition (Gujarat Unification and Amendment) Act, section 39 of the Act was amended. The result of the amendment of section 39 of the Act is that the provisions of sections 4 to 37 inclusive of the Act cannot be put into force unless the previous consent of the appropriate Government is obtained and unless the Company has executed an agreement mentioned in sections following section 39 of the Act.

In the present case there was an enquiry by the State Government under Rule 4 of the Land Acquisition (Companies) Rules. The enquiry was held prior to the notification dated 4 March, 1961 under section 4 of the Act. On 22 August, 1961 there was an agreement between the State Government and the Company. This agreement was after the State Government had given consent to the acquisition. On

A 4 November, 1961 the notification under section 4 of the Act was corrected with regard to the survey numbers. The notification under section 4 of the Act dated 4 March/4 November, 1961 was however cancelled on 28 September, 1965.

On 29 September, 1965 there was a fresh notification under section 4 of the Act. Subsequent to that notification there was an enquiry
B under section 5-A of the Act. The respondent, viz., the owner of the land filed objections. There was a report on 11 December, 1968 on that enquiry under section 5-A of the Act that the land sought to be acquired was suitable for the company and was not in excess of the requirements.

On 18 January, 1969 there was a notification under section 6 of
C the Act. Along with the notification under section 6 of the Act an agreement dated 13 January 1969 between the company and the State as contemplated in section 41 of the Act was published on 18 January 1969.

The respondent land owner challenged the notification dated 29 September, 1965 under section 4 of the Act as well as the notification under section 6 of the Act dated 18 January, 1969. The High Court
D accepted the contention of the respondent that the enquiry contemplated under rule 4 of the Land Acquisition (Companies) Rules had not been held lawfully, and, therefore, the notification under section 6 of the Act was illegal. The reason given by the High Court was that the enquiry under rule 4 contemplated giving opportunity to the owner of the land to make effective representation against the proposed acquisition. The High Court held that the enquiry under rule 4 was bad be-
E cause no opportunity had been given to the owners of the land.

On behalf of the State it was contended that the High Court was wrong in holding that the notification under section 6 of the Act was bad for these reasons. The enquiry under rule 4 is an administrative enquiry and the owner of the land is not entitled to be heard in that enquiry. Second, the satisfaction under section 4 of the Act is subjec-
F tive and is formed on the basis of the report pursuant to an enquiry conducted under rule 4. Third, the enquiry under rule 4 is to determine the bonafides of the Company, and, therefore, in such enquiry the owner of the land need not be heard. Fourth, after the report under rule 4 is made the Government may or may not issue a notification under section 4. Fifth, if a notification under section 4 is issued the person concerned viz, the owner of the land will get an opportunity
G under section 5-A of the Act to make objection. Finally, the enquiry under Rule 4 is a preliminary enquiry in exercise of executive power. This enquiry is for collecting data to form an opinion for or against the issuing of notification. In such enquiry for collecting data the question of violating any rights of the land owner does not arise.

The contention of the State that the enquiry under rule 4 is admi-
H nistrative 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 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 5-A may not be held.

There is another reason why the enquiry under rule 4 should be in the presence of the owners of the land, Reference may be made to the Rules for the guidance of officers in dealing with objections under section 5-A of the Act. These rules are made in exercise of the powers conferred by section 55 of the Act. Under these Rules it is stated that the objections are of the following nature : (i) the notified purpose is not genuinely or properly a public purpose; (ii) the land notified is not suitable for the purpose for which it is notified; (iii) the land is not so well suited as other land; (iv) the area proposed is excessive; (v) the objectors' land has been selected maliciously or vexatiously; (vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort; will take away important public right of way or other conveniences or will desecrate religious buildings, graveyard and the like. The nature of objections under these rules shows that the matters which are to be enquired into under rule 4, and in particular, that the Company made all efforts to get such land by negotiation with the persons interested thereon on payment of price and such efforts failed is not one of the objections which can be preferred in an enquiry under section 5-A. It is true that in the present case there was an enquiry under section 5-A of the Act but the enquiry was also before the agreement between the State and the Company under section 41 of the Act and without any enquiry under section 40 of the Act to enable the Government to give its consent.

The respondent put in the forefront the contention that the agreement between the Company and the State under section 41 of the Act in the present case, dated 13 January, 1969 and published on 18 January 1969 was subsequent to the notification under section 4 of the Act, dated 29 September, 1965 and therefore the said notification was in violation of the provisions contained in section 39 of the Act and therefore invalid.

The Land Acquisition (Gujarat Unification and Amendment) Act, 1963 which amended section 39 of the Central Act enacted that the provisions of sections 4 to 37 inclusive of the Act shall not be put in

A force in order to acquire land for any Company, unless there is previous consent of the State Government or the Company shall have executed the agreement. On behalf of the State it was said that the agreement in the year 1961 would suffice. This is only to be stated to be rejected because the notification under section 4 of the Act was cancelled by the State on 28 September, 1965. Thereafter fresh proceedings started. Further, the agreement in the year 1961 did not survive, because a fresh agreement was made on 18 January, 1969, which was published on 18 January 1969.

The provisions contained in sections 38 to 41 of the Act indicate that the provisions of sections 4 to 37 of the Act cannot be applied to acquire land for any company unless the State Government gives previous consent thereto and the company executes an agreement with the State as mentioned in section 41 of the Act. Second, section 40 of the Act indicates that the State Government cannot give consent unless there is an enquiry as provided in that section. It is noticeable that any enquiry under section 5-A of the Act is not an enquiry within the meaning of section 40 of the Act. The reason is that the Gujarat Amendment Act 1963 being Gujarat Act No. 20 of 1965 deleted the words "either on the report of the Collector under section 5-A subsection (2) or" from section 40 of the principal Act. Similarly, in section 41 of the Act as a result of the Gujarat Amendment Act the words "either on the report of the Collector under section 5-A subsection (2) or" were deleted. The effect of the deletion of those words by the Gujarat Amendment Act is that the enquiry under section 5-A is not an enquiry within the meaning of section 40 of the Act.

In the present case, the enquiry under rule 4 of the Land Acquisition (Companies) Rules was held before the notifications under sections 4 and 6 of the Act were issued in the year 1965. The enquiry pursuant to the notifications in the year 1961 and previous to the fresh notifications in 1965 is of no effect in law for two principal reasons. First, the 1961 notification was cancelled, and, therefore, all steps taken thereunder became ineffective. Second, the enquiry under rule 4 in 1961 was held without giving opportunity to the land owner respondent, and, therefore, the enquiry is invalid in law.

The affidavit evidence on behalf of the Government was that an enquiry was held under section 40 of the Act in the month of July, 1965 and there was a report on 25 August, 1965. The enquiry under section 40 of the Act is equally of no avail for similar reasons why the enquiry under Rule 4 in 1961 is of no effect in law.

For these reasons, we hold that the acquisition proceedings are vitiated. There was no compliance with the provisions of section 39 of the Act. There was no prior agreement between the State and the Company before provisions contained in sections 4 to 37 were put into force. The enquiry under section 5-A of the Act in the present case does not satisfy the provisions contained in rule 4 of the Companies Acquisition Rules. The owners of the land are entitled to opportunity of being heard in an enquiry under rule 4 and enquiry under section 40 of the Act. No such opportunity was given to the owners.

The appeal, therefore, fails and is dismissed. The State will pay costs to Respondents No. 1, 2 and 3.

V.M.K. *Appeal dismissed.*