

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 16174 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 16175 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 16074 of 2024

=====

ILA KIRIT SHELAT & ORS.

Versus

UNION OF INDIA & ORS.

=====

Appearance:

MR. MIHIR JOSHI, SR. ADV. WITH MR. RUTUL DESAI for the Petitioner(s)
No. 1,2,3

GOVERNMENT PLEADER for the Respondent(s) No. 2

MS ARCHANA U AMIN(2462) for the Respondent(s) No. 1,3

Appearance (in SCA No. 16175 of 2024):

ME. MIHIR JOSHI, SR. ADV. WITH MR. SHALIN MEHTA, SR. ADV. ADITYA
R PARIKH(8769) for the Petitioner(s) No. 1

GOVERNMENT PLEADER for the Respondent(s) No. 2

MS ARCHANA U AMIN(2462) for the Respondent(s) No. 1,3

Appearance (in SCA No. 16074 of 2024):

MR. MIHIR JOSHI, SR. ADV. WITH MR. SHALIN MEHTA, SR. ADV. WITH
ADITYA R PARIKH(8769) for the Petitioner(s) No. 1,2

GOVERNMENT PLEADER for the Respondent(s) No. 2

MS ARCHANA U AMIN(2462) for the Respondent(s) No. 1,3

=====

CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 29/11/2024

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

Learned counsel for the petitioners prays and is granted
permission to make correction in the prayer clause in the writ
petitions during the course of the day to make proper prayers.

2. By means of the abovenoted three writ petitions, the petitioners are challenging the validity of the acquisition notifications dated 11.10.2023 and 12.10.2023 under Section 20A of the Railways Act, 1989 and the declaration notifications under Section 20E dated 08.10.2024 and 09.10.2024. The challenge is also to the validity of the Notification dated 02.02.2023 issued under Section 2(37A) of the Railways Act, 1989. The three writ petitions have been tagged and heard together as they are on common questions of law and facts.

3. Challenging the acquisition proceedings drawn by the Railways with the notifications issued by the Ministry of Railways (Western Railways)(Construction Organisation), noted hereinbefore, it was submitted by Mr. Mihir Joshi, the learned senior advocate for the petitioners in one of the writ petitions that the proceedings for acquisition under the Railways Act can be invoked in a case where the Central Government is satisfied that any land is required for the public purpose, which should be for execution of a Special Railway Project. Before issuance of the proposal under Section 20A declaring the intention of the Central Government to acquire any

land, there is a necessity of making a declaration by means of the notification as per Section 2(37A) by the Central Government that the project-in-question is a Special Railway Project, which fulfills the condition of being a project for providing national infrastructure for a public purpose and is to be executed in a specified time-frame.

4. The further submission is that on the publication of the proposal for acquisition under Section 20A, the petitioners herein filed their objections on 31.10.2023, raising specific queries, pertinent amongst which are asking to provide relevant documents of the proposal for considering the project-in-question as a Special Railway Project within the meaning of Section 2(37A) of the Railways Act; the feasibility report, if any, in relation to the proposal in question; the survey report, if any, undertaken; the report regarding consultation with the land owners who would be affected by the acquisition. Inviting attention of the Court to the response of the Railways to the said queries raised by the petitioners, the learned senior advocate appearing for the petitioners has taken us through page No. '190' of the paper book, the reply

to the representation dated 29.11.2023 filed by some of the petitioners therein.

5. Giving parawise remarks to the objections raised by the petitioners in the table provided in the communication dated 08.01.2024 sent by the Deputy Chief Engineer/C/II-ADR, in response to the query about the proposal for considering the project as a Special Railway Project, the copy of the notification dated 02.02.2023 has been enclosed. However, in response to the query with regard to the minutes of the meeting of the concerned competent authority wherein the decision was taken to treat the project as a Special Railway Project, it was stated that considering the importance and urgency of the project, the proposal was submitted to railway's competent authority to declare it as a Special Railway Project and the authority decides itself on the merits of the project. It is further stated therein that there was no meeting organised for the purpose.

6. The submission of the learned senior counsel, thus, is that the notification dated 02.02.2023 is not backed by any decision of the

competent authority arrived at by application of mind on the importance of the project being falling under Section 2(37A) of the Railways Act, 1989, which provides for notifications of the project for providing national infrastructure for a public purpose in a specified time-frame. The contention is that the mechanical issuance of the notification under Section 2(37A) of the Railways Act to notify the project-in-question as a Special Railway Project, is a fraud on the powers exercised by the competent authority. The fact that in response to the query of the petitioners asking for the minutes of the meeting pertaining to the proposal for declaration of the project-in-question as a special project, it was stated that there was no meeting held for the purpose, is a proof of the fact that there has been no application of mind at the time of conceiving the project by issuance of the notification dated 02.02.2023, in exercise of the powers conferred under Section 2(37A) of the Railways (Amendment) Act, 2008.

7. It was further argued that though in the notice issued under Section 20D of the Railways Act, 1989 initially the dates i.e. 29.12.2023/2.1.2024 were fixed for hearing the petitioners, but no

hearing took place on the said dates. However, the last date fixed being 30.01.2024 was intimated in the communication dated 19.01.2024 to the petitioners. A categorical statement has been made in the writ petitions itself that no hearing took place on any of the abovenoted dates fixed for the purpose. It is also contended that no further date was fixed for hearing. The declaration notification had, thus, been published on 08.10.2024 in utter violation of the principles of natural justice.

8. Lastly, it is contended that the petitioners have objected to the initiation of the project before the competent authority in their representations dated 29.11.2023 stating that previous consultation with the land owners, which was required to be undertaken as per the notification of the Central Government, had actually not taken place. In response thereto, in the communication dated 08.01.2024 of the Deputy Chief Engineer/C/II-ADI, at point No. 9(x), it was stated that according to the Railways Act, 1989, there is no provision for consultation with the land owners. To contradict the said stand of the respondent Railways, a copy of the instructions issued by the Railway Board, Government of India, Ministry of

Railways dated 17.12.2009 has been placed before us to demonstrate that as a reformative action taken by the Ministry of Railways on the acquisition proceedings under the Railways (Amended) Act, 2008, guidelines have been issued in the matter of acquisition of the lands under the Railways Act to the effect that the acquisition of private lands may be made only when it is very essential and inevitable and further there is a need for consultation with the land owners so as to address their concern about the project.

9. All these issues raised in the writ petition require consideration.

10. As prayed by Ms. Archana Amin, the learned advocate appearing for the Railways, the respondent Nos. 1 and 3 herein, four weeks' time is granted to file a counter affidavit. Two weeks, thereafter, is granted to file rejoinder.

11. The office of the learned Government Pleader has received notice on behalf of the respondent No.2, whose response may also

be filed within the time given above.

12. It is provided that till the next date of listing, *status quo* as on date, with respect to the possession over the lands-in-question, subject matter of consideration in the captioned writ petitions, shall be maintained by the parties. Meaning thereby no coercive action shall be taken against the petitioners and further the petitioners shall not create any third party right or interest over the lands-in-question.

Put up on 21.01.2025.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

C.M. JOSHI