

Gujarat High Court

Mohmadkhan Sherkhan Pathan And ... vs State Of Gujarat And Anr. on 21 February, 1989

Equivalent citations: AIR 1990 Guj 10

Author: C Gokulakrishnan

Bench: P Gokulakrishnan, P Chauhan

JUDGMENT Gokulakrishnan, C. J.

1. This Special Application in to quash Ss. 4 and 6 Notifications in respect of acquisition of the lands of the petitioners herein. Acquisition is for providing an approach road between Bhalak and Tarwad. Section 4 Notification was issued as early as 30-7-1983 and objection for the same was filed on 15-9-1984. On 4-12-1985, objections were heard. After taking into consideration the report sent by the Acquisition Officer, S. 6 Notification was issued on 29-1-1986. It is clear from the facts of the case that the award was made on 8-6-1987 itself. The present petition came to be filed as late as 5 th Sept. 1988, when specially S. 4 notification was issued as early as on 30-7-1983. Noting this inordinate delay on the part of the petitioners to approach this Court, Mr. Have brought to our notice the decision in the case of Aflatoon v. Lt. Governor of Delhi, reported in A I R 1974 SC 2077. The Supreme Court has correctly held (at p. 2081 of AIR):

"A valid notification under S. 4 is a sine quanon for initiation of proceedings for acquisition of property. To have acted on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under S. 4 and the declaration under S. 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners. "

2. This decision squarely applies to the facts of the present case. The date which we have referred above clearly establishes the dilatory tactics which the petitioners want to adopt at such a late stage in order to scuttle the acquisition proceedings which are for the public benefit. The affidavit in reply clearly states that the alignment of Bhalak Tarwad road was sanctioned by the District Panchayat in view of the fact that the said alignment is shortest and economical. It is further noticed from the affidavit-in-reply that the total length of this approach road in question is 1.2 k.m. and that the authorities have borne in mind while providing alignment of the approach road the fact that the agricultural lands of farmers are not divided into pieces or small pieces and they are not fragmented. It is also stated in the affidavit-in-reply to the effect that except one survey number bearing Survey No. 16, which is at survey point, no land is being divided into pieces. Further, the alignment is sanctioned only on the border of the agricultural lands of respective survey numbers as far as possible, keeping technical considerations in mind. Thus, it is clear that the authorities concerned have applied their mind before they acquired these lands for the purpose of the road. Mr. Joshi, the learned counsel appearing for the petitioner, as a first ground, raised the question of mala fides on the part of the authorities concerned to acquire the lands of the agriculturists, who are poor and who have small pieces of land. The affidavit-in-reply amply provides genuineness of the acquisition and the necessity of such acquisition for forming a straight road, which is nearer and economical. There is absolutely nothing in the petition to spell out mala fides against any of the authorities since there could not have been any ill-feeling or mala fide intention on the part of the authorities concerned to

acquire the lands of the petitioners herein. The averments in the petition cannot spell out such mala fides and as such, this ground has no substance. As far as the contention of Mr. Josh, to the effect that the Collector has not given any report to the State Government nor did the State Government consider the objections of the petitioners, is concerned, Mr. Have, the learned Assistant Government Pleader, points out that there is specific averment in S. 6 notification to the effect that the report of the Collector has been taken into account and Mr. Joshi, the learned counsel appearing for the petitioners, after seeing such an averment, which is on record, is not able to press this point. Hence, we do not find any substance in these points raised by the petitioners concerned. It is further contended by Mr. Joshi that the Gram Panchayat has objected for acquisition of this land. The resolution of the Gram Panchayat is neither here nor there. The advisability of the acquisition has been gone into when the objections were heard by the authorities concerned. While the balance of the laying of the road was on progress, the petitioners have approached this Court, after a lapse of 5 years after the S. 4 notification was issued and has obtained ad-interim relief. The facts we have discussed above clearly establish the dilatory tactics adopted by the petitioners and there is absolutely no substance in any of the contentions raised by the petitioners herein. Both on the ground of laches in approaching this Court after a delay of nearly 5, years and following the decision in the case of Aflatoon v. Lt. Governor of Delhi, reported in AIR 1974 SC 2077 and for the grounds we have discussed above, we do not find any substance in any of the contentions raised by the petitioners herein and accordingly, this Special Civil Application is dismissed. Notice is discharged. Ad-interim relief is vacated.

3. Application dismissed.