

State of Gujarat Vs. Shivshanker Gaurishanker Mehta and anr.

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Court : Gujarat

Decided On : Aug-03-1983

Reported in : AIR1984Guj88; (1984)1GLR510

Judge : N.H. Bhatt and; S.A. Shah, JJ.

Acts : [Bombay Provincial Municipal Corporation Act, 1949](#) - Sections 212 and 213

Appeal No. : Reference Nos. 1 to 5 and 7 to 11 of 1980

Appellant : State of Gujarat

Respondent : Shivshanker Gaurishanker Mehta and anr.

Advocate for Def. : P.V. Nanavati and; S.N. Shelat, Advs.

Advocate for Pet/Ap. : R.M. Vin, Govt. Pleader for Adv. General

Judgement :

Bhat, J.

1. All these references are made. to this Court by the learned Judge of the City Civil Court at Ahmedabad under Section 113 read with Order 46, Rules 2 and 4 of the Civil Procedure Code in the matters of the Civil Suits Nos. 2770/77, 2773/77, 3321/77, 3764/77, 4043/77, 4044/77, 493178, 942/78, 2084/77, 3158/77 and 197/7f. The suits have been Wed by various citizens, challenging the notice of the

Municipal Commissioner issued under Sections 212 and 213 of the Bombay Provincial Municipal Corporations Act, 1949, hereinafter referred to as 'the Act' for brevity's sake. One of the grounds challenging the said action was that Ss. 212 and 213 of the Act were ultra vires Art. 14 of the Constitution of India in so far as they unreasonably provided for a notice only to, the owner and not to the other interests like those of tenants, to be heard before the drastic action under Section 212 or 213 of the Act was taken. The argument found favour with the learned Judge, who, by his common order, referred the following two, questions to this Court :-

(i) Are not the provisions of Section 212 of the Bombay Provincial Municipal Corporations Act, ultra vires Article 14 of the Constitution of India, in so far as the said provisions provide due opportunity of being heard' to the owners of buildings, whereas it does not provide such opportunity to tenants occupying the said buildings, falling within the regular line of street; in this context, are not the owners as also the tenants of such buildings, quite alike and yet differentially treated by the said section, without any intangible differentia?

(ii) Is not Section 213 of the Bombay Provincial Municipal Corporations Act liable to be struck down on the ground that it is violative of the fundamental principles of natural justice viz. audi alteram partem in so far as before asking the owner/occupant of the land to hand over possession thereof to the Municipal Commissioner, it does not provide an opportunity to such occupant/ Owner to show cause why the land in his ownership/occupation acquired ?'

2. The learned Advocate, Mr. P. V. Nanavati appearing for the various plaintiffs urged That it was ex-facie unreasonable on the part of the Legislature to bear only the owners and exclude the other interests that were likely to be adversely affected by the actions under Section 212 or 213 of the Act. We do not elaborate his arguments because in effect he reproduced the very arguments, which were advanced before the learned trial Judge.

3. To us it appears that the question is no longer open to be agitated, it having been set at rest by the Supreme Court before which the question had been taken against the order of the Division Bench of this Court in the case of Girdharlal

Ganpatram Gandhi v. Municipal Corporation of City of Ahmedabad, (1967) 8 Guj LR 500. Chief Justice N. M. Miabhoy, as he then was 'sitting with N. K. Vakil, J. in that case held that Sections 211, 212, 213 and 216 of INE Act have been designed to (a few words, obliterated) into part of a public street directly and those powers could be brought into play after the Municipal Commissioner had prescribed a road-line under Section 210. The Bench held, that those provision embodied a scheme for compulsory acquisition of private property and. therefore, &acted; the. Municipal Commissioner to treat the notice or notices issued under Section 212 of the Act as null and void and further directed not to act on the same. In paragraph 42 of the said judgment, the learned Judges ultimately held, that Section 212 of the Act was bad. They stated that none of the power was bad. They stated that none of the powers conferred upon, the Municipal Commissioner by Section 212 could be salvaged as the scheme of acquisition as embodied there in was bad. In the circumstances, the learned Judges held that the provisions contained in Section 212 conferring various powers of issuing notices, requiring demolition or authorising demolition must be held to be unconstitutional.

4. The said judgment, was challenged by the Municipal Corporation before the Supreme Court and the judgment of the Supreme Court delivered by the Five Judges is to be found in the case of Ahmedabad Municipality v. State of Gujarat, AIR 1972 SC 1,730. The Supreme Court in terms held that judgment of the High Court referred to above was bad, because in S. 216 referring only to the 'owner' as a person to be entitled to compensation, there was implicit full indemnification in accordance with judicial norms for all interests, including owners. The Supreme Court in terms stated as follows (at p. 1737):-

'The involvement of Civil Courts in finally determining compensation imports judicial norms. Since full indemnification in accordance with judicial norms is the goal set by the Act it is implicit in such a provision that the rules for determination of compensation shall be appropriate to the property acquired and such as will achieve the goat in full indemnity against loss. In other words, the Act provides for compensation to 6 determined in accordance with judicial principles by the employment of appropriate methods of valuation so that the person who is deprived of property is fully indemnified against the loss...

In paragraph 14 also, it has been specifically provided that 'two sections (Section 216(1) and Section 389(1)) read together make it clear that full indemnification in terms of money for the loss causes is to be made to the owner of the property or other interests affected by reason of the exercise of power, under Section 212.' is also laid down there that 'since every kind of loss is required to be compensated as a consequence of the order Passed by the Commissioner under Section 216 of the Act, the question whether the Act need have provided for compensation as on the acquisition of the building or a part of the building which is pulled down under Section 212 does not survive'.

5. It is to be noted with pertinence that the Division Bench of this Court in the Girdharlal's case (1967 (8) Guj LR 5W) (Supra) specially tested its decision on the meaning of the word 'owner' as defined In Section 2(45) of the Act. The learned Judges restricted that term to the definition as given in Section 2(45) of the Act and, therefore, held that Section 216 and correspondingly Section 212 were ultra vires Article 19(1)(f) of the Constitution of India.

6. Once for some reasons any provisions of law are declared by the highest Court of this land to be intra vires, it is not open to this Court to question that decision because certain arguments were not advanced before the Supreme Court. Mr. Nanavati, however, in this connection invited our attention to paragraph 19 of the Supreme Court's judgment, wherein the Supreme Court remanded the matter for reconsideration of the question under Article 14, but in view of the settled legal position, we, find that this Court cannot go behind that question. After remand, this High Court had upheld these provisions, Mr. Nanavati also urged that the 'Supreme Court had not specifically dealt with Section 212 and it had confined its discussion to Section 216 of the Act only. This argument is of little avail to the, original plaintiffs, at whose behest these References have been made to this High Court. Section 216 deals only with an owner to be compensated. The Division Bench of this Court struck that Section 216 and also incidentally Section 212 as ultra vires because other interests likely to be adversely affected were left without any compensation in spite of the loss of the proprietary rights or interest. Simply because Section 212 had not been specifically dealt with, it cannot be said that the Supreme Court was not alive to the challenge to Section 212. In our view, the

Supreme Court has specifically dealt with this question that not only the owner is to be protected, but other interests are also to be protected. In other words, the, Supreme Court has interpreted the, word 'owner' to mean not only the owners as defined in Section 2(45) of the Act, but also including other interests.

7. As far as these references are concerned, they are not accepted and stand rejected. As a corollary, it would follow that the other interests as can be reasonably identified with reference to public records like City Survey Records or the records with the Municipality in the form of assessment books, Are required to be served with a notice under Sections 212 and 213 of the Act. Some difficulties are bound to be experienced by the Municipality in- doing so, but that cannot be helped because the law requires that interests are to be heard before such drastic actions are intended to be taken to be detriment of those interests. Without laying down any law, but way of only a suggestion, we would say that if the Municipality in such cases affixes a notice to the conspicuous part of the property to be dealt with under Ss 212 and 213 of the Act, it may in all probability serve the purpose, though it is always desirable to locate the interests as can be located reasonably and by reasonable search and serve them with notice. These references are accordingly rejected and stand disposed of.

8. At this stage, Mr. Nanavati applied for leave under Article 133 of the Constitution of India. As we have simply followed the judgment of the Five Judges of the Supreme Court in the case of Ahmedabad Municipality v. State of Gujarat, AIR 1972 SC 1730 (1736) (supra), we do not think that a question of law of general importance has arisen in this case, which is required to be decided by the Supreme Court. Hence the oral request is rejected.

9. Order accordingly.