

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 40 OF 2017

- | | | |
|---|--|-----------------|
| 1 | Abuli Abdul Husain Vora, Daudi-vora |] |
| | Aged about 72 yrs. Indian Inhabitant |] |
| | Retired, resident of "Alif Villa" Plot No. |] |
| | 20 S.No.64/2 Gurukrupa Society |] |
| | Samervarni Road, Silvassa, Dadra |] |
| | Nagar Haveli |] |
| | | |
| 2 | Nafisa Abuli Abdul Husain Vora, |] |
| | Aged about 60 years, Indian Inhabitant |] |
| | Retired, resident of "Alif Villa" Plot No. |] |
| | 20, S.No.64/2, Gurukrupa Society, |] |
| | Samervarni Road, Silvassa, Dadra |] |
| | Nagar Haveli |]...Petitioners |

vs

- | | | |
|---|---|------------------|
| 1 | Union Territory of Dadra and Nagar Haveli |] |
| | through the Administrator, having office |] |
| | at Secretariat, Amli Union Territory of |] |
| | Dadra and Nagar Haveli |] |
| | | |
| 2 | The Collector, Dadra and Nagar Haveli |] |
| | Silvassa |] |
| | | |
| 3 | The Land Acquisition Collector, Dadra and |] |
| | Nagar Haveli, Silvassa |] |
| | | |
| 4 | Ministry of Home Affairs, Government of |] |
| | India, North Block, New Delhi |]...Respondents. |

Anjali
Tushar
Aswale

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Digitally signed by
Anjali Tushar Aswale
Date: 2018.08.08
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Mr. A.V.Anturkar, Sr. Counsel I/b S.B.Deshmukh for the Petitioners.
Mr. Shrishailya S. Deshmukh for Respondent Nos.1 to 3.
Mr D.R.Shah with Shrinivas Bobde, for Respondent No.4.

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**CORAM : K. K. TATED &
B. P. COLABAWALLA, JJ.**

**RESERVED ON : 2nd August, 2018
PRONOUNCED ON : 8th August, 2018.**

JUDGMENT [PER B. P. COLABAWALLA, J]:

1. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioners seek a direction for quashing the notification issued under Section 4 (dated 22nd November, 2011) and the declaration issued under Section 6 (dated 19th October, 2012) of the Land Acquisition Act, 1894 (for short the **“said Act”**). In addition, the petitioners also seek quashing of the award dated 17th October, 2014 that were passed in relation to the non-agricultural land plot No.20 of Survey No.64/2 totally admeasuring 439 square meters. Out of this entire larger property, an area admeasuring 165.75 square meters with the residential bungalow standing thereon was sought to be acquired (for short the **“acquired property”**) for a public purpose, namely, construction of a ring road around Silvassa. The grounds on which the petitioners have challenged the acquisition are more particularly set out in the written submissions tendered on behalf of the petitioners and which we shall advert to a little later. However, before dealing with the

legal submissions, it would be apposite to set out a few necessary facts.

2. The petitioners claim to be co-owners of the larger property along with the bungalow constructed thereon. According to the petitioners, out of this larger property of 439 square meters, 165.75 square meters with a major portion of their bungalow “Alif Villa” are the subject matter of the acquisition proceedings which have finally culminated in an award. According to the petitioners, in this bungalow they are living their retired life.

3. It is not in dispute that the Union Territory Administration of Dadra and Nagar Haveli, considering the huge number of industries operating in this small territory, took a policy decision to construct a ring-road to bypass the heavy vehicles from the urban area and to establish a transport hub, to better manage the traffic and also to prevent many fatal accidents occurring due to movement of heavy traffic into the urban town area. In furtherance of this policy decision, the School of Planning and Architecture, SPA, Delhi, undertook a study and submitted a report in August 1999 indicating the final alignment of the proposed ring-road. This proposed ring-road alignment was thereafter also reflected in the

Regional Plan which was notified in the year 2001 (for years 2000-2020). Thereafter, the same alignment was also reflected in the revised Regional Plan (for the years 2007-2021). This alignment was also notified under the draft Outline Development Plan for Dadra and Nagar Haveli in 2012 for publication, and was finalized in March 2014. The original alignment and the structure of the ring road was prepared by the School of Planning and Architecture, New Delhi after carrying out various detailed surveys and investigations and which is reflected in a detailed report submitted to the Administration.

4. In order to construct this ring-road, acquisition proceedings were initiated. Accordingly, a notification was issued under Section 4(1) of the said Act, on 22nd November, 2011. Under this notification, objections were invited in writing within a period of 30 days from the date of the notification. The project of the ring-road was divided into eight different stretches from one point to another and was a four lane road with a 30 meter Right of Way stretching over 11.3 km. The total tendered cost for the construction of this ring road was about 66.66 crores.

5. As far as the petitioners are concerned, their acquired property (which includes a part of their Bungalow), falls within the

stretch B-C of the ring-road. As far as this particular stretch is concerned, a total number of 10 structures are affected and the total disbursement of compensation to the affected persons in this stretch (stretch B-C) is approximately 1.59 crores. It is also not in dispute that the earth work cutting/embankment is under progress as on today.

6. Be that as it may, in response to the notification issued under Section 4(1) of the said Act, the petitioners submitted their written objections in or about November, 2011. Thereafter, as contemplated under Section 5-A of the said Act, the hearing of the objections was conducted. These objections were received by the concerned authorities in writing including the objections of the petitioners. After considering all the objections, including the objections of the petitioners, the same were rejected and thereafter a declaration under Section 6 of the said Act was issued on 19th October, 2012. Thereafter, proceedings under Section 9 of the said Act were conducted by Respondent No.3 in January 2013 which finally culminated in the award dated 17th October, 2014. It is aggrieved by this entire process of acquisition that the petitioners are before us in the present Writ Petition.

7. In this factual backdrop, Mr. Anturkar, the learned Senior Counsel appearing on behalf of the Petitioners, submitted that in the facts of the present case, admittedly the notification issued under Section 4 as well as the declaration under Section 6 of the said Act were issued by the Land Acquisition Collector, Dadara and Nagar Haveli, Silvassa and were in the name of the Administrator, Diu, Daman and Dadara Nagar Haveli. To support this fact, he relied upon pages 75, 161 and 181 of the paper book. Mr. Anturkar submitted that as per the provisions of the said Act, the Section 4 notification as well as the Section 6 declaration had to be issued by the appropriate Government as defined in Section 3 (ee) of the said Act. He submitted that as per said definition, in the present case, the appropriate Government was the Central Government and hence it was the Central Government alone that had the power to issue the notification under Section 4 as well as the declaration under Section 6 of the said Act. He submitted that the same cannot be issued by any subordinate officer, as was done in the present case. He, therefore, submitted that the very initiation of the acquisition proceedings was bad and hence the entire proceedings which ultimately culminated in the Award dated 17th October, 2014 ought to be quashed and set aside.

8. We are unable to agree with this submission of Mr. Anturkar. Article 239 of the Constitution of India deals with the Administration of Union territories. Article 239(1) clearly mandates that save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. Article 239(2) stipulates that notwithstanding anything contained in Part VI of the Constitution, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers. It is true that the appropriate Government is defined under Section 3 (ee) of the Land Acquisition Act, 1894 which stipulates that the expression "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government and, in relation to acquisition of land for any other purposes, the State Government. What is important to note in the facts of the present case is that in pursuance of clause (1) of Article 239 of the Constitution of India and in supersession of all previous Notifications relating to exercise of powers and functions under the Land Acquisition Act, 1894 by the administrators of various Union territories, the President has

directed that subject to his control and until further orders, the powers and functions of the appropriate Government in relation to a Union territory shall also be exercised and discharged by the administrator of such Union Territory. This Notification reads thus:

**“MINISTRY OF HOME AFFAIRS
NOTIFICATION**

New Delhi, the 14th August, 1989

S.O. 642(E) - In pursuance of clause (1) of article 239 of the Constitution and in supersession of all previous notifications relating to the exercise of powers and functions under the Land Acquisition Act, 1894 (1 of 1894) by the administrators of various Union territories, except as respects things done or omitted to be done before such supersession, the President hereby directs that subject to his control and until further orders, the powers and functions of the appropriate Government in relation to a Union territory shall also be exercised and discharged by the administrator of such Union territory (whether known as Administrator, Chief Commissioner or Lieutenant Governor) within the respective Union territory under, -

- (i) the Land Acquisition Act, 1894 (1 of 1894) except the functions exercisable by the Central Government under the proviso to sub-section (1) of section 55 of the said Act; and
- (ii) the Land Acquisition (Companies) Rules, 1963

[No.U-11030/1/89-UTL]
ASHOK NATH, Jt. Secy.”

9. In the facts of the present case, it can be clearly seen that the notification issued under Section 4 as well as the declaration under Section 6 of the said Act have been issued by the order and in the name of the administrator Diu Daman & Dadra Nagar Haveli. We must also mention that a similar notification has been issued on 15th December, 2014 being notification S.O. 3181(E)(E) in relation to the

the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (“**New Land Acquisition Act**”). This being the case, and faced with these Notifications, Mr. Anturkar, the learned Senior counsel appearing on behalf of the Petitioners, did not press this point any further. In any event, we find that these notifications dated 14th August, 1989 and 15th December, 2014 clearly gives the power to the administrator not only to issue the Section 4 notification as well as the Section 6 declaration under the provisions of the Land Acquisition Act, 1894, but also the power to undertake and/or sanction acquisition proceedings under the New Land Acquisition Act. This being the case, we have no hesitation in rejecting this argument.

10. Mr. Anturkar then next submitted that the acquisition proceedings were vitiated in view of the fact that the hearing of the objections as contemplated under Section 5-A of the said Act were conducted by Mr. Sanjeev Kumar whereas the report was submitted by one Ramesh Verma. He submitted that it is well settled that the person hearing the objections is the person who has to submit the report as contemplated under section 5-A. In this regard, Mr. Anturkar relied upon a decision of the Supreme Court in the case of **Union of India and Others v/s Shiv raj and Others reported in**

(2014) 6 SCC 564. Placing reliance on this decision, Mr. Anturkar submitted that the objections being heard by Mr. Sanjeev Kumar and the report being submitted by Mr. Ramesh Verma, clearly vitiates the entire acquisition proceedings as the same were carried out in violation of the principles of natural justice. In addition to this argument, Mr. Anturkar also submitted that there was a complete non-application of mind on behalf of the administrator to the report submitted under Section 5-A of the said Act. This, according to Mr. Anturkar, was clear from the fact that the administrator had approved the report merely by stating “approved” without assigning any reasons whatsoever. He, therefore, submitted that on this ground also the acquisition proceedings including the award were vitiated.

11. We are unable to agree with this submission also. In the facts of the present case, the Petitioners had filed their objections in November 2011. These objections were in writing and the main objection was regarding the alignment of the ring road. The Petitioners wanted it to be re-aligned as it was passing through their property and affecting their bungalow. As can be seen from the Affidavit-in-Reply filed by Respondent Nos.1 to 3, the report under Section 5-A was submitted by Mr. Ramesh Verma after considering

the objections of the Petitioners, along with the objections of several other persons. Mr. Ramesh Verma was the then Requisition Collector and his report was submitted to the appropriate Government on 17th August, 2012. However, it was not accepted by the administrator and the same was decided to be re-submitted. Accordingly, the report was again re-submitted by Mr. Ramesh Verma to the appropriate Government on 27th August, 2012 and despite this, the administrator on 7th September, 2012 issued a direction to discuss the matter again. It is also on record that on 18th September, 2012 a meeting was held between the administrator and the Land Requisition Collector and the objections (including the objections of the Petitioners) regarding the alignment of the ring road were directed to be scrutinized again. Accordingly, on 20th September 2012, a site inspection was held in respect of the properties of the affected persons including that of the Petitioners and certain recommendations were made. As far as the Petitioners are concerned, in the report of the survey conducted on 20th September, 2012, it was revealed that the bungalow of the Petitioners was falling within 50 meters from the junction and therefore, re-alignment was not possible. After the survey was conducted on 20th September 2012, the report was placed before the administrator once again on 30th September 2012, when it was again directed to be discussed

further by the concerned authorities. In view of this, on 17th October 2012, the report was re-submitted to the administrator. Whilst submitting this report, a specific noting is made that every objection under Section 5-A made to the Collector in writing has been taken into account and the recommendation on the objections as mentioned in the report ought to be accepted by the administrator (though the final decision lay with him). To our mind, what all this clearly reveals is that every effort was made by the authorities concerned to try and save the properties of the affected persons and after exhaustion of all remedies, the report was finally re-submitted to the administrator on 17th October, 2012 and which was finally approved by him on the same date. From what is stated above, two things become absolutely clear. Firstly, the contention of the Petitioners that the objections were considered by one person and the report was submitted by another person, appears to be totally incorrect. Apart from making a bald assertion that the hearing on the objections was done by Mr. Sanjeev Kumar whereas the report was submitted by Mr. Ramesh Verma, there is nothing on record to even remotely suggest that this was the case. In view of the factual position discussed earlier, at least prima facie, it appears to be otherwise. In these circumstances, we find that the reliance placed by Mr. Anturkar on the decision of the Supreme Court in the case of **Union**

of India and Others v/s Shiv raj and Others (supra), is totally misconceived. Secondly, we find that the authorities concerned (including the administrator) have duly considered all the objections and there has been a complete and proper application of mind by the administrator before approving the report dated 17th October, 2012. This can clearly be seen from the fact that despite the report being submitted earlier, the administrator had directed several things to be done before finally accepting the report. This process clearly reflects a proper application of mind by the administrator before accepting the report submitted under section 5-A of the said Act. We, therefore, find the argument of Mr. Anturkar that the administrator has to give reasons for approving the report submitted to him for acquisition of the Petitioners' property to be without any merit. In fact, if the administrator disagreed with the report submitted to him then he would have had to give reasons for his disagreement. This does not mean that if he agreed with the report, he would still have to give reasons for agreeing with the same. In this regard, it would be apposite to refer to a decision of the Supreme Court in the case of **Vinod Kumar v. State of Haryana reported in (2014) 3 SCC 203**, and more particularly paragraphs 12 to 14 thereof, which read thus:-

“12. Further, in *Women's Education Trust v. State of Haryana* [(2013) 8 SCC 99 : (2013) 3 SCC (Civ) 721] , this Court has held as under: (SCC p. 119, para 35)

“35. What is most surprising is that the High Court did not even deal with

the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector under Section 5-A(2) along with his recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued under Section 4(1). The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act.”

(emphasis supplied)

13. Also, in an earlier case in *Shyam Nandan Prasad v. State of Bihar* [(1993) 4 SCC 255] , this Court observed that compliance with Section 5-A of the Act is a sine qua non for acquisition of land. This Court held that: (SCC p. 260, para 10)

“10. ... The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause.”

14. In the light of the foregoing cases, it is evident that the Government has to consider the report of the Land Acquisition Collector while making declaration of acquisition of land under Section 6 of the Act. Further, if the Government is coming to a conclusion which is contrary to the report, then the Government has to provide appropriate reasons for the same.”

(emphasis supplied)

12. What this decision seems to suggest is that if the Government disagrees with the report submitted to it or even if it modifies the report, then reasons have to be given by the Government, but not otherwise. In any event, from what is discussed

earlier, what becomes clear is that there has been a proper application of mind by the administrator before accepting the report and that being the primary ingredient, we do not think that by not giving reasons in the facts and circumstances of the present case, would vitiate the entire acquisition proceedings.

13. It would not be out of the place to mention that to grant relief under Article 226 of the Constitution of India, what the Court has to look at is not the final decision of the authority concerned, but the decision making process. If there is an illegality in the decision making process, then certainly this Court would invoke its equitable, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India. In the facts of the present case, we do not find any illegality in the decision making process as sought to be contended by Mr. Anturkar and we, therefore, cannot vitiate the entire acquisition proceedings on the so called grounds that either the objections of the Petitioners were heard by one person and the report submitted by another; or that there has been a complete non application of mind on the part of the administrator before accepting the report under Section 5-A of the said Act.

14. Whilst on this subject we would also like to take note of the fact that the award in the present matter was passed as far back

as on 17th October 2014. The present petition has been filed on 26th October 2016 which is after a lapse of more than two years. It is not in dispute before us that the Petitioners were very well aware of the Award passed on 17th October 2014. There is absolutely no explanation as to why the Petitioners have approached this Court for equitable and discretionary reliefs after a lapse of a period of two years. As of today, we are informed that more than 90% of the compensation with reference to this entire infrastructure project is already disbursed to the affected persons and more than 60% of the work of the ring road is over. In fact, the work of the ring road was to be completed by October 2018 and it has got delayed due to several litigations being filed in that regard. Considering all these facts we do not think that in any event, the Petitioners have made out a case for invoking our equitable, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

15. The last submission that was canvassed by Mr. Anturkar was that in the present case, the award was made on 17th October 2014 whereas in the interregnum, the Land Acquisition Act, 1894 was repealed and the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (**“New Land Acquisition Act”**) came into force w.e.f. 1st January,

2014. He submitted that by virtue of the provisions of Section 113 of the New Land Acquisition Act, the Central Government had issued a clarification for the purposes of determining the amount of compensation in cases where the award was passed after coming into force of the New Land Acquisition Act. According to Mr. Anturkar, as per this clarification, the compensation had to be calculated not as per the date of the Section 4 Notification but the date on which the new Act came into force i.e 1st January, 2014. He submitted that in the facts of the present case the valuation done under the award dated 17th October 2014 was the valuation as on the date of the Section 4 Notification dated 22nd November, 2011 rather than on 1st January, 2014. This being the case, he submitted that the award was vitiated as the very foundation of the award was on the wrong premise. He submitted that if the valuation in the award was on the basis of the date of the Section 4 Notification (22nd November 2011), rather than 1st January 2014 (as per the clarification of the Central Government), then, a fresh opportunity had to be given to the Petitioners to raise their objections about the quantification of the compensation by giving them an opportunity under the provisions of Sections 21, 26 and 27 of the new Land Acquisition Act. Mr. Anturkar submitted that the Collector cannot amend the award, barring any clerical or arithmetical mistakes. He, therefore,

submitted that on this count alone the award must fail.

16. We find absolutely no merit in this contention. What is important to note is that, in the facts of the present case, the award was passed on 17th October 2014 whereas the clarification that was given by the Central Government was on 26th October 2015 (see the written submissions on behalf of the Petitioners). Section 24 (1) (a) of the new Land Acquisition Act clearly stipulates that notwithstanding anything contained in the new Land Acquisition Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where no award under Section 11 thereof has been made, then, all the provisions of the new Land Acquisition Act relating to the determination of compensation shall apply. What section 24 (1) (a) of the new Land Acquisition Act contemplates is that, if an award under section 11 of the Land Acquisition Act, 1894 has been made after coming into force of the new Land Acquisition Act, then, compensation would have to be calculated as per the provisions of the new Land Acquisition Act and not as per the provisions of the Land Acquisition Act, 1894. This is also clear from Section 114 of the new Land Acquisition Act which deals with repeal and saving. We do not think that on this ground and considering that the clarification given by the Central Government came after the

award being passed in the present matter, the same would vitiate the award in its entirety. It is only a matter of calculation of compensation as per the clarification issued by the Government dated 26th October, 2015 and that would have to be done. It is also the case of the Petitioners that the Land Acquisition Officer can correct clerical and arithmetical mistakes in the award. This being the case, we do not think that the award passed on 17th October 2014 can be completely vitiated on this ground alone. We, however, make it clear that the Petitioners would be entitled to compensation not as on 22nd November 2011 (the date of the Section 4 Notification) but as on 1st January, 2014 (the date on which the new Land Acquisition Act came into force). This is the only relief that the Petitioners would be entitled to.

17. In view of the foregoing discussions and subject to what is stated by us in the preceding paragraph, we find no merit in this Writ Petition and it is accordingly dismissed. However, in the facts and circumstances of the case we leave the parties to bear their own costs. Ad-interim order passed by this court in the Writ Petition stands vacated forthwith.

(B. P. COLABAWALLA, J.)

(K. K. TATED, J)

18. After the judgment was pronounced, the learned advocate for the Petitioner sought a continuation of the ad-interim order passed by this court on 27th April 2018.

19. Considering what we have stated in our judgment, we do not think that this is a fit case to continue the ad-interim order any further and delay the infrastructure project of the construction of the ring road.

20. In this view of the matter, the request for continuing the ad-interim relief is rejected.

(B. P. COLABAWALLA, J.)

(K. K. TATED, J)