

PETITIONER:
BAJIRAO T.KOTE (DEAD) BY LRS. & ANR.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT 08/12/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
PARIPOORNAN, K.S.(J)

CITATION:
1995 SCC (2) 442 JT 1995 (1) 85
1994 SCALE (5) 138

ACT:

HEADNOTE:

JUDGMENT:

K. RAMASWAMY, J.

1. This appeal by special leave arises from the order of the High Court Bombay dated June 13, 1979 in writ petition no. 587 of 1979. The Govt. of Maharashtra published in the State Gazette the notification issued under s.4(1) of the Land Acquisition Act 1 of 1894 (for short, 'the Act') on October 11, 1972, acquiring the lands including House No.594/B admeasuring about 25" x 25" for public trust "Saibaba Sansthan Shirdi", the validity of which was challenged by the appellants in the writ petition. The Division Bench rejected their writ petitions in limine. Thus this appeal.

2. It is contended for the appellants that the specification of the "public purpose" in the notification is vague and acquisition for Saibaba Sansthan is of no public purpose. For the first time before the High Court, the respondents had disclosed in their counter affidavit, namely, that the land was needed for joining two temples, i.e. Saibaba and Dwarka Mai Mandir. Even that also is of no public purpose, since those two temples have been in existence for well over years without any need for them to be connected. There is no

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specification either in the notification or in the counter affidavit to disclose the purpose behind the proposed acquisition denying to the appellants an opportunity to effectively object to the acquisition. Right of objection statutorily given to the owner of the land under s.5A of the Act should not be made illusory by vague statement of public purpose. It is, therefore, a colourable exercise of the power and also is vitiated on the ground of vagueness.

3. It is also contended that by running the business of selling flowers in the house proposed to be acquired to the pilgrims and a small hotel is being run, they would also serve public purpose of catering service to the pilgrims

denying their livelihood, offend their right to life. Attempts were made to purchase the property from the appellants by negotiation which were turned down by the Charity Commissioner by his finding that the purchase does not serve any public purpose. Therefore, the exercise of the power by the State under s.4 is malafide amenable to judicial review under Art.226 and Art. 136 of the Constitution. It is also further contended that for the construction of a huge Dharamshala, a resting room and Prachar Hall, the area under acquisition is too small. The total extent is only 60 sq. meter in all and no useful purpose will be served by acquiring such a small piece of land for a large project. The same contention are raised in the other connected appeal.

4. These contentions have been refuted by Sri Ganpule, the learned senior counsel for the second respondent, Sansthan. The questions, therefore, are whether the public purpose specified is vague and liable to be quashed on that ground and whether notification published under s.4(1) of the Act is vitiated by malafide or colourable exercise of the power. The notification mentions thus: "Whereas it appears to the Commissioner, Poona Division that lands 'specified in the Schedule II hereto are likely to be needed for public purpose, viz., for public trust Saibaba Sansthan, Shirdi. It is hereby notified under the provision ors.4 of the Land Acquisition Act, 1894 that the said land are likely to be needed for the purpose specified above". The question, therefore, is whether this notification is vague and the public purpose mentioned therein is liable to be quashed on that ground. The leading judgment of this Court in this behalf is the ratio laid down in Smt. Somavanti & Ors. v. The State of Punjab & Ors., 1963 (2) SCR 774. The facts therein were that the State of Punjab exercised the power under s.4(1) and issued the notification followed by the declaration under s.6 that the land was likely to be needed by the government for a public purpose, namely, for the "setting up of a factory" (elaborated later on) for manufacturing various ranges of refrigeration compressors and ancillary equipments. It was contended that the public purpose is a colourable exercise of the power and it is no public purpose and that, therefore, the exercise of the power for the benefit of the company is a colourable exercise of the statutory power offending their right to hold the property under Art. 19(1)(g) of the Constitution. The Constitution Bench per majority dealing with that question held at p.801 that the Act made no attempt to define public purpose in a compendious way. Public purpose is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive definition of it. It

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is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose. At p.804 it was held that whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Govt. to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State, the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. If it appears that what the Government is satisfied about is

not a public purpose but a private purpose or no purpose at all, the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final. Therefore, the Constitution Bench upheld the notification when it was mentioned that the public purpose was for industrial development without any specification.

5. In *V.M. Soneji & Anr. v. State of Bombay (Now Gujarat) & Ors.*, 1964 (3) SCR 686, another Constitution Bench considered the question, when the notification under s.4(1) mentioned public purpose, namely, "for State Transport Corporation". The contention thereto also was that it was vague and is a colourable exercise of power. The Constitution Bench negatived the contention and held that there is a clear declaration of the government that the purpose of acquisition was a public purpose even though the land was being acquired for a corporation and not for the State. The acquisition must nevertheless be said to be for public purpose. In *Ratilal Shakarabhai & Ors. v. State of Gujarat & Ors.*, 1970 (2) SCC 264, the facts were that the land was acquired for public purpose, namely, for housing scheme undertaken by a Cooperative Society registered under the Cooperative Societies Act and sanctioned by the State Govt. for the employees of a company. It was contended that the public purpose was vague. A bench of three Judges considered the question whether it was vague and liable to be quashed? In paragraph 8, it was held that there was no substance in the contention that the notification under ss. 4 & 6 was vague. They are similar to notifications usually issued under ss. 4 & 6. Therein it is clearly mentioned that the proposed acquisition was for public purpose. Public purpose in question was also stated therein. In *Jage Ram & Ors. v. State of Haryana & Ors.*, 1971 (3) SCR 871, a bench of two Judges was to consider whether the public purpose elaborated in the affidavit filed under the State Govt. that it was needed to start new industry is vague and liable to be quashed. It was held that starting an industry is a public purpose. It is essentially a question that has to be decided by the government. There is no denying the fact that the starting of new industry is in public interest. Therefore it was held that the notification under s.4(1) and the declaration under s.6 were not vague.

6. In *Gopal Krishan Das v. Sailendra Nath Biswas & Anr.*, 1975 (1) SCC 815, the facts therein were that the notification under s.4(1) was published for the public purpose of "construction of dispensary building and other institutions connected with E.S.I. Scheme" It was contended

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needed for the extension of soil conservation and other improvement work in the catchment area of Sukhna Lake, Chandigarh and for raising a green belt around the Capital was held to be public purpose and was not vague. In *Srinivasa Coop. House Building Society Ltd. v. Madam Gurumurthy 'Sastry & Ors.*, JT 1994 (4) SC 197, a bench of two judges, to which one of us K.Ramaswamy, J. was a member, considered the question whether acquisition for a private cooperative society was a public purpose. Considering that question, this Court held that:

"Public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. 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. Yet it is not beyond the purview of judicial scrutiny"

7. In that case it was found that since the acquisition was for a private coop. house building society not sanctioned by the State Govt., it was held that the acquisition was not for public purpose and that coop. society was also not a company. In *M.P. Housing Board v. Mohd. Shaft & Ors.*, 1992 (2) SCC 168 on which strong reliance was placed by the counsel for the appellant. The facts were that the notification issued under s.4(1) did not specify any public purpose. The notification merely reads that the land detailed in the schedule attached thereto was required for a public purpose. The notification further disclosed that the State Govt. was being of the opinion that the provision of sub-s.(1) of s.17 was applicable in respect of the land required to be acquired, it dispensed with the enquiry under s.5-A of the Act. The schedule of the land was given. In that context a bench of three Judges considered the controversy and had held that the latter elaboration that the land was acquired for the planned development under the M.P. Housing Construction Board was vague and that, therefore, it was not a public purpose. Accordingly the notification was quashed. It is seen that this Court consistently has taken the view that if the purpose has been mentioned in the notification as a public purpose, whether it "specified" the public purpose or not, the court did not go behind the public purpose nor seek specification in the notification published under s.4(1). When declaration un-90

der sub-s.(1) ors.6 was published, the public purpose was held to be conclusive by operation of sub-s.3 ors.6. If there is any vagueness and if it is specified in the counter affidavit or is evident from the record, it was also accepted by this court amplifying the public purpose in the notification. If it is not a public purpose, i.e. to serve general interest but individual interest, it was held to be a colourable exercise of power. In *M.P. Housing Board 's*, case as no mention was made of any public purpose in the notification issued under s.4(1), the subsequent clarification was not accepted by this Court. This Court did not lay down any law contrary to or inconsistent with the law laid down by the two Constitution Bench Judgments

and successive three Judge Benches and two Judge Benches. Therefore, the ratio therein must be understood in the backdrop of the facts and renders little assistance to the appellants.

8. The contention that it is also a malafide exercise of power has no legs to stand. In *Abdul Husein Tayabali & Ors. v. State of Gujarat & Ors.*, 1968 (1) SCR 797, a bench of three Judges of this Court considered whether the State Govt. has exercised the power mala fide without applying its mind to the facts of the case. Considering the facts of that case and the allegations made in the petition and the counter affidavit filed by the State Govt. explaining the circumstances in which the notification under s.4(1) and the declaration under s.6(3) came to be published, it was held that it is not a mala fide exercise of the power. Enquiry under s.5A was conducted and a report submitted thereunder was considered and then the declaration under s.6(1) was published. It is seen that in this case even before the enquiry under s.5A was conducted and the report submitted and the declaration under s.6(1) could be made, the appellants had approached the High Court and sought to have the notification published under s.4(1) quashed.

9. It is seen that the public trust Saibaba Sansthan - Shirdi, needs the land for the public purpose, namely, two temples are needed to be connected by a road though the land occupied by the house sought to be acquired. It is true that Saibaba Temple at Shirdi is run by a public trust maintaining Saibaba Temple at Shirdi and other temples and Dharamshala prayer Hall. Thousands of pilgrims daily visit Saibaba Temple at Shirdi to pay their homage and seek blessings of the mystic secular saint Sri Saibaba. Each religion claims that he belongs to their faith but the great saint never proclaimed himself to be of a particular faith. Therefore, all sections of the people in India have great unflinching faith, devotion and absolute belief in him and every day thousands of pilgrims throng Shirdi to pay their homage and seek his blessings. Though physically he was not present, the devotees believe that he is still surviving.

10. The land of India is known for such great saints and yogies hailing from different faiths. One good example is of two brothers, by name, Eider and Younger, bala-yogies in Mummidivaram village in East Godavari of Dist. Andhra Pradesh, the Eider one started his penance at the age of 16 and the younger one at the age of 7 years respectively. They stopped taking any food and water and locked themselves in two separately built ashrams from outside and the keys were kept in the custody of the District Magistrate. According

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to the wishes of the yogi, on Mahasivaratri day, in the midnight at the stroke of 12.00 without a watch, hissing sound would be heard and the doors were to be opened and the Eider yogi would give darshan to the devotees on a speciallyeracted platform at a distance of 500 sq. yards and after 10 minutes the door from outside would be closed and he would get himself seated on the platform after 10 minutes and thereafter the closed platform would be opened and throughout the day he would give darshan. The Eider yogi used to give darshan and retired back into Ashram on the next day midnight. Both brothers closed their eyes. There were neither windows to get air nor ventilators to exhaust air from inside. Keeping the ashram closed throughout the year without air, not only makes the life impossible to live but also bad Odour would emit contrarily when the doors were opened, perfume smell come out from the rooms. They did their ceaseless penance for well over 40 years. It is a

miracle that they surpassed human physiology and they know the latest technological development. Eider yogi started his penance even when electricity was not known in the villages. He knows the mechanism of electrical operations and explained new developments in the country by his signals since he observed only silence. It is highly impossible to walk when they always keep themselves seated with crossed-legs. But within a short period of 5 to 10 minutes, he used to reach the platform. It is also impossible to know how they know the latest technological developments when they closed the eyes and lock themselves in the Ashram. These revelation are inexplicable and how they survive doing penance for more than 40 years without taking any food and water and without excretions and bath

When the doors were opened, it would be seen that they appear as if they just had bath and had wet clothes but nothing could be found. The entire room gives perfume smell. It is difficult to explain these miracles where from such perfume smell comes and not a particle of dust was found in the rooms. India has produced several such great saints and yogies but these are only illustrative.

11. Be that as it may, it cannot be gainsaid that providing access to the temples is not a public purpose. The exercise of the power under s.4(1) of the Act, therefore, is neither colourable nor malafide. It is true that this court in *Tata Cellular v. Union of India*, 1994 (3) Scale, 477, by a bench of three Judges, considering the scope of judicial review of the administrative action (grant of licence by tenders) held that the administrative actions of the State or its instrumentalities are amenable to judicial review. As mentioned earlier when the State Govt. have exercised the power under s.4(1) for a public purpose and the public purpose was mentioned therein, the exercise of the power cannot be invalidated on grounds of malafides or colourable exercise of power so long as the public purpose is shown and the land is needed or is likely to be needed and the purpose subsists at the time of exercise of the power. It is primarily for the State Government to decide whether there exists public purpose or not, and it is not for this Court or the High Courts to evaluate the evidence and come to its own conclusion whether or not there is public purpose unless it comes to the conclusion that it is a malafide or colourable exercise of the power. In other words the exercise of the power serve no public purpose or it serves a private purpose.

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12. It is true that an attempt was made on an earlier occasion to purchase the property by negotiation but it was turned down by the Charity Commissioner and he refused to grant permission. Consequently, the trust was constrained to approach the government requesting to acquire the land. The government did consider the circumstances and exercised that power. The Act does give the power to negotiate by private sale or even during pending acquisition proceedings negotiations by private sale could be made in which event the need to determine the market value under the Act would be obviated and the compensation would be determined in terms of the agreement reached between the Land Acquisition Officer and the owner of the land or person having an interest in the land, subject to the prior approval of the Govt. Therefore, the failure to purchase the land by negotiation and the exercise of the power under s.4(1) thereafter, by no stretch of imagination, be considered to be a mala fide or colourable exercise of the power. Therefore, we do not find any infirmity or illegality in the

notification published under s.4(1) warranting interference.
Accordingly, the appeal is dismissed but without costs.

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JUDIS