

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10833/2013

(From the judgement and order dated 06/11/2012 in SCA No.9599/2008 of The
HIGH COURT OF GUJARAT AT AHMEDABAD)

GUJARAT POSITRA PORT COMPANY LTD.

Petitioner(s)

VERSUS

KHIMANAND DEVANAND & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and prayer for interim relief
and office report)

WITH

S.L.P.(C)...CC NO. 6321 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6442 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6444 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6512 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6923 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6924 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6926 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6927 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6931 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6933 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6935 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6937 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6947 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6948 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6949 of 2013

(With appln(s) for c/delay in filing SLP and office report)

S.L.P.(C)...CC NO. 6952 of 2013

(With appln(s) for c/delay in filing SLP and office report)

Date: 22/03/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s)

Mr. Sudhir I. Nanavati, Sr. Adv.

Mr. D.N. Ray, Adv.

Mr. Savrin Mehta, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

These petitions are directed against judgment dated 6.11.2012 of the Division Bench of the Gujarat High Court, whereby the Special Civil Applications filed by the respondents for quashing the acquisition of their land were allowed. The operative portion of that order reads as under:

"Therefore, in the facts and for the reasons discussed hereinabove, all the petitions are partly allowed with the direction that the acquisition of land of the petitioners and notices dated 21.02.2008, 11.03.2008 and 03.04.2008 issued to them pursuant to the land acquisition proceeding are set aside in cases of all the petitioners who have not accepted the amount of compensation due to them under the respective awards which also are hereby quashed as for such petitioners. However, petitioners who have been paid the amount of compensation shall have to refund within three months that amount with 9% interest p.a. for the period from the date of payment to them till the date of repayment by them to respondent concerned; and on that condition being fulfilled the award and notices issued to them under section 12 as well as the land acquisition proceeding shall stand set aside. This order shall not affect the acquisition of lands in respect of which petition is not filed and the original holder of land has not come out to challenge the acquisition. With that clarification and subject to the condition as aforesaid, the petitions are allowed and rule is made absolute in each of the petitions with no order as to costs."

In furtherance of the policy decision taken by it to develop ten Green Field Ports, six of which were wholly private and the remaining four were in joint sector, the Government of Gujarat issued Notification dated 22.1.1999 under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') for the acquisition of 75,000 sq. mtrs. of agricultural land situated in Village Positra, District Jammagar. The declaration under Section 6 of the Act was made on 8.4.1999. Thereafter, the Land Acquisition Officer passed various awards between 16.4.2001 and 24.8.2001.

The respondents challenged the acquisition proceedings mainly on the ground of non-compliance of the procedure prescribed under the Act. They pleaded that the awards passed under Section 11 were neither published nor communicated to them. The Special Civil Applications filed by the respondents were dismissed by the Division Bench of the High Court vide order dated 20.1.2010 by observing that even though there was delay in communicating the awards, the respondents were not entitled to relief because they had already sought reference under Section 18 of the Act.

The special leave petitions filed by the respondents were disposed of by this Court on 30.4.2010 by giving liberty to them to file review petitions before the High Court.

The review petitions filed by the respondents were allowed by the High Court and the earlier order dismissing the Special Civil Applications was recalled.

After re-hearing, the High Court allowed the Special Civil Applications and annulled the acquisition proceedings in terms of the paragraph quoted hereinabove.

We have heard Shri Sudhir I. Nanavati, learned senior counsel for the petitioner, and carefully perused the record. In paragraphs 4.2, 4.3 and 5.1 of the impugned order, the Division Bench

of the High Court referred to the affidavits filed on behalf of Gujarat Maritime Board in which it was admitted that though the notices were issued under Section 12 of the Act in 1997, the amount of compensation was provided only in 2007-2008 and observed:

"It is clear from the above statements of facts that the land acquisition process which was initiated in the year 1997 has culminated for the petitioners into receipt of notices under section 12 of the Act in the year 2008 and neither possession of the lands in question is really and physically taken over nor is compensation accepted by most of the petitioners. Upon a specific query put to learned counsel for GMB and learned Government Pleader appearing for the State Government, it was fairly conceded and confirmed that no amount of compensation has ever been deposited in terms of section 31 of the Act apparently because funds for payment of compensation were admittedly provided only in the year 2007-2008. It, therefore, follows by necessary implication that possession of the lands could not be and has not been taken over for as long as eight years, obviating payment of interest under section 34 of the Act. The net effect of the prolonged process of land acquisition as aforesaid is that market value of the land would, for the purpose of payment of compensation, remain pegged at the value of the land on the date of publication of notification under section 4 of the Act."

The Division Bench then referred to the judgment of the co-ordinate Bench in Bhanuben D.Patel and others v. State of Gujarat and others 2010 (3) G.L.H. 545 and held that the acquisition proceedings are liable to be quashed because the compensation was offered to the landowners after a long time gap of seven years. In our view, the reasons assigned by the High Court for holding that the acquisition proceedings stand vitiated are correct and the impugned order does not call for interference under Article 136 of the Constitution.

It needs no reiteration that after getting the price of the acquired land pegged with reference to the date on which notification under Section 4(1) is issued, the acquiring authority cannot indefinitely delay the payment of compensation to the landowners and thereby deprive them of their property without the sanction of law.

With the above observations, the special leave petitions are dismissed.

| (Parveen Kr.Chawla)

| Court Master

| | (Phoolan Wati Arora)

| | Court Master