

LAXMANRAO BAPURAO JADHAV AND ANR.

v.

THE STATE OF MAHARASHTRA AND ORS.

OCTOBER 1, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Land Acquisition Act, 1894.

s.3-A as inserted by Bombay (Amendment) Act of 1945, ss. 4(1) and 6(1)—Acquisition of land for construction of houses for weaker sections of society—Declaration u/s.6(1) published—Writ petition challenging the acquisition allowed by High Court on the ground that compliance with s.3-A was not made—Held, the view of the High Court is incorrect—It is the State Government that is required to decide whether the land is needed or is likely to be needed for public purpose—s.6 gives a conclusiveness to the public purpose found by the Government on publication of declaration in the Gazette.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4165 of 1988.

From the Judgment and Order dated 25.2.87 of the Bombay High Court in W.P. No. 1417 of 1984.

Gopal Balwant Sathe for the Appellants.

S.M. Jadhav for the Respondent No. 1 and 2.

D.M. Nargolkar for the Respondent No. 3.

The following Order of the Court was delivered :

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the 'Act') was published on June 19, 1982 acquiring lands in Survey No. 27/C.1/A/1 admeasuring 1 hectare, 19 acres and 8 tees for construction of houses for weaker sections of the society. Notification under Section 5-A was issued. The enquiry was conducted and on satisfaction that it was needed for public purpose, declaration under

- A Section 6 was published on January 17, 1983. After the Land Acquisition Officer issued notice under Sections 9 and 10 of the Act, the respondent No. 3 filed writ petition in the High Court questioning the validity of the notification and the declaration. The contention raised and accepted by the High Court was that since Section 3-A of the Bombay (Amendment) Act, 1945 (22 of 1945) empowers the officer authorised by the Commissioner to satisfy himself whether the land is needed for a public purpose and since the authorised officer had not satisfied in that behalf, the Government's power, after the enquiry under Section 5-A, was denuded. The Government, therefore, was not right in its conclusion that the land was needed for a public purpose. We find that the view taken by the High Court is not correct in law.

- D On publication of the notification under Section 4(1) of the Act, sub-section (2) envisages that the Land Acquisition Officer or an officer authorised specially in this behalf by the Government or any servant or workman shall have lawful authority to enter upon and survey and conduct levels of any land in such locality etc. Section 3-A envisages the powers of the officers to carry out survey as under :

- E "3-A. Preliminary survey of lands and powers of officers to carry out survey. - For the purpose of enabling the State Government or the Commissioner to determine whether the land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officers of the State Government in the Public Works Department, or any other officer either generally or specially authorised by the State Government in this behalf, or as the case may be, any officer authorised by the Commissioner and for his servants and workmen, --

- F (i) to enter upon and survey and take levels of any land in such locality;
- G (ii) to marks such levels;
- (iii) to do all other acts necessary to ascertain whether the land is adapted for such purpose; and
- H (iv) where otherwise the survey cannot be completed and the

levels taken, to cut down and clear away any part of any standing crop, fence or jungle; A

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof), without previously giving such occupier at least seven days' notice in writing of his intention to do so." B

This is synonymous to the power under Section 4(2) of the Act. In addition to the officer authorised under Section 7 of the Act, any other officer named in Section 3-A is also empowered even before the notification under Section 4(1) is published to inspect the locality and find out whether the land is needed or is likely to be needed for any purpose and on such authorisation it shall be lawful for the officer appointed by the State Government in the Public Works Department or any other officer generally or specially authorised in this behalf, as the case may be, or any officer authorised by the Government or a public servant or a workman, to enter upon and survey the land, take levels of any land in such locality, mark levels and to do all other acts necessary to ascertain whether the land is adapted for such purpose and, where otherwise the survey cannot be completed and levels taken, to cut down and clear away any part of any standing crop, fence or jungle etc. C D E

Section 3-B gives power for awarding damages for doing such acts. This will be only an enabling provision to authorise the officer to do the acts envisaged under Section 3-A of the State Amendment Act in addition to the power under sub-section (2) of Section 4. Ultimately, it is for the State Government to decide whether the land is needed or is likely to be needed for a public purpose and whether it is suitable or adaptable for the purpose for which the acquisition was sought to be made. The mere fact that the authorised officer was empowered to inspect and find out whether the land would be adaptable for the public purpose, it is needed or is likely to be needed, does not take away the power of the Government to take a decision ultimately. F G

Section 6 of the Act gives a conclusiveness to the public purpose found by the Government on publication of the declaration in the Gazette. In other words, it is the State Government that is required to H

A decide whether the land is needed or is likely to be needed for the public purpose. The view of the High Court, therefore, is clearly incorrect.

The appeals are accordingly allowed. The order of the High Court in Writ Petition No. 1417/84 dated February 25, 1987 stands set aside. No costs.

B

R.P.

Appeals allowed.