

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 6061 of 2008
With
SPECIAL CIVIL APPLICATION No. 6057 of 2008
With
SPECIAL CIVIL APPLICATION No. 6063 of 2008
With
SPECIAL CIVIL APPLICATION No. 6066 of 2008
With
SPECIAL CIVIL APPLICATION No. 6067 of 2008
With
SPECIAL CIVIL APPLICATION No. 6068 of 2008
With
SPECIAL CIVIL APPLICATION No. 6921 of 2008
With
SPECIAL CIVIL APPLICATION No. 11776 of 2006
With
SPECIAL CIVIL APPLICATION No. 11730 of 2006
With
SPECIAL CIVIL APPLICATION No. 12136 of 2006
And
SPECIAL CIVIL APPLICATION No. 10055 of 2008
With
CIVIL APPLICATION No. 3778 of 2008
In SPECIAL CIVIL APPLICATION No. 12136 of 2006
With
CIVIL APPLICATION No. 3292 of 2008
In SPECIAL CIVIL APPLICATION No. 11730 of 2006
And
CIVIL APPLICATION No. 3293 of 2008
In SPECIAL CIVIL APPLICATION No. 11776 of 2006

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANAIYALAL MAGANBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)
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Appearance :

MR MIHIR JOSHI, SR.ADVOCATE with MR SP MAJMUDAR for the Petitioner.
MS MINI NAIR, AGP for Respondent(s) : 1,
Respondent(s) : 2 - 4 SERVED .
MR KS NANAVATI, SR.ADVOCATE with MR KEYUR GANDHI AND MR RAJ YADAV for
NANAVATI ASSOCIATES for Respondent(s) : 5,
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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 30/09/2008

COMMON ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

This group of writ petitions preferred under Article 226 of the Constitution of India are taken out by the owners of the lands situated at Hazira, Taluka Choryasi, Surat against the acquisition proceeding for the purpose of the respondent - Essar Steel Limited (hereinafter referred to as, "**the Company**").

The Company has an existing project at Hazira, Taluka Choryasi, Surat. On 26th April, 2004 the Company moved the Collector, Surat to acquire lands of village

Hazira admeasuring 164-Hectare-82-Are-56 sq.meters. On 8th July, 2004, a fresh proposal was made for acquisition of 246.8 hectares of land. A further proposal for acquisition of around 77 hectares of land was made on 16th September, 2004. Pursuant to the said proposals, acquisition proceeding of the said lands was initiated on 3rd June, 2005 by issuing notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as, "**the Act**"). The petitioners and others had filed their objections on 3rd June, 2005. After considering the said objections, declaration under Section 6 of the Act came to be issued on 16th January, 2006. In respect of some 125 hectares of land consent awards as envisaged by Section 11(2) of the Act were made on 31st July, 2007. The award for compensation as envisaged by Section 11(1) of the Act for 124 hectares of lands has been declared on 21st January, 2008. It is this acquisition proceeding which is under challenge before us.

Learned advocate Mr.Joshi has appeared for the petitioners. He has submitted that some of the petitioners had earlier approached this Court to challenge the acquisition proceeding after issuance of

notification under Section 4 of the Act. He has submitted that the petitions at this stage of the acquisition proceeding are maintainable as the respondents - authorities have failed to follow the required procedure under Chapter VII of the Act. He has submitted that no inquiry is conducted nor the report as envisaged by Rule 4 of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as, "**the Rules**") is made by the Collector. No satisfaction has been recorded as envisaged by the said rule. The acquisition proceeding is, therefore, liable to be set-aside. He has also submitted that the procedure envisaged by Section 40 of the Act has also not been followed. In the submission of Mr.Joshi the entire proceeding is contrary to law and calls for interference by this Court. In support of his submissions, Mr.Joshi has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Devinder Singh and others v/s. State of Punjab and others** [(2008)1 SCC 728]. Mr.Joshi has submitted that the prejudice caused to the petitioners by non-compliance of the mandatory procedure is inherent. It does not need to be established. In support thereof, he has relied upon the judgments in the matters of **State of**

Gujarat and another v/s. Patel Chaturbhai Narsibhai and others [(1975)1 SCC 583] and of Swasthya Raksha Samiti Rati Chowk v/s. Chaudhary Ram Harakh Chand (D) by LRs. and others [(2005)2 SCC 718].

Learned advocate Mr.Majmudar has appeared for the petitioners. He has submitted that the appropriate Government failed to cause an inquiry as envisaged by Section 40 of the Act. Hearing of the objections under Section 5A of the Act was a mere mechanical process. Such hearing cannot replace the inquiry envisaged by Section 40 of the Act. He has further submitted that no notice of hearing was given before the Collector made report under rule 4 of the Rules. The prejudice caused to the petitioners is inherent. In support of his submissions, he has relied upon the judgments in the matters of **Reliance Petroleum Limited v/s. Zaver Chand Popatlal Sumaria and others [(1996)4 SCC 579]; S.L.Kapoor v/s. Jagmohan and others [(1980)4 SCC 379]; of Tej Kaur and others v/s. State of Punjab and others [(2003)4 SCC 485]; of Urban Improvement Trust, Udaipur v/s. Bheru Lal and others [AIR 2002 SC 3309]; of M/s.Larsen and Toubro Limited v/s. State of Gujarat and others [1998(1) GLH 683]; of Dhirajbhai**

Thakorebhai Patel and others v/s. Special Land Acquisition Officer, Surat and others [1989(2) GLH 133] and of **Aflatoon and others v/s. Lt.Governor of Delhi and others** [AIR 1974 SC 2077(1)]

The petitions are contested by the State Government and the Company. Ms.Nair has appeared for the State Government. She has relied upon the counter affidavit made by the State Government. She has submitted that in view of the enquiry conducted under Section 5A of the Act, inquiry as envisaged by Section 40 of the Act was not necessary. Each objection raised by the concerned land owner was considered and decided by the Collector.

Mr.Nanavati has appeared for the Company. He has relied upon the counter affidavit filed by the Company. He has submitted that the petitions after declaration of award under Section 11 of the Act are not maintainable. In support thereof, he has relied upon the judgments in the matters of **Reliance Petroleum Limited v/s. Zaver Chand Popatlal Sumaria and others** [(1996)4 SCC 579]; of **Jorubha Raghaji and others v/s. State of Gujarat and others** [2005(4) GLR

3588]; of **Pratapsang Naranji Jadeja v/s. State of Gujarat and others** [1998(1) GLH 499]; of **Ramniklal N.Bhutta and another v/s. State of Maharashtra and others** [(1997)1 SCC 134] and of **Amarnath Ashram Trust Society and another v/s. Governor of U.P. And others** [(1998)1 SCC 591]. He has submitted that once there was a full-fledged inquiry in respect of the objections lodged under Section 5A of the Act, the inquiry envisaged by Section 40 of the Act was not warranted. In support thereof, he has relied upon the judgment in the matter of **Pratapsang Naranji Jadeja v/s. State of Gujarat and others** [1998(1) GLH 499]. He has taken us through the report made by the District Collector. He has submitted that unless the petitioners prove the prejudice caused to them, the petitions cannot be entertained for want of observation of principles of natural justice. He has submitted that the requirement of land for a company is also a public purpose. He has also submitted that compensation offered by the Company by private negotiations was much higher than the prevalent price in the area. Besides, the Company has also undertaken construction of housing colony for rehabilitation of the land owners affected by the land acquisition. Most

of the land owners have accepted the offer made by the Company. Only 23 families are before this Court. He has submitted that unless the acquisition proceeding is completed, the Company cannot expand its business as planned. It would be a loss to national economy and production.

The acquisition of land for companies is regulated by the provisions contained in Part VII of the Act comprising Sections 38 to 44. Section 39 of the Act provides for previous consent of the appropriate Government and execution of an agreement by company as provided under the Act. Section 40 of the Act prohibits the appropriate Government from granting consent unless it is satisfied either on the report submitted by the Collector under Section 5A(2) of the Act or by an inquiry held as provided in that section of the matters referred to in clauses (a), (aa) and (b) of sub-section (1) of Section 40 of the Act. In other words, the said Section 40 enjoins the appropriate Government to record its satisfaction in the manner and in respect of the matters provided in that section before it gives consent as envisaged by Section 39 of the Act. Section 41 of the Act provides

for an agreement between company and the appropriate Government for the matters referred to in clauses (1) to (5) of that section.

In exercise of powers conferred by Section 55 of the Act, the Central Government has made the Land Acquisition (Companies) Rules, 1963. The said Rules apply to acquisition of land for all companies under Part VII of the Act. Rule 3 thereof provides for constitution of a Land Acquisition Committee. Rule 4(1) thereof enjoins the appropriate Government to direct the Collector to submit a report on the matters referred to in clauses (i) to (vi) of that sub-rule. Sub-rule (2) thereof enjoins the Collector to hold inquiry into the matters referred to in sub-rule (1). Clause (i) thereof provides, *inter alia*, for consultation with Senior Agricultural Officer of the district. It is evident that the above referred provisions are mandatory. They have been held to be mandatory by a catena of judgments.

In the present case, as recorded hereinabove, the proposal for acquisition of lands was mooted as far

back as on 26th April, 2004 and proposal for acquisition of additional land was made on 16th September, 2004. The Collector had submitted his report as envisaged by Rule 4 of the Rules on 30th December, 2004. The report contained the details of the lands sought to be acquired, the nature of its use and the quality of the agricultural land. The appendix to the said report specifically answered the matters referred to in clauses (i) to (vi) of sub-rule (1) of Rule 4. After considering the said report, the appropriate Government accorded its approval on 17th January, 2005. Since then, the acquisition proceeding was initiated on 3rd June, 2005. Before issuance of declaration under Section 6 of the Act on 16th January, 2006, on 1st October, 2005 the Company had entered into the agreement with the appropriate Government as envisaged by Section 41 of the Act. Pursuant to the valuation made on 9th June, 2005, the cost of acquisition (Rs.3,13,73,716=00) was deposited by the Company on 16th June, 2005. The objections lodged under Section 5A of the Act were heard over a period of ten days from 30th August, 2005 to 26th September, 2005. The report under Section 5A of the Act was made on 1st October, 2005. In view of the inquiry and report made

under Section 5A(2) of the Act, the previous inquiry as envisaged by Section 40 of the Act was not necessary. As disclosed in the counter affidavit made by the appropriate Government, the appropriate Government before granting consent, did consult the Land Acquisition Committee as envisaged by Rule 3 of the Rules. It has also come on record that the Collector, before submitting his report as envisaged by Rule 4 of the Rules, did consult the District Agricultural Officer.

In above view of the matter, we are of the opinion that before the appropriate Government issued declaration under Section 6 of the Act, it did comply with the mandatory requirements as envisaged by Sections 39, 40 and 41 of the Act and Rules 3, 4 and 5 of the Rules.

This Court exercising power of judicial review under Article 226 of the Constitution of India will not delve into the sufficiency of materials before the appropriate Government. Suffice that the procedure for acquisition of the land for companies as envisaged by the Act and the Rules is followed.

Further, in our opinion, the challenge to the acquisition proceedings after declaration of award under Section 11 of the Act need not be entertained. It is evident that the petitioners were involved with the acquisition proceedings right from the inception i.e. before the Company moved the proposal for acquisition of the lands, the Company on its own made a survey and made attempt to negotiate the matters. Thus, the petitioners were aware of the motion to acquire their lands even prior to the publication of notification issued under Section 4 of the Act. They had lodged objections as envisaged by Section 5A of the Act and were also aware of the issuance of declaration made under Section 6 of the Act. Nevertheless, the petitioners allowed the matters to proceed further and waited for the awards to be made under Section 11(1) of the Act. This leads to a necessary inference that the petitioners were waiting to ascertain whether the compensation awarded met their expectation. Writ petitions earlier filed by some of the present petitioners is no excuse for the belated challenge to the acquisition proceedings in the present set of petitions.

For the aforesaid reasons, we dismiss these petitions. Notice is discharged. Rule nisi issued in Special Civil Application Nos.11776/2006, 11730/2006 and 12136/2006 is discharged. Interim relief, if any, stands vacated. Civil Applications stand disposed of.

It is clarified that this order shall not preclude the land owners/petitioners from seeking reference under Section 18 of the Act. This order will not allow the Company to exclude the petitioners from the rehabilitation scheme and the piece of residential land assured to the land owners.

Learned advocate Mr.Majmudar appearing for the petitioners states that the petitioners are not yet dispossessed pursuant to the award made under the Act. The status quo as to the possession of the disputed lands be maintained for some time. The request is granted. The possession of the disputed lands will not be taken away from the petitioners till 31st January, 2009.

Registry will maintain copy of this order in each petition.

(Sharad D.Dave, J.)

(Ms.R.M.Doshit, J.)

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