

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 10530 of 2006****With****SPECIAL CIVIL APPLICATION NO. 10531 of 2006****TO****SPECIAL CIVIL APPLICATION NO. 10533 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****and****HONOURABLE MR.JUSTICE A.G.URAIZEE**

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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 or any order made thereunder ?	

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**CHATURBHAI GOKALBHAI PADSHALA....Petitioner(s)****Versus****DISTRICT DEVELOPMENT OFFICER & 4....Respondent(s)**

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**Appearance:****MR PRADEEP PATEL, ADVOCATE for the Petitioner(s) No. 1****Mr.DHAWAN M. JAYSWAL, ASSISTANT GOVERNMENT PLEADER for the**

Respondents No. 3 - 4

MR HS MUNSHAW, ADVOCATE for the Respondent(s) No. 1 - 2

MR NM KAPADIA, ADVOCATE for the Respondent(s) No. 5

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**  
and  
**HONOURABLE MR.JUSTICE A.G.URAIZEE**

**Date : 31/08/2015**

**ORAL JUDGMENT (PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

These writ petitions arise out of similar background. The facts are similar and so are the prayers. We may therefore, refer to the pleadings in Special Civil Application No.10530 of 2006. The petitioner is an agriculturist and is owner of agricultural land bearing Survey No.49/1 of Village Kerala, Taluka Lathi District Amreli, admeasuring 2 hectors, 8 Are and 41 square meters. The petitioner has challenged the action of the State authorities in laying a road between villages Kerala and a nearby village Dudhala. According to the petitioner such proposed road passes through the agricultural land of the petitioner. According to the petitioner the Government not having undertaken any proceedings for acquisition of the petitioner's land is going to undertake road construction. According to the petitioner the action on the part of the authorities in attempting to lay the road is wholly impermissible. The petitioner therefore, prayed for a declaration that decision of the authorities to construct paved road between villages Kerala and Dudhala which passes through the land of the petitioner is without authority of law since no acquisition proceedings have been

initiated.

2. According to the petitioner there is an existing narrow cart road which the said authority proposes to widen, pave it and construct into a fullfledged connecting road between the said two villages. As per the petitioner such road would occupy large portion of the petitioner's agricultural land bearing Survey No.49/1. Admittedly, no acquisition proceedings have been initiated, no compensation for the land lost is paid. The action of the respondents is therefore, wholly impermissible and unauthorized. According to the petitioner the Government simply yielded to the demand of a local MLA (Member of Legislative Assembly) under the pressure from residents of the nearby villages. The petitioner has produced revenue record, Form 7/12 and other forms pertaining to the land in question to establish his ownership and occupancy.

3. Official respondents have filed several replies. In first such reply dated 30.05.2006 filed by respondent no.2- Executive Engineer, it is stated that there is an existing cart road. Five years earlier the same was repaired by one Jaldhara Trust from its own funds by doing earthen work. At that time the petitioner did not object. The road is being regularly used by all the villagers and residents of surrounding areas. The road is approximately 22 to 28 feet wide. It is further stated that after following proper procedure contract was awarded to a contractor at cost of Rs.33.5 lacs. Work

worth Rs.12 lacs was already over.

4. Respondent no.3- District Collector, Amreli filed his reply dated 11.08.2011 pointing out that the petitioner had filed Regular Civil Suit No.2 of 2006 before Civil Court, Amreli for the said purpose. It is stated that no acquisition proceedings were initiated since the same were not required. Respondent no.4- District Inspector, Land Records (DILR) has also filed replies. In first such reply dated 11.08.2011, he has stated that,

“6. I respectfully say and submit that annexed hereto and marked as ANNEXURE R-1 is the copy of the measurement sheet reflecting survey no.49/1. A perusal of the same indicates that existing road, as it stands today, does not fall within the land of the petitioner. In fact, the road has been laid on the northern side (towards top of the page) of the boundary of survey no.49/1. Thus, there is no question of any land of the petitioner being utilized for the purpose of laying road.

7. I respectfully say and submit that the two dotted lines shown in the measurement sheet reflects the erstwhile usage of the land as road by the people of village Kerala, which was falling within Tal. Lathi. When Gujarat was not a single State, Lathi and Gaikwad were different states. Both were having there (sic., their) own road, for the purpose of having access to their respective land, one was not using the road of the other. Thus, the portion towards north of the top dotted line was being used as road by erstwhile

Gaikwad states.

8. I respectfully say and submit that at present the road had been laid just above the top dotted land and now the same is being used as access for various survey numbers including survey number of the petitioner. Also it is used as a way from Village Kerala to Village Village Dudhala. In fact, this is 10 mtrs wide road. Annexed herewith and marked as ANNEXURE-R/ 2 is the copy of the Tippan Book, which indicates the original measurement, carried out at the relevant time. Original document may be produced at the time of hearing for perusal of the Hon'ble Court.

9. I respectfully say and submit that at present only 5 mtrs wide road is laid – for which land of rest 5 mtrs is dug and soil available there from is being utilized for laying road. Thus, towards the petitioner survey no., 5 mtrs wide road is laid and towards the erstwhile Gaikwad State survey numbers land is dug, for taking out soil.

10. I respectfully say and submit that the exact position of the road as it is laid is marked by the red ink. This indicates that none of the portion of the land survey no.49/1, 50/2 and 48 are utilised for laying the road.”

5. One Padshala Dakubhai Kurjibhai, who was allowed to be joined at his request, referred himself to be newly added respondent no.4 (actually, it should be respondent no.5) has filed multiple replies. In first such reply dated 04.11.2012 he has

opposed the petition on several grounds including that proposed road would benefit residents of several villages. The petitioners are the only persons, who have opposed construction of road. It is stated that the petitioners, who are owners of Survey No.49/1 and other agricultural lands have themselves encroached Government land. They cannot oppose construction of road, which is passing through the land belonging to Government, not of the petitioners.

6. The petitioner has filed rejoinder affidavits denying the averments made by the respondents in their different affidavits, principally reiterating his original stand in writ petition that proposed road would pass through the land of the petitioner and Government cannot lay down such a road without following acquisition proceedings and paying compensation for the same.

7. Learned counsel Mr.Pradeep Patel for the petitioner contended that record would clearly demonstrate that the petitioners are the owners of the agricultural land in question. The State authorities have no power to lay down any road through the land of the petitioners without acquiring the land under the Land Acquisition Act. In the present case admittedly, no such acquisition proceedings have been initiated, no compensation has been paid. Merely because previously there was cart road for the benefit of the nearby fields would not authorize the State Government to construct a pucca road for the benefit of general public, that too

piercing the agricultural land of the petitioners.

8. On the other hand counsel for the respondents submitted that there is nothing on record to suggest that proposed road passes through the land of the petitioner. DILR has taken measurement and filed affidavits clarifying that no portion of road occupies any portion of the petitioners' land. The petitioners themselves have filed civil suit in which interim injunction was refused by the Civil Court. They pointed out that proposed road would benefit residents of several villages in surrounding area. Work is stalled since long resulting into loss of public revenue and difficulties to the population of surrounding area.

9. Having heard learned advocates for the parties and having perused record the following aspects emerge:

(i) The petitioners have filed Regular Civil Suit No.2 of 2006 before the learned Principal Senior Civil Judge, Amreli. In such proceedings the Civil Court has refused to grant interim injunction. Application – exh.5 was dismissed by order dated 05.05.206. Later on the petitioners withdrew the said suit, presumably for filing the present writ petitions.

(ii) It is admitted position that no acquisition proceedings have been initiated by the State authorities for acquiring any portion of the land of the petitioners.

(iii) Case of the State authorities is that such acquisition is not necessary since no portion of the land of the petitioners is being utilized for construction of the road. They point out that there is existing cart road which was previously repaired by private trust through its own funds. It is the same road which Government proposes to convert into a pucca road.

10. There is nothing on record to suggest that measurement made by DILR and precise location of the road viz-a-viz land of the petitioners is in any manner defective or not in consonance with the record. Precise boundaries of the petitioners' lands and boundary of the Government's proposed road would be a matter of complicated measurement-taking and comparison of such measurements with the official record. In a writ petition it would not be possible for the court to over-rule the conclusions of the DILR that proposed road does not in any manner passes through the land of the petitioners. The very basis of the petitioners' case is such that the road passes through their lands and therefore, no construction would be permissible without acquiring such land. When we find that the very basis is shaky and is not established before us, the question of insisting that Government authorities must first undertake exercise of acquiring land would not arise. We may recall that the petitioners had previously filed civil suit for this very purpose. We have briefly noted the prayers made in such



suit. For whatever reason or legal advice the suit came to be withdrawn by the petitioner. In any case, by mere affidavits the petitioners cannot hope to establish that proposed road would encroach the petitioners' land in view of several factors emerging from the record. Firstly, as noted, there is no reason for us to discard measurement and report of DILR concluding that road does not pass through the land of the petitioners. Secondly, a road, albeit narrow or kacha road has been in existence since long. Thirdly, the petitioners have not produced any counter material to, prima facie, demonstrate that the official records and official measurements are in any manner doubtful.

11. In the present petition we are not concerned with the purpose or advisability of construction of the road. It is primarily for the executive to judge such issues. Even otherwise, the petitioners have not questioned the need or advisability of construction of the road linking said two villages. Such question is therefore, not at issue before us.

12. In the result, these writ petitions are dismissed. Rule/ Notice is discharged. Interim relief granted earlier is vacated.

**(AKIL KURESHI, J.)**

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**(A.G.URAIZEE,J)**