

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7352 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 - Yes

2 to 5 - No

VIJAY SAKARLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR GM AMIN for Petitioner
MR UDAY BHAATT, ASSTT. GOVERNMENT PLEADER for
Respondents Nos. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/12/97

ORAL JUDGEMENT (Per: C.K. Thakkar,J.)

Rule. Mr.Uday Bhatt, learned Asstt. Govt.
Pleader appears and waives service of rule on behalf of
respondents. In the facts and circumstances, the matter

is taken up for final hearing today.

.RS 2

#. This petition is filed by the petitioner for an appropriate writ, direction or order calling upon the respondents to initiate proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') and to declare award in respect of the land of the petitioner bearing Survey No.62 situated in the sim of Village Sarkhej, Taluka City, District Ahmedabad admeasuring 1435 sq.metres and by directing the respondents to pay compensation to the petitioner with interest thereon.

#. It is the case of the petitioner that he inherited part of land bearing Survey No.62 situated in the sim of Village Sarkhej. It is asserted by him that possession of the said land was forcibly taken without following due process of law. Said action was taken under the guise of acquisition of land, but no compensation was paid to him. He, therefore, served a notice through an advocate on the respondents. When award was declared, he came to know that the petitioner's land bearing Survey No.62 was not mentioned at all and thus he was deprived of compensation to which he was otherwise entitled. He, therefore, approached this Court by filing this petition.

#. When the petition came up for hearing, following order was passed by Division bench on October 8, 1997:-

"The learned counsel for the petitioner states that the petitioner is prepared to accept the compensation at the same rate and conditions at which it has been awarded to the other land holders under acquisition of 1991.

Notice returnable on 10th November,1997."

#. Today, we have heard the learned counsel for the parties. Mr.Amin, learned counsel for the petitioner stated that the petitioner is the owner of land and that he is entitled to compensation. He cannot be deprived of both, namely possession and ownership of land as well as compensation. If the respondent authorities do not want the land, it may be handed over to the petitioner. But if the respondents want to acquire land in accordance with law, they will have to pay compensation to the owner, i.e. to the petitioner. By not paying compensation and not including the said Survey number in the award, an error of law has been committed which requires interference by this Court.

#. Mr.Bhatt, on the other hand, stated that the land was of Devasthan Inam. It did not belong to the petitioner or his forefathers. In view of that fact, when the possession was taken over and award was declared, the said survey number was not included. Regarding the so-called ownership of the petitioner and the documents in support thereof, it was stated that the said documents were not produced at the relevant time and now it is not open to the petitioner to rely on any document. Mr.Bhatt under the instructions of Mr.U.L.Dave, Deputy Executive Engineer from the respondent No.1 who is present and under the instructions, Mr.J.J.Acharya, Process Survey Officer in the Land Acquisition Office, Ahmedabad, states that the land in question will now be included in the award and an appropriate order will be passed in accordance with law as expeditiously as possible preferably within four months from today. On that statement being made, in our opinion, nothing more requires to be done so far as the present petition is concerned. Hence, it is disposed of accordingly. Rule is made absolute to the above extent. In the facts and circumstances of the case, no order as to costs. Liberty to apply in case of difficulty.

Sd/-

(C.K.Thakkar,J.)

Sd/-

Dt:30-12-1997 (R.P.Dholakia,J.)
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