

HIGH COURT OF GUJARAT (D.B.)

**ISHWARBHAI ANANDABHAI TANK
V/S
STATE OF GUJARAT**

Date of Decision: 24 August 2009

Citation: 2009 LawSuit(Guj) 342

Hon'ble Judges: [R M Doshit](#), [Sharad D Dave](#)

Case Type: Speical Civil Application

Case No: 8827, 8832, 10612, 10617, of 2008; 5028, 5616, 5620 of 2009

Subject: Civil, Property

Acts Referred:

[Land Acquisition Act, 1894 Sec 6](#), [Sec 4](#)

[Gujarat Industrial Development Act, 1962 Sec 30](#)

Final Decision: Petition dismissed

Advocates: [K S Nanavati](#), [Kunal Nanavati](#), [Mini Nair](#), [Rakesh Gupta](#)

Reference Cases:

[Cases Referred in \(+\): 15](#)

Judgement Text:-

R M Doshit

[1] The petitioners in this group of writ petitions are the owners of the agricultural lands

situated at Anjar, District Kachchh. The petitioners seek to challenge the Notification dated 6th July, 2005 issued by the State Government under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) declaring its intention to acquire the lands of Anjar for extension of Anjar Industrial Estate by the Gujarat Industrial Development Corporation (hereinafter referred to as the Corporation). The petitioners also challenge the Notification dated 25th September, 2006 issued under Section 6 of the Act in respect of their lands.

[2] It appears that pursuant to the proposal made by the Corporation to acquire some lands for extension of the industrial estate at Anjar, the State Government had issued the above referred Notification dated 6th July, 2005 under Section 4 of the Act. After considering the objections submitted by the concerned land owners, the declaration envisaged by Section 6 of the Act has been issued on 25th September, 2006. Feeling aggrieved by the action of the State Government and the Corporation in acquiring the lands of the petitioners, the petitioners have preferred the present petitions.

[3] We are informed at the bar that pending these petitions the acquisition proceedings are completed. The awards for compensation have also been made.

[4] Learned advocate Mr. Nanavati has appeared for the petitioners. He has challenged the impugned Notifications on the grounds of non-observance of the statutory requirement under Section 30 of the Gujarat Industrial Development Act, 1962 (hereinafter referred to as the Act of 1962) and of non-application of mind by the State Government, the appropriate Government. He has submitted that the industrial estate at Anjar established in the early 1980s has not been fully utilised till the date. He has submitted that almost 70% of the existing industrial estate has remained unutilised. Nevertheless, the Corporation has sought acquisition of around 70 acres of land for extension of the existing industrial estate. He has submitted that the need for additional lands expressed by the Corporation is not real or genuine. No more land is required to be acquired for the purpose of industrial estate. He has next contended that the lands sought to be acquired are agricultural lands. Within few kilometers of the existing industrial estate, a large tract of Government waste land is available. The Government could have allocated the said Government land to the Corporation for development/extension of the industrial estate. However, the Government has, without application of mind, decided to acquire fertile agricultural lands the petitioners have been cultivating for decades. The satisfaction recorded by the appropriate Government as required by Section 6 of the Act is also not genuine or at least it is without application

of mind.

[5] Mr.Nanavati has also submitted that the Act is an expropriatory legislation. The procedure is required to be followed scrupulously. In the present case the objections submitted under Section 5A of the Act are not considered objectively. The report of the Collector is sham and bogus. These allegations have not been denied by the appropriate Government. In absence of such denial adverse inference should be drawn against the appropriate Government.

[6] Mr.Nanavati has further submitted that all along the petitioners have challenged the action of the appropriate Government in acquiring the lands of the petitioners. In the proceedings before the Land Acquisition Officer also, the petitioners did not participate. During the interregnum period, the petitioners had made several representations to the appropriate Government to reconsider the objections raised by the petitioners and to spare their fertile agricultural lands from acquisition for industrial purpose. Therefore, there is no delay in filing the writ petitions which would ordinarily oust the petitioners from this Court. In support of his submissions, Mr.Nanavati has relied upon the judgments of the Hon'ble Supreme Court in the matters of [Madhya Pradesh Industries Ltd. v/s. The Income Tax Officer, Nagpur](#), 1970 2 SCC 32; of [Hindustan Petroleum Corpn. Ltd. v/s. Darius Shapur Chenai and others](#), 2005 7 SCC 627; of [Vyalikaval House building Coop. Society v/s. V.Chandrappa and others](#), 2007 9 SCC 304 and of [Devinder Singh and others v/s. State of Punjab and others](#), 2008 1 SCC 728. He has submitted that the allegations made against the appropriate Government in respect of non-application of mind or colourable exercise of power have not been controverted by the appropriate Government. In absence of any contest, the said contentions require to be accepted.

[7] The petitions are contested by the Corporation. Learned advocate Mr.Gupta has appeared for the Corporation. He has submitted that while considering the need for industrial development, the Corporation is required not only to examine the immediate need for industrial development but also the future need. He has submitted that, whether there was a need for acquisition of the lands or that the lands sought to be acquired are suitable for the purpose or not, are not the questions subject to the judicial review by this Court. In support of his argument, he has relied upon the judgments in the matters of [Aflatoon and others v/s. Lt.Governor of Delhi and others](#), 1975 4 SCC 285; of [State of Punjab and another v/s. Gurdial Singh and others](#), 1980 2 SCC 471; of [Hari Singh and others v/s. State of U.P. And others](#), 1984 2 SCC 624; of [Pramodbhai](#)

[Bhulabhai Desai v/s. Officer on Special Duty No.2 \(Land Acquisition\), Ahmedabad and others](#), 1989 1 GLR 194; of [Vishwas Nagar Evacuees Plot Purchasers Association and another v/s. Under Secretary, Delhi Administration and others](#), 1990 2 SCC 268; of [Urban Improvement Trust, Udaipur v/s. Bheru Lal and others](#), 2002 7 SCC 712; of [Sooraram Pratap Reddy and others v/s. District Collector, Ranga Reddy District and others](#), 2008 9 SCC 552; of [Ambalal Purshottam etc. v/s. Ahmedabad Municipal Corporation of the City of Ahmedabad and others](#), 1968 AIR(SC) 1223 and of [Kanaiyalal Maneklal Chhinnai and another v/s. State of Gujarat and others](#), 1970 AIR(SC) 1188.

[8] The State Government has contested the petitions. According to the State Government, on receipt of the proposal for expansion of the existing industrial estate at Anjar, the State Government had considered the same and had approved the proposal for expansion of the industrial estate. The objections lodged by the land owners/interested persons under Section 5A of the Act were scrutinized individually. Declaration under Section 6 of the Act was made after scrutiny of the objections received under Section 5A of the Act.

[9] Learned AGP Ms.Nair has appeared for the appropriate Government. She has submitted that in acquiring the disputed lands for the purpose of extension of industrial estate at Anjar, the State Government has considered the proposal made by the Corporation and the objections raised by the petitioners and such others. She has submitted that it is the subjective satisfaction of the appropriate Government to acquire the lands in question. In support of her submission, she has relied upon the judgments in the matters of [Ismail Gulam Mahmad Davji Patel v/s. State of Gujarat and others](#), 1991 2 GLR 865 and of [Jagjivanbhai Motirai, Baroda v/s. The State of Gujarat and others](#), 1989 1 GLH 190.

[10] Section 3 of the Act contains definition of various words and phrases utilised in the Act. Clause (f) thereof defines the expression public purpose to include, inter alia, the acquisition of land for a corporation owned or controlled by the State Government. It is not in dispute that the Corporation is a statutory corporation established under the Act of 1962 and is owned and controlled by the State Government. In our opinion, the acquisition of lands for the purpose of development of industrial estate by the Corporation is a public purpose within the meaning of the Act. The respondents were, therefore, obliged to follow the procedure set out in part II of the Act. Section 30 of the Act of 1962 empowers the State Government to invoke the provisions of the Act for acquisition of lands for the Corporation. It is an enabling provision and not a procedural

one.

[11] We do share the anguish of the petitioners on loss of agricultural lands. We appreciate that it takes years or generations of hard toil to make the land cultivable. The land owners, particularly the farmers, have sense of attachment to their lands. Their land is their life line. However, our power of judicial review is circumscribed by the Law of the land enacted by Parliament and as pronounced by the High Courts and the Hon'ble Supreme Court.

[12] As to the necessity or suitability of the lands sought to be acquired, it is beyond the purview of judicial review by the Court. Once the procedure set out in the Act is followed scrupulously, in absence of malafide alleged and proved, the Court would not interfere with the acquisition proceedings. The impugned acquisition cannot be held to be bad merely because some Government lands at some distance are available. It has come on record that the Anjar industrial estate was established in the year 1985 on little more than 21 hectares of land. Some of the lands were acquired under the Act and certain lands were allotted by the State Government. The said industrial estate was developed over a period of 20 years in several phases. The original industrial estate established in the year 1985 was further expanded in the years 1988, 2001 and 2002. Some 154 industrial plots were demarcated on the said land. All the said 154 plots have been allotted to various industrial units. None of the said plots is available for fresh allotment. The present acquisition was proposed to be made after the devastating earthquake of 26th January, 2001. In view of the various tax sops offered by the State Government and with a view to facilitating rehabilitation the existing industrial estate was required to be expanded. Accordingly, a proposal was made for acquisition of the lands in question. A demand was also made for the allotment of the land out of the Government land Survey No.984 paiki.

[13] In view of the above facts and the legal position, we are afraid we are unable to interfere with the impugned acquisition for the purpose of expansion of the Anjar industrial estate. Further, the challenge to the impugned acquisition should also fail on the grounds of delay and laches.

[14] As recorded hereinabove, Notification under Section 4 of the Act was issued as far back as on 6th July, 2005. The declaration under Section 6 of the Act was made on 25th September, 2006. Neither the petitioners challenged the Notification issued under Section 4 of the Act nor the declaration made under Section 6 of the Act at the first possible opportunity. On the contrary, the petitioners seem to have waited for another

two years. Meanwhile, the acquisition proceedings proceeded further and the awards for compensation have been made under Section 11 of the Act.

[15] For the aforesaid reasons, we dismiss the above writ petitions. The Civil Applications stand disposed of. The parties will bear their own cost.

[16] The registry will maintain copy of this judgment in each petition.

