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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2810 OF 2023

UDAY MANSUCLAL]
Age : 43 years; Occ : Supervisor]
Jay Shankar Guest House,]
Vekaria Road, Village Diu,]
Tehsil Diu, District Diu]
At present residing at]
4 Sandal Avenue, Leicester]
Leicestershire, United Kingdom]
LE4 5HZ]..... Petitioner.

Versus

1] Union Territory of Dadra]
& Nagar Haveli and Daman & Diu]
Through]
The Department of Administration]
2] The Collector,]
District : Diu]
Union Territory of Dadra]
& Nagar Haveli and Daman & Diu]
3] The Land Acquisition Officer]
District : Diu]
Union Territory of Dadra]
& Nagar Haveli and Daman & Diu]
4] The Mamlatdar]
Tehsil Diu, District : Diu]
Union Territory of Dadra]
& Nagar Haveli and Daman & Diu]..... Respondents.

(b) Acquisition for a new Government Guest House/Circuit House is not a tourism project. Therefore, it cannot be regarded as a public purpose as defined under Section 3 (za) r/w Section 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“the 2013 Act”).

(c) Though the Petitioner filed his objections to the proposed acquisition, no opportunity of hearing as contemplated by Section 15 of the 2013 Act was granted to the Petitioner. Any acquisition without an opportunity of hearing is illegal, arbitrary and ultra vires of the 2013 Act.

(d) The locality already has 7 Guest Houses/Circuit Houses. Therefore, acquiring additional land for such Guest House/ Circuit House does not constitute a public purpose.

(e) The Respondents have let out or entered into arrangements with private parties to operate Guest Houses/Circuit Houses in the locality. Therefore, the proposed purpose is not public purpose.

(f) The Petitioner is operating the Guest House/Circuit House, which is now proposed to be demolished, and the

new Guest House/Circuit House has been erected in its place for the last 35 years. Therefore, the proposed acquisition will severely affect the Petitioner without any corresponding benefit to the Respondent.

5. Apart from the above contentions which we noted and reproduced, no other contentions were raised during arguments. There was no whisper of any malafides. There was no other breach of procedure alleged.

6. Mr. Harsh Dedhia, learned counsel for the Respondents, countered the above contentions, *inter alia*, by referring to the 2013 Act and the Affidavit filed by Dharmendra Ratilal Damania, Mamalatdar of Diu of Union Territory for Daman Diu and Dadra Nagar Haveli. He submitted that the Petitioner never filed objections within the prescribed period. He submitted that the acquisition was for a public purpose and that all lawful procedures had been followed. He submitted that the Petitioner had stalled the public project and, therefore, the Respondent had applied for an expeditious hearing of this matter. He urged the dismissal of this petition.

7. The rival contentions now fall for our determination.

8. The acquisition in the present case was initiated with the issue of Social Impact Assessment Notification dated 13 August

2021 under Section 4 of the 2013 Act. (See Exhibit D at paged 29 and 30 of the paper book of this Petition). After that, U.T. Administration Order dated 02 September 2021 constituted the Social Impact Assessment Team under 2013 Act. (See Exhibit – E at page 32).

9. A Preliminary Notification dated 06 December 2021 under Section 11(1) of the 2013 Act was issued. (See Exhibit – G, pages 36 to 38). The Preliminary Notification dated 06 December 2021 stated that land admeasuring 1767 sq.mtrs was required as additional land for construction of Government Guest House in place of existing Circuit House Annexe Building at Jalandhar Beach, Diu, for public purpose as defined in Section 2(1)(vi) of the 2013 Act. This Preliminary Notification also gives the opportunity to the persons interested in objecting to the acquisition to file objections within 60 days from the date of publication of the notification as provided under Section 15 of the 2013 Act before the Collector.

10. Admittedly, Ms. Palav could not show that the Petitioner had filed objections within this 60-day period. The objections were filed only on 30 March 2022 (Exhibit-I) after the publication of the Declaration dated 29 March 2022 under Section 19(2) of the 2013 Act (Exhibit-H at pages 39 & 40). Therefore, the petitioner cannot be heard to complain of the lack of hearing.

11. In the Affidavit filed on behalf of the Respondents, it is stated that a hearing on objections was scheduled for 04 March 2022. However, since no objections were received from any persons, including the Petitioner, the acquisition proceedings proceeded by seeking necessary approval from the Administrator. The Affidavit also explains the further steps taken for the acquisition consistent with the provisions of the 2013 Act. There is no case made out to doubt the averments made in the Respondents' Affidavit in Reply. Even no rejoinder was shown to us or relied upon.

12. The argument that no public purpose was involved in the acquisition cannot be accepted. Section 2 (za) provides that public purpose means the activities specified under subsection (1) of Section 2. Section 2(1) is quite exhaustive, and it states that the provisions of the 2013 Act will apply when the appropriate government acquires land for its own use and for a public purpose and shall include, *inter alia*, projects for sports, health care, tourism, and transportation of space programmes. The definition is inclusive.

13. In **Manimegalai Vs the Special Tehsildar**¹, the Hon'ble Supreme Court has held that public purpose is incapable of precise definition. Each case has to be considered in light of the purpose

1 AIR 2018 SC 2020

for which the acquisition is sought for. It is to serve the general interest of the community instead of the individual's particular interest. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual, is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is a public purpose.

14. In this case, the public purpose is to construct a government guest house in place of the existing circuit house and the Annexe Building at Jalandhar Beach, Diu. The Affidavit states that the tourism department initiated this acquisition. Social Impact Assessment was undertaken, and its report was evaluated, and its recommendations were considered. The Social Impact Assessment Report was placed in the public domain by uploading it on the government website. Thus, all legal procedures prescribed under the 2013 Act were complied with. No arguments were made regarding these compliances.

15. The record shows that the existing Circuit House Annexe, in place of which construction of a government Guest House is proposed, is at the Jalandhar Beach in Diu. The tourism department initiated this proposal. Ms. Palav's contention that a Circuit House or a government Guest House is only a place for

government servants to stay when on official work may not be accurate. They may be accommodated at such guest houses while availing of LTC or even otherwise on visits. To say that the public purpose of constructing a Guest House at Jalandhar Beach has no nexus with tourism would not be correct. The definition of public purpose is inclusive. Even if used for government servants when on duty, it would be for public purpose because government servants are rendering public duty.

16. From the perusal of the Petitioner's belated objections dated 30 March 2022, we cannot say that the acquisition, in this case, is not for the public purpose of tourism or has no nexus with tourism. The Petitioner has himself stated that the Guest House, which is proposed to be acquired, is a landmark for Diu. It finds mention in many international travel guides. Thousands of international travellers have stayed and dined in this guest house and written nostalgic reviews about this property. It has played a major role in bringing Diu to the International Tourist Map. The Petitioner has stated that the government has not recognized the important contribution of this Guest House in attracting tourism footfall.

17. After considering all these factors cumulatively, we cannot accept that the acquisition, in this case, is not for a public purpose. Even the Petitioner does not contend that the acquisition is for some private purpose. No malafides are alleged, and no arguments

were made alleging malafides. The arguments about several other guest houses in the locality or that the petitioner was himself operating a guest house for the last 35 years are not reasonable enough grounds to strike down acquisition proceedings. In exercising judicial review, the Courts are not concerned with the wisdom or commercial expediency of the project. They are concerned with the legality.

18. The Petitioner's contention that he was not given any opportunity of hearing as contemplated by Section 15 of the 2013 Act also cannot be accepted. The record shows that vide Preliminary Notification dated 06 December 2021, the Petitioner was granted an opportunity to file his objections, if any, within 60 days from the publication of the Notification as required under Section 15 of the 2013 Act. Admittedly, no such objections were filed by the Petitioner within 60 days of publishing the Preliminary Notification dated 06 December 2021.

19. Only after the Declaration under Section 19(2) was issued on 29 March 2022, the Petitioner purported to raise objections via communication dated 30 March 2022 (Exhibit I on pages 41 to 45). Since the objections were filed beyond the prescribed period and even after the Declaration under Section 19(2) of the 2013 Act was made, the Petitioner cannot be heard to complain of denial of

opportunity of hearing or complain that his objections were not considered. No breach of section 15 can, therefore, be inferred.

20. Even perusal of the Petitioner's belated objections dated 30 March 2022 would show that the same transgresses the parameters of Section 15(1) of the 2013 Act. Only if the objections are made can the objector insist on an opportunity to be heard in person, or any person authorized by him or by an Advocate. Since, in this case, the Petitioner filed no objection within the prescribed period or even until the declaration was made under Section 19(2), the Petitioner cannot even call himself an objector and insist upon an opportunity of hearing in terms of Section 15(2) of the 2013 Act.

21. The Petitioner's argument about there being seven Guest Houses in the locality or that the Respondents have entered arrangements with private parties for operating Guest Houses, or that the Petitioner is operating a Guest House which is now proposed to be demolished are not valid grounds to strike down the acquisition notifications. If the petitioner perceives any illegalities in the government's transactions, he can always question such transactions or arrangements following the law. However, based on such arguments, the acquisition cannot be struck down or conclude that the acquisition is not for a public purpose.

22. No doubt, the Petitioner might have to face some hardship. But that is not the ground to quash valid acquisition proceedings. Regarding the quantum of compensation, the Respondents' Affidavit states that such an issue can always be raised before the competent authority and that compensation will be provided in accordance with the law.

23. We dismiss this Petition and vacate the ad-interim relief for all the above reasons. There shall, however, be no order for costs.

24. All concerned to act upon an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)

AFTER PRONOUNCEMENT :-

25. At this stage, Ms. Rekha Musale i/by The Laureate, the learned counsel for the Petitioner, seeks extension of interim relief for four weeks.

26. Though this request is opposed by Mr. Harsh Dedhia, the learned counsel for Respondent No.1, we extend the interim relief by four weeks as prayed for.

(Jitendra Jain, J)

(M.S. Sonak, J)