

# **Madhusudan Chhotalal Patel And Anr vs Special Land Acquisition Officer And ... on 8 January, 1980**

**Equivalent citations: AIR 1980 SC 318, 1980 SUPP(1) SCC 364, 1980(SUPP)SCC364, AIR 1980 SUPREME COURT 318, 1980 (2) SCC 471, (1980) 1 SCJ 397, (1980) 1 SCJ 399, (1980) 1 SCR 1071 (SC), (1980) ILR SC 4**

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**Bench: D.A. Desai, E.S. Venkataramiah**

## **JUDGMENT**

D.A. Desai, J.

1. The appellant questioned the validity of notification dated March 31, 1958 and another notification dated December 29, 1962 under Sections 4 and 6 respectively of the Land Acquisition Act in Special Civil Application No. 228 of 1963 filed in the Gujarat High Court at Ahmedabad on the following grounds:

(1) The two notifications are mala fide as they suffer from non-application of mind and are in colourable exercise of power on the two submissions:

(a) There is utter impossibility of constructing a road over this plot as part of the scheme, and

(b) The acquisition is in excess of the requirement.

(2) Section 6 notification is illegal as it does not show the instrumentality through which the said public purpose should materialise.

2. These grounds did not find favour with the High Court and the special civil application was dismissed. Upon certificate granted under Article 133(1)(b) the present appeal is filed.

3. Mr. Bhandare, learned Counsel for the appellant canvassed the same two contentions before us. It is not necessary to examine them in an elaborate manner. The main gravamen of the charge was that the whole of plot No. 31 which was under acquisition could not be required for a road 30 ft. in width. In a detailed affidavit, filed on behalf of the Ahmedabad Municipal Corporation for whose benefit the acquisition was made, it was pointed out that the plot is required for road 60 ft. wide, walking platform by the side of it again 60 ft. in width and a service platform 30 ft. in width and that

this should cover the entire plot which is 188 ft. in width at one end and 204 ft. in width at other end and 237 ft. in length. Further, it transpired from the affidavit that the acquisition forms part of a Town .Planning Scheme which envisages not only a road, a walking platform, a service platform along the river Sabarmati between the two termini Mahatama Gandhi Bridge and Ellis Bridge along with a neighbourhood center, Public Garden and a playground. The High Court accepted these averments. These findings are incontrovertible. The High Court rightly rejected the contention of the appellant that the entire plot was not required for the purpose for which it was acquired. This finding also answers the second limb of the submission that the acquisition is in excess of the requirement.

4. The second contention is no more res integra. At one time the High Court of Gujarat took the view that the statement of public purpose in a Section 6 notification is not complete unless the instrumentality through which the public purpose was to be carried out is stated as an integral part of the statement of public purpose in the notification under Section 6. Subsequently, a Full Bench in *Ramji Popatbhai Patel v. Jamnadas Shah* (1969) 10 Guj LR 164 overruled its earlier view and held that failure to specify the instrumentality by which the public purpose was to be carried out does not invalidate a notification under Section 6. This view of the Full Bench was confirmed by this Court in *Kanaiyalal Maneklal Chinai v. State of Gujarat* . While affirming the view taken by the Full Bench, this Court observed that this Court in *Vishnu Prasad Ramdas Gohil v. State of Gujarat* (C. A. No. 1983 of 1966 decided on October 9, 1969) Reported in 1970 UJ (SC) 14 agreed with the view of the Full Bench of the Gujarat High Court in *Ramji Popatbhai* (supra) that failure to specify the instrumentality which is to execute the public purpose does not affect the validity of the notification under Section 4 or 6 of the Land Acquisition Act. Accordingly, there is no merit in the second contention.

5. These were the only contentions raised in this appeal and as there is no merit in any of them, the appeal fails and is dismissed, but in the circumstances of the case with no order as to costs.