

Dahiben Maganbhai Patel vs State Of Gujarat on 19 March, 2019

Author: Anant S. Dave

Bench: Anant S. Dave, Biren Vaishnav

C/SCA/14335/2014

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14335 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14336 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14337 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14338 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14339 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14340 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14341 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14342 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14343 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14344 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14345 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14346 of 2014

With

R/SPECIAL CIVIL APPLICATION NO. 14347 of 2014

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R/SPECIAL CIVIL APPLICATION NO. 14348 of 2014

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R/SPECIAL CIVIL APPLICATION NO. 14349 of 2014

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R/SPECIAL CIVIL APPLICATION NO. 14381 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 14382 of 2014
With
R/SPECIAL CIVIL APPLICATION NO. 12685 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE

sd/-

and

HONOURABLE MR.JUSTICE BIREN VAISHNAV

sd/-

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- | | | |
|---|---|-----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | YES |
| 2 | To be referred to the Reporter or not ? | YES |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |

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DAHIBEN MAGANBHAJI PATEL & 4 other(s)

Versus

STATE OF GUJARAT & 2 other(s)

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Appearance:

MR SAURABH G AMIN(2168) for the Petitioner(s) No. 1,2,3,4,5

MS NISHA THAKORE, ASST GOVERNMENT PLEADER(1) for the

Respondent(s) No. 1

RULE SERVED(64) for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE

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CAV JUDGMENT

and

HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 19/03/2019

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE BIREN VAISHNAV)

1. All these petitions, filed under Article 226 of the Constitution of India raise an identical question of law and are based on identical facts. They arise out of proceedings under the Land Acquisition Act, 1894. Since the facts are identical, it would be proper to reproduce prayers in Special Civil Application No. 14340 of 2014, which read as under:

"9(A) YOUR LORDSHIP may be pleased to hold and declare that the acquisition proceedings have lapsed and/or are even otherwise are illegal, contrary to law and vitiated and be further pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction and thereby be pleased to quash and set aside the acquisition proceedings initiated vide notification no. LAQ Sr 1/2010 and LAQ SR 4/2010 dated 10/03/2010 and the award bearing LAQ case No. 2/2009/Lawarpur, Ratanpur, Shahpur/Vashi 8628/2013 passed by the respondent.

B) Pending admission, hearing and final disposal of this petition, YOUR LORDSHIP may be pleased to restrain the respondents from taking possession of the land of the petitioners as notified vide notification no. LAQ Sr 1/2010 and LAQ SR 4/2010 dated 10/03/2010 and included in the award bearing LAQ case No. 2/2009/Lawarpur, Ratanpur, Shahpur/Vashi 8628/2013."

2. The facts, in brief, are as under:

2.1 The petitioners, in various petitions, are agriculturists holding various parcels of lands. The villages in which such petitioners own such lands are villages Lavarpur, Shahpur and Ratanpur in Gandhinagar. District. According to the petitioners, notifications under Sections 4, 6 & 9 in each of the villages were issued on the relevant dates which are produced hereunder in a tabular form:

Notification Issued	Date of Notification		
	Lavarpur	Shahpur	Ratanpur
Section 4	10.03.2010	18.05.2010	18.05.2010
	29.07.2010	16.08.2010	16.08.2010
	as	per	as
	Award	Award	Award.
Official Gazette	16.03.2010	19.05.2010	19.05.2010
At the	29.07.2010	16.08.2010	29.07.2010
Gram Panchayat Office			
Collector's Notice Board	03.08.2010	25.08.2010	25.08.2010
Common Notification under	14.03.2011	14.03.2011	14.03.2011
Section 6	* In all three Villages as recorded in the Award they were published in the newspaper on 28.03.2011 and 29.03.2011		

As per the 18.07.2011 14.07.2011 17.08.2011 award under Sections 6 & 9 notices 3.08.2011 4.08.2011 5.08.2011 Hearing Under Section 11(1) Date of 14.08.2013 14.08.2013 14.08.2013 award 2.2 The lands in question of the petitioners were sought to be acquired for upgradation of the existing road for the development of Gandhinagar International Financial Tech City (GIFT City). It is the case of the petitioners that they filed objections under Section 5-A of the Act of 1894 to the acquisitions. The petitioners state that without any report or consideration of objections of the petitioners, straight away, on 14.03.2011, notification under Section 6 was issued, declaring that there was satisfaction that the lands were required for public purpose. Such notifications were published in 'Sandesh' and 'Gujarat Samachar' newspapers on 28.03.2011 and 29.03.2011 respectively.

2.3 According to the petitioners, notices under Section 9 of the Act were issued by the Land Acquisition Officer inviting claims regarding measurement, compensation etc. As stated in the award, hearings of land owners were fixed on 03.08.2011 as far as village Lavarpur is concerned and 04.08.2011 for Shapur village. For Ratanpur, the hearing was fixed on 05.08.2011. In case of Lavarpur, a sample notice under Section

9 for hearing on 03.08.2011 is annexed at page 34 of the paperbook. The petitioners in their petitions have pleaded that nothing was heard from the competent authorities after the hearings. Since the limitation for filing reference was expiring, the petitioners filed a reference without prejudice to their right to challenge the acquisition.

2.4 The pleadings further state that as far as village Shahpur is concerned, the Talati of the village orally informed some land owners to come to the office and collect notices for compensation. As far as land owners of Ratanpur and Shahpur are concerned, it is their case that in the first week of September, 2014 they were served with the notices under Section 12(2) of the Act, however, a copy of the award was not given. The petitioners state that one of the petitioners obtained a copy of the award from the office of the DILR, when they came to know that an award was passed on 14.08.2013. The copy was so obtained and the petition was filed on 29.09.2014.

2.5 Based on such sequence of dates, the petitioners have pitched their case to suggest that since the awards were made under Section 11 on 14.08.2013 of the Act beyond a period of two years from the date of publication of the declaration i.e. 14.03.2011, in accordance with the provisions of Section 11A of the Act, the entire proceedings for the acquisition of the land shall lapse. For this purpose, it is their case that declarations under Section 6(2) were made for Lavarapur on 18.07.2011, for Shahpur on 14.07.2011 and for Ratanpur on 17.08.2011, and according to the petitioners, though the award reflects such dates, no such publication was made and paper records have been created only to save the acquisition proceedings from the rigors of Section 11A. There cannot be any publication under Section 6 on 17.08.2011 after completion of hearing of Section 9 notice on 05.08.2011.

2.6 To the statements made in the petition, the State has filed an affidavit-in-reply affirmed on 11.02.2015 by one Pushpaben Ninama, Special Land Acquisition Officer, Gandhinagar. As per the affidavits, the dates of notifications under Section 4 and Section 6 are not disputed. As far as publication of Section 6 notices published at the Gram Panchayat office is concerned, it is stated that for Shahpur it was published on 14.07.2011, for Lavarapur on 18.07.2011 and for Ratanpur on 17.08.2011. Notices under Section 9 were issued as well to be ones under Section 6(2) by letters dated 14.07.2011. According to the deponent, the letter dated 14.07.2011 was addressed to Talati to publish last publication of Section 6 of the Act as well as issue notices under Section

9. Issuance of proceedings of last publication of Section 6 and issuance of notice under Section 9 together does not have any co-relation. Section 6(2) publication at the last place is only relevant and since at Ratanpur, Section 6(2) notice was issued on 17.08.2011, the award dated 14.08.2013 is within two years from the date of such declaration and cannot therefore be held to have been illegal or lapsed. It would be relevant at this stage to reproduce paragraph no. 4(D) of the affidavit-in-

reply which reads thus:

"4D. A common notification under Section 6 of the Land Acquisition Act was issued covering the lands of above referred 3 villages on 14.03.2011 in the Government Gazette. Section 6 notification was published in the newspaper of Sandesh on 28.03.2011 and in Gujarat Samachar it was published on 29.03.2011. It was lastly published at Gram Panchayat office, Lavarpur on 18.07.2011 and it was lastly published at Gram Panchayat office of Ratanpur on 17.08.2011."

2.7 To, the affidavit-in-reply so filed, a detailed rejoinder has been filed by the petitioners. Essentially, the attempt by such a rejoinder is to deny the contentions raised in para 4(D) of the reply regarding the falsity of the claim that declaration under Section 6(2) was last published at the office of Shahpur, Lavarpur and Ratanpur on 14.07.2011, 18.07.2011 and 17.08.2011 respectively. Paragraph no. 5 of the rejoinder needs to be reproduced in its entirety and the same reads as under:

"5. The contentions raised and averments made in para 4(D) & para 6 of the reply regarding last date of publication of notification under S. 6 at the Gram Panchayat offices are not true or correct and are hereby specifically denied. I state that the notification under S.6 was last published in the newspaper on 29.03.2011 whereas the award is claimed to be made on 14.08.2013 and therefore it is clearly beyond the limitation of 2 years and is hit by S.11-A of the Act. To prevent the acquisition from lapsing and bring it within the limitation, it is falsely claimed in the award and in the reply that the declaration under S.6(2) was last published at the office of the village Panchayat Shahpur on 14.07.2011, village Lavarpur on 18.07.2011 and village Ratanpur on 17.08.201. I specifically deny the same and state that there was no such publication at the panchayat office or at site on the said dates as claimed. I state that though specific averment denying such publication are made in para 3.12 and 4(1) of the petition, the Land Acquisition Officer instead of producing the panchnama evidencing publication at panchayat office and site, has deliberately chosen only to produce his letter dated 14/07/2011 whereby she had directed the Talati Cum Mantri of the said 3 village to publish the declaration under S. 6. In absence of any material, the bald averments of the respondent may not be accepted on face value.

I state that panchnamas are not produced because there was no publication of the declaration under S.6(2) at the gram panchayat offices or at site and false records and false panchnama were subsequently created to save the Acquisition. The same is evident from the following facts:

i) The petitioner had requested the Talati-cum-

Mantri of village Lavarpura and that of village Shahpur and Ratanpur to furnish the record regarding publication of S.6(2) notification. In response thereto, the Talati-cum-Mantri of village Shahpur and Ratanpur declined the request stating that no such record was available in his office, whereas the Talati of village Lavarpur has furnished certain record which consists of letter of the Sp.

LAO dated 14.07.2011 bearing no. 1026/2011 directing the talati to publish declaration under S. 6 at the office of the panchayat (annexed herewith as Annexure R-1), covering letter dtd. 14.10.2011 with a panchnama dated 01.08.2011 (annexed herewith as Annexure R-2), another covering letter dtd. 14.10.2011 with panchnama dated 01.08.2011 (annexed herewith as Annexure R-3), Letter of LAO dated 18.08.2011 bearing no. 1502/2011 (annexed herewith as Annexure R-4), reminder letter of LAO dated 27.09.2011, (annexed herewith as Annexure R-5).

ii) In the award and Affidavit in reply of LAO, it is stated that the declaration under S.6 was published at the Gram Panchayat Lavarpur on 18.07.2011. Surprisingly, in the record of the Panchayat/Talati of Lawarpur there is no so called panchnama dated 18/07/2011, instead there are 2 different panchnama dated 01.08.2011 recording publication of notice under S.6(2) at Lawarpur panchayat office. Both these panchnamas are forwarded by the Talati to the Sp. LAO vide 2 different covering letters dated 14.10.2011, despite which there is no mention of this publication in the award and on the contrary the date of publication in the award is shown as 18.07.2011.

iii) In one of the panchnama dated 01/08/2011 (Annexure R-2) there is a reference to subsequent communications of the Sp. LAO bearing no. 1502/2011 dated 18.08.2011 (Annexure R-4). This establishes beyond doubt that the said panchnama dated 01/08/2011 was a false panchnama subsequently created after 18.08.2011.

iv) May be after noticing the said discrepancy, the second panchnama dated 01.08.2011 (Annexure R-3) was created. However it appears that the date of 01.08.2011 was beyond the period of 1 year from the last date of publication of S. 4 notification (29.07.2010 as mentioned in the award - pg. 47) and therefore in the said panchnama, the date '01.08.2011' was subsequently overwritten and changed to '18.07.2011' and then in the award the date of publication is mentioned as 18.07.2011. The same is evident from the copy of the so called panchnama dated 18.07.2011 provided to the petitioner by the office of the Sp. LAO on 09.03.2015 pursuant to an application under Right To Information Act dated 18.02.2015. A side by side comparison of the said panchnama dated 18.07.2011 provided under RTI and panchnama dated 01.08.2011 provided by Talati Lavarpur (Annexure R-3) shows that it is the same copy and the only difference is in date and it is apparent that the date '18.07.2011' is subsequently over written on '01.08.2011'. The covering letter dated 18.07.2011 is also a false record contrary to the covering letter dated 14.10.2011 provided by Talati Lawarpur. A copy of the application under RTI Act is annexed herewith as Annexure R-6. A copy of the covering letter dated 18.07.2011 and panchnama dated 18.07.2011 given pursuant to the RTI application is annexed herewith as Annexure R-7.

v) Similarly a perusal of the so called panchnama dated 17.08.2011 of Village Ratanpur as provided under the RTI Act, shows that it is no where mentioned that the declaration under S. 6 was published on 17.08.2011. It only vaguely states that some public notice was published from Ratanpur Gram panchayat. More importantly, in the second para of the said so called panchnama dated 17.08.2011 it is stated that the land owners were informed to remain present before the LAO on 05.08.2011 at 12.00 hrs for making claim for market value. It is out right impossible that on 17.08.2011, the Talati would inform the land owners to remain present on 05.08.2011. This clearly shows that this is also a false and got up panchnama, subsequently created in the office with a

malafide and oblique motive to create false record to save the acquisition from lapsing. A copy of the so called panchnama dated 17.08.2011 of village Ratanpur is annexed herewith as Annexure R-8.

vi) I state that similarly a false panchnama was created purportedly dated 14.07.2011 for village Shahpur. The said panchnama is also false, bogus and subsequently created document and no such publication was ever done on 14.07.2011 at village Shahpur. A copy of the panchnama dated 14.08.2011 is annexed herewith as Annexure R-9.

Vii) Thus there was no publication on declaration under S. 6(2) on 14.07.2011, 18.07.2011 and 17.08.2011. The award is not made within period of 2 years from the publication of S. 6 notification and therefore false, bogus and fictitious dates of publication are mentioned in the award and false affidavit has been filed by the Special Land Acquisition Officer without producing the record of last publication only to save the illegal acquisition. The petitioners pray that strict actions including actions for perjury be initiated against the responsible officers for creating false Government record and filing false affidavit before this Hon'ble Court.

3. Based on such pleadings Shri Saurabh Amin, learned counsel for the petitioners submitted that there was no substance of publication of declaration under Section 6 at the site or the Gram Panchayat office of Village Lavarpur and Ratanpur and the Panchnamas dated 18.07.2011, 01.08.2011 pertaining to Lavarpur and one dated 17.08.2011 pertaining to Village Ratanpur are false and created with an oblique motive to defeat the rights of the petitioner.

3.1 With regard to the Panchnama dated 18.07.2011 for Publication at Village Lavarpur as provided by the Land Acquisition Officer under the RTI Act, Shri Amin submitted as under:

(I) The award and the reply state that the declaration under Section 6 and public notice under Section 9 was on 18.07.2011. According to the petitioners, therefore, as evident from the panchnamas which are false and concocted, no publication of declaration was made under Section 6(2) on 14.07.2011, 18.07.2011 and 17.08.2011 and hence since the award made on 14.08.2013 is not made within two years, the award is bad and proceedings must have been treated to have lapsed. In the context of the rejoinder, as submitted by Shri Amin, after filing of the rejoinder the Land Acquisition Officer filed a Sur-Rejoinder wherein he has stated that the panchnama dated 18.07.2011 records publication of public notice under Section 9(1) and not publication of declaration under Section 6(1). According to the Land Acquisition Officer, the Panchnama dated 1.08.2011 records publication of declaration under Section 6 and that by inadvertent mistake in the award, it is shown as 18.07.2011 instead of 01.08.2011. It is therefore admitted that there was no declaration for Lavarpur under Section 6 on 18.07.2011.

(II) It is even otherwise clear on reading the Panchnama that it nowhere records publication of declaration under Section 6. It only states that by a public notice the land owners were asked to remain present before the Land Acquisition Officer on 3.08.2011 for raising the claim of compensation. Therefore, it is evident that the language of the Panchnama indicates that it is not a

declaration under Section 6 but a publication of notice under Section

9. (III) By comparing the Panchnama dated 18.07.2011 (PAGE 145) with Panchnama dated 1.08.2011 (PAGE

138) as provided by the Talati Lavarpur, he submitted that the two panchnamas are verbatim, word by word, line by line and that in the Panchnama dated 01.08.2011 the date is interpolated to make it read as "18.07.2011". Thus, both Panchnamas are false and bogus.

3.2 With regard to the Panchnama dated 1.08.2011 of Village Lavarpur as provided by the Talati, it is submitted by Shri Amin as under:

(I) As per the award, the substance of the declaration was published on 18.07.2011 and panchnama was drawn accordingly, but when in rejoinder the panchnama dated 01.08.2011 has been produced, a sur-rejoinder has been filed that the Land Acquisition Officer changed his stand and claimed that the declaration was published in the Village Lavarpur on 1.08.2011 and Panchnama (PAGE

136) records the same.

(II) When the Panchnama dated 1.08.2011 at PAGE (136) is seen, it bears reference to two letters bearing number 1026/2011 (PAGE 134) and letter dated 1502/2011. Perusal of the letter no.1502/2011 (PAGE 139) shows it is dated 18.08. 2011. Thus, a panchnama dated 1.08.2011 bears a reference to a subsequent letter dated 18.08.2011 which obviously makes the Panchnama bogus. Therefore, there is no publication of substance of declaration of notification under Section 6 at Village Lavarpur on 1.08.2011 or 18.07.2011.

3.3 With reference to the panchnamas dated 17.08.2011 pertaining to Village Ratanpur, it is submitted as under:

(I) In the reply and the award, it is claimed that the substance of declaration under Section 6 and notice under Section 9 were published for Ratanpur on 17.08.2011 and accordingly the panchnama was drawn.

However, the publication of declaration in the newspaper under Section 6 was on 29.03.2010. Personal notices were served in July 2011 and hearing was fixed under Section 11(1) on 05.08.2011. At this stage, the Land Acquisition Officer claims that the declaration under Section 6 and publication of notice under Section 9(1) was again published on 17.08.2011. The stand and panchnama is bogus as the panchnama is created to bring the award within limitation.

(II) The Panchnama nowhere records that the declaration under Section 6 was published on 17.08.2011. It informs all land owners to remain present on 5.08.2011 (a date 12 days prior to the panchnama).

(III) In the sur-rejoinder the Officer has admitted that panchnama dated 18.7.2011 records publication of notice under Section 9 and not publication of declaration under Section 6. Panchnama of Ratanpur (PAGE 146) dated 17.08.2011 and Lavarpur dated 18.07.2011 (PAGE

145) are identically worded and therefore the Panchnama dated 17.08.2011 at best can be construed as recording publication of notice under Section 9(2) and not Section 6. Thus, there is no publication under Section 6 in Ratanpur.

3.4 Several anomalies were further pointed out in the rejoinder by Shri Amin. He submitted that the sequence based on the dates claimed for publication has shown that the version of the deponent of the Land Acquisition Officer on Section 6(2) declaration is false. The sequence so culled out from the rejoinder according to him is as under:

- No panchnamas are produced by the Special Land Acquisition Officer to substantiate the dates of declarations under Section 6(2) at Shahpur, Lavarpur and Ratanpur on 14.07.2011, 18.07.2011 and 17.08.2011.
- Two panchnamas dated 01.08.2011 are produced with a covering letter dated 14.10.2011. They are concerning village Lavarpur. Both these panchnamas are forwarded by Talati to Special Land Acquisition Officer recording 01.08.2011 as the date of publication of notice under Section 6(2) at Lavarpur. The award does not mention such dates.
- One of the panchnamas dated 01.08.2011 (page 136) refers to a letter no. 1026/1502/2011. The letter so numbered is produced at page 139. The same is dated 18.08.2011. The petitioner therefore questions the veracity of a panchnama which mentions a letter having date subsequent to the panchnama.
- To obviate the discrepancy of panchnama at page 136, second panchnama of the same date at page 138 is created.
- Therefore to say that Section 6(2) hearing took place on 18.07.2011 is not established from these panchnamas.
- A panchnama of Lavarpur given under RTI dated 18.07.2011 with a covering letter shows that date 18.07.2011 is overwritten on 01.08.2011. The accompanying letter of 18.07.2011 is also false and contrary to the covering letter of 14.10.2011.
- Comparing the panchnama dated 01.08.2011 with one at page 145 dated 18.07.2011 shows that the panchnama dated 18.07.2011 is false.
- A panchnama dated 17.08.2011 of village Ratanpur is also placed on record at Annexure R/8 - page 146 with the rejoinder. The panchnama records that land owners were asked to remain present on 05.08.2011 at 1200 hrs for making claim for market value. Apparently, the panchnama appears to be false.

- A panchnama dated 14.07.2011 of Shahpur is also produced at Annexure R/9.

3.4 Shri Amin has through the sequence of events hereinabove and reading of the panchnamas submitted that the acquisition proceedings must be treated to have been lapsed. To fortify his stand, he further submitted that as claimed on the basis of the panchnama dated 17.08.2011 and the affidavits, the hearings under Section 9 were held on 03.08.2011, 04.08.2011 and 05.08.2011 and then to say that notice under Section 6(2) was published thereafter on 17.08.2011 is not valid. There cannot be a publication of notice under Section 6(2) of the Act after completion of proceedings under Section 9 of the Act.

3.5 For the sake of ready reference, the panchnamas (translated version) are reproduced hereunder:

Panchnama dated 17.08.2011 "..."

That, in presence of you Talati cum Mantri, upon enquiry, we declare that for the upgradation of existing road in village Ratanpur, for development of Gujarat International Finance Tech City, publicnotice of L.A.Q. Case no. 2/2009, Mouje Ratanpur, Taluka & District Gandhinagar has been published on the notice board of Ratanpur Gram Panchayat.

All the farm owners whose land is being acquired have been informed. And they are informed by going at the site. They have been informed to remain present on 05.08.2011 at 12.00 hours before the Land Acquisition Officer to state their claim regarding their interest in land, compensation to be determined and other civil rights.

The aforesaid facts being true, we Panchas have signed herein below.

...."

Panchnama dated 01.08.2011 "..."

In presence of you Talati cum Matri, on enquiry we state that for the purpose of upgradation of road for development of Gujarat International Finance Tech. City in village Lawarpur, Taluka & District Gandhinagar, public notice is published at Lawarpur Gram Panchayat for LAQ Case No. 2/2009.

All those agriculturist landowners whose lands are being acquired are thereby informed and they are informed by going at site to remain present before the Special Land Acquisition Officer on 3/8/2011 at 12.00 p.m. to raise claim regarding rights in land, compensation amount payable and other civil rights in land.

The aforesaid facts being true, we panchas have signed hereinbelow.

..."

Panchnama dated 01.08.2011 "...

Today, we panchas, in presence of you Talati Cum Mantri, on enquiry, state that Letter of Special Land Acquisition Officer, Gandhinagar bearing no. LAQ Case No. 2/2009 Lawarpur Vashi 1026/1502/2011, Public notices under S.6(2) and S.9(1)(2)(3)(4) for acquisition of land for the purpose of upgradation of existing road for development of Gujarat Information Tech City. For lands of mouje Lawarpur, Taluka & District Gandhinagar the final notification under S. 6 bearing no. AM/2011/25/M/JGDh/1410/3126/Gh dated 14.03.2011 was published on 14.03.2011 in Gazette of the Government of Gujarat in Part 1B at pg 212/1 to 212/6. The public notices under S. 6(2) have been published in the village and block no. 1 to 27 and the notices under S. 9 (1)(2)(3)(4) have been published on the Block nos included in the list and in the village in our presence. In view of the publication we panchas are signing herein below.

..."

Panchnama dated 18.07.2011 "...

In presence of you Talati cum Mantri, on enquiry, we state that for the purpose of upgradation of road for development of Gujarat International Finance Tech City, in village Lawarpur, Taluka & District Gandhinagar public notice is published at the Lawarpur Gram Panchayat for LAQ Case No. 2/2009.

All those agriculturist landowners whose lands are being acquired are thereby informed and they are informed by going at the site to remain present before the Land Acquisition Officer on 03.08.2011 at 12 pm to raise their claim regarding rights in land, compensation amount payable and other civil rights in land.

The aforesaid facts being true, we Panchas have signed herein below.

..."

Panchnama dated 14.07.2011 "...

Today we have remained present in the office of the Gram Panchayat Shahpur & in presence of Talati cum Mantri we have given reply/panchnama that:

For acquisition of land of village Shahpur for upgradation of road for development of Gujarat International Finance Tech City, the notification No. LAQ/2/2009/Shapur/Vashi/1033/2011 dated 14.07.2011 along with circular & yadi has been published in public by publishing it on the notice board of the Gram Panchayat and other public places.

All those agriculturist landowners whose lands are being acquired are thereby informed and they are informed by going at the site to remain present before the Land Acquisition Officer on 03.08.2011 at 12 pm to raise their claim regarding rights in land, compensation amount payable and other civil rights in land.

The aforesaid facts being true, we Panchas have signed herein below after understanding the same.
..."

3.6 According to Shri Amin, even otherwise, the award dated 14.08.2013 qua the lands of villages Lavarpur and Shahpur is clearly beyond the statutory limit of two years prescribed under Section 11A of the Act as the date of publication in the notification under Section 6(2) at village Lavarpur is claimed to be 18.07.2011 and at village Shahpur to be 14.07.2011. According to Shri Amin, Section 11-A is mandatory. It was introduced to ensure that the award is made within a reasonable time from the declaration under Section 6 so that the "market value" of the land is guaranteed as compensation. The declaration under Section 6 was published on 14.3.2011, in the newspaper on 28.3.2011/29.03.2011 and last published in Shahpur Village on 14.07.2011 and therefore the Award is beyond two years of the declaration and the acquisition ought to have been treated as lapsed and the award be quashed.

3.7 In the alternative, Shri Amin submitted that even if it is presumed that declaration under Section 6 was published in Ratanpur on 17.08.2011 then such publication AFTER stages under Sections 7, 8 and 9 and hearing under Section 11(1) is bad. There can be no publication of Section 6 after hearing under Section 11(1).

3.8 Shri Amin submitted that by multiple publications of notifications under Section 6 of the Act an artificial last date of publication to extend the limitation cannot be created. According to him, the term "make an award" under Section 11A does not only mean signing of the paper award but also includes communication of the same to the land owner and offering the compensation.

3.9 In support of his submissions, Mr. Amin relied on the case of Kunwar Pal Singh (Dead) by Lrs. vs. State of U.P. And Ors. (2007) 5 SCC 85, about interpretation put forth by the Apex Court of Section 11-A and 6(2) of the Act, 1894 and period of two years to be reckoned from the last of dates of the three modes of publication prescribed under Section 6(2) and in the facts of the above case as the declaration under Section 6 was given by beat of drums in the locality and considering the case of publication under Section 6 of the notification Supreme Court held that the award was made after expiry of the limitation period of acquisition proceedings were held to be lapsed.

4. Ms. Nisha Thakore, learned Assistant Government Pleader has vehemently opposed the contention that the land acquisition proceedings can be treated to have lapsed on the expiry of two years from the date of publication of declaration under Section 6 of the Land Acquisition Act, 1894. On the basis of a summary of dates and events, she has tried to make out a case that since, through a series of publication of declarations were made for the same, last one being on 17.08.2011, the award made on 14.08.2013 was within two years and would therefore not attract Section 11A of the Land Acquisition Act, 1894.

4.1 According to Ms. Thakore, there was a proposal of the Patnagar Yojna for acquisition of 104 Revenue Survey Numbers of villages Lavarpur, Shahpur and Ratanpur. Such proposal was submitted to the office of the Special Land Acquisition Officer and a darkhast was sent on 27.07.2009. On 24.02.2010, the DILR with the assistance of the surveyor and in the presence of a representative of the acquiring body conducted the survey and submitted a measurement sheet. There is no dispute on the dates of notifications under Sections 4, 6(2) and 9. However, what is seriously in controversy are the dates of publication of Section 6(2) notifications and Section 9 procedure in the context of such dates.

4.2 From the list of dates so submitted by Ms. Thakore, learned Assistant Government Pleader, it is her case that Section 6(2) and Section 9(1)(2)(3)(4) notices were made on 14.07.2011 for Shahpur, 18.07.2011 for Lavarpur and 17.08.2011 for Ratanpur. Hearings were fixed under Section 9 on 03.08.2011 for Lavarpur, for Shahpur on 04.08.2011 and on 05.08.2011 for Ratanpur. The objections were submitted by the petitioners on 05.08.2011 by landholders of village Ratanpur, on 04.08.2011 by landholders of village Shahpur and on 01.09.2011 by those of village Lavarpur. The draft award was sent to the State Government for approval on 24.05.2013, which was approved by the State Government on 13.08.2013. The award was published on 14.08.2013. The compensation as per award was deposited on 07.11.2013. The new Act of 2014 came into force on 01.01.2014. The notices under Section 12(2) were issued fixing hearing on 05.09.2014.

4.3 According to Ms. Thakore, the exercises both under Section 6(2) and Section 9 were simultaneously carried out. That the simultaneous exercise was done and is valid is because as per Section 8 of the Land Acquisition Act, 1894, lands had already been marked out under Section 4 on 24.02.2010 and therefore no fresh measurements were needed to be made, in between the proceedings envisaged under Section 6(2) and Section 9 of the Act.

4.4 According to Ms. Thakore, the object of the Act makes it apparent that procedure for determination of compensation is the secondary purpose of the Act. The primary purpose of the enactment is to lay down the law which would enable the State to acquire land. Ms. Thakore drew our attention to the provisions of Section 4 and submitted that the manner in which the notification can be issued is prescribed in sub-section (1) of section 4. The same has to be by publication in official gazette, publication in a daily newspaper and apart from that the Collector has to cause public notice of the substance of the notification to be given at convenient places and locality. The consequences of the publication of the notification are provided in sub-section (2) of Section 4.

4.5 Ms. Thakore also invited our attention to Section 5A and Section 6 of the Land Acquisition Act. According to Ms. Thakore, no prejudice is caused to the petitioners if Sections 6 & 9 notices are issued together as under the Scheme there is no procedure for inviting objections after Section 6 publication.

4.6 Drawing our attention to the communication dated 14.07.2011 addressed by the Special Land Acquisition Officer to the Talati-cum-Mantri, Lavarpur, Ratanpur and Shahpur, it was submitted that it shows that there is reason to believe that both notices under Sections 6 & 9 (1)(2)(3)(4) were simultaneously issued. Section 9 of the Act lays down the procedure for service of notice and such

notice specifies the place and date where the claimants have to lodge objections. According to Ms. Thakore, the panchnama dated 17.08.2011 of Ratanpur Gram Panchayat was with respect to Section 6(2) of the Act and it also records with regard to Section 9 notice. Section 9(2) hearing was fixed on 06.08.2011 which preceded the date of the panchnama drawn under Section 6(2). In her submission, this in no manner would lapse the acquisition as Sections 6 & 9 deal with two distinct stages of acquisition.

4.7 With regard to the submission of Mr. Amin that there was non compliance of Sections 5(A), 7 & 8 of the Act, she submitted that the land owners cannot be allowed to sit on the fence and allow the State to complete the acquisition and then attack the notifications under Sections 4 & 6. Ms. Thakore further submitted that as far as Section 8 is concerned, the DILR office with the assistance of the Surveyor and in presence of the representatives of the acquiring body have undertaken the survey of lands proposed to be acquired and as envisaged under Section 8 the same exercise undertaken at the stage of Section 4 of the Act can be made the basis for purposes of Section 8. It is submitted by Ms. Thakore that the petitioner cannot be permitted to blow hot and cold and raise a plea that no publication of substance under Section 6(2) was published locally when in fact they had raised objections under Section 9 of the Act and participated in the hearings so fixed.

4.8 With regard to contention of the petitioner that the proceedings have lapsed on the statutory period of two years having expired, she submitted that though there were two notifications under Section 4 of the Acquisition Act for lands at Lavarpur, Shahpur and Ratanpur, there was a single notification under Section 6 and therefore though Section 6 (2) publication of declaration of the three villages took place on different dates, it is the last of the series of such publication which has to be taken into consideration. In support of her submissions she has relied upon the decisions in the case of Bihar State Housing Board reported in (2003) 10 SCC 1.

4.9 As far as discrepancy in the dates in the panchnama are concerned, she submitted that in respect of village Lavarpur wherein the panchnama of 18.07.2011 is mentioned, and subsequently one panchnama of 01.08.2011 is produced, when there was no publication of Section 6 it would have no bearing on the period of two years because the last panchnama of village Ratanpur was of 17.08.2011 and discrepancy in the dates would not make such panchnama bogus or concocted.

4.10 As far as with regard to the acquisition proceedings being governed under the new Act, according to Ms. Thakore, the same is misconceived because the award has been passed on 14.08.2013 which is not prior to five years of coming into force of the new Act. The acquisition proceedings will be governed by the old Act and the petitioners at the most can get additional compensation.

4.11 In support of her submissions, Ms. Thakore relied on the following decisions:

1. (2002) 7 SCC 712 - Urban Improvement Trust, Udaipur v. Bheru Lal and Ors.: That in the context of Section 6 of Land Acquisition Act, 1894 limitation-period of one year from "the date of publication of the notification"

under Section 4 (1) is for making the declaration under Section 6 and not for publication thereof in Official Gazette and starting point of the period of one year is the date of publication of the substance of notification under Section 4 (1). In exercise of powers under Article 226 of the Constitution of India in a given facts of the case delay in publication of substance of the notification in local papers based on the above notification cannot be set aside.

2. (2003) 9 SCC 662 - General Manager, Department of Telecommunications, Thiruvananthapuram vs. Jacob S/o Kochuvarkey Kalliath (Dead) By Lrs. And Ors.: In the context of Section 11-A and 6 (2) of Land Acquisition Act, 1894 period of two years from the date of publication of the declaration of prescribed Section 11-A for passing the award, must be calculated from the last of the series of the publication referred to under Section 6(2) and last of the series of the publications in the facts of the above case was publication in daily newspaper and period of two years to be reckoned from the date of such publication. In the facts and circumstances of the case, the date of publication locally in case of Ratanpur Village was 17.8.2011 and date of award was 14.8.2013 and, therefore, the acquisition proceedings are not to be held illegal on the ground of Section 11-A of the Act.

3. Larsen & Toubro Limited vs. State of Gujarat and Others reported in (1998) 4 SCC 387 - However, in the context of the facts about contention raised by learned advocate for the petitioner in all these petitions, about publications of notification qua Lavarpur Gram Panchayat, Shahpur Gram Panchayat and Ratanpur Gram Panchayat under Section 6 and 9 on 18.7.2011, 14.7.2011, 17.8.2011, learned AGP would contend that all such publications locally were under Section 6(2) of the Act, 1894 and thereafter various dates of hearing were given for Section 9 notices on 3.8.2011, 4.8.2011 and 5.8.2011 for villages Lavarpur, Shahpur and Ratanpur respectively.

5. We may, before we assign our reasons and reach the conclusions, point out that in Special Civil Application No. 14335 of 2014 to Special Civil Application No. 14339 of 2014, the challenge in addition to the lapsing of the award is that the award is bad as it demonstrates total non-application of mind inasmuch as wrong survey numbers have been mentioned in the award. However, since the main dispute in all these petitions is with regard to the operation of Section 11A of the Land Acquisition Act, 1894, we have, insofar as these five petitions are concerned, not dealt with the alternative challenge.

6. In the context of the challenge to the land acquisition proceedings and the dates and procedures adopted, it will be appropriate to reproduce relevant sections of the Land Acquisition Act, 1894. The relevant Sections are as under:

"Section 4

4. Publication of preliminary notification and powers of officers thereupon:

(1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette [and in two daily

newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification)]. (2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Section 5A (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorized by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final. (3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.] Section 6 6 Declaration that land is required for a public purpose.-(1) Subject to the provisions of Part VII of this Act, [when the]

[appropriate Government] is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders [, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)]:

[[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 68 of 1984) shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:] [Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

[Explanation 1.- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.] [Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues]. (2) [Every declaration] shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected. (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration the 34 [appropriate Government] may acquire the land in a manner hereinafter appearing.

Section 7

7. After declaration, Collector to take order for acquisition:-Whenever any land shall have been so declared to be needed for a public purpose or for a company, the [appropriate Government] or some officer authorised by the [appropriate Government] in this behalf, shall direct the Collector to take order for the acquisition of the land.

Section 8

8. Land to be marked out, measured and planned.- The Collector shall thereupon cause the land (unless it has been already marked out under section 4), to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof), a plan to be made of the same.

Section 9

9. Notice to persons interested.-(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent. (3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.. (4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and 37 [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)].

Section 10

10. Power to require and enforce the making of statements as to names and interests.-(1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub- proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal

Code (45 of 1860).

Section 11

11. Enquiry and award by Collector.- (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land and 39 [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.] [(2) Notwithstanding anything contained in sub- section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. [(3) The determination of compensation for any land under sub-section (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act. [(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.] Section 11A 11A. Period within which an award shall be made.-(1)The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement."

7. The analysis, briefly of the provisions of the Sections reproduced hereinabove would reveal that :

(I) When the State has an intention to acquire a certain parcel of land, a notification has to be published. Modes of publication are envisaged in the Act. The intention is to ensure that adequate publicity is given so that landowners and persons interested will have an opportunity to file their objections under Section 5A of the Act.

(II) Objections can be filed under Section 5A by the landowners or persons interested. On receipt of such objections and hearing thereon, the Collector shall make a report.

(III) This section provides that if the appropriate government is satisfied after considering the report, if any made under Section 5A, that any land is needed for a public purpose, a declaration shall be made to that effect under the signature of the Secretary to such government or of some officer duly authorized. It is this declaration that is material for the purposes of counting the period of two years referred to in Section 11A. The declaration has to be published in official gazette, newspaper and at a convenient place in the locality.

Such a declaration is conclusive evidence that the land is needed for a public purpose.

(IV) Under Section 7 when the land shall have been so declared i.e. under Section 6, the State Government shall direct the Collector to take order for the acquisition of the land.

(V) On such declaration, on a direction so received, the Collector, under Section 8, cause the land to be marked out and cause to be measured.

(VI) Thereafter, under Section 9, the Collector cause public notice to be given at convenient places on or near the land to be taken stating that the government intends to take possession and that claims to compensation for all interests be made. This gives an opportunity to all persons interested to appear before the Collector within 15 days from such notice and state the nature of their respective interests, amounts and particulars of their compensation and objections to measurements made under Section 8.

(VII) Enquiry then shall be made into the objections which any person has made under Section 9 and then shall make an award.

7.1 In the context of such provisions, let us assess the chronology of dates viz-a-viz the procedure that has been undertaken in the facts of the present case, in case of each village. We have in the earlier part of this judgement produced the relevant dates in the case. Perusal of such chart would indicate that:

(a) Section 4 notification in Lavarpur, is 10.03.2010 and publication was on 29.07.2010 as per the Award. For lands in Shahpur and Ratanpur notification was on

18.5.2010. The award records that it was published on 16.08.2010.

(b) Common notification under Section 6 was issued on 14.03.2011

(c) Date of hearing of Section 9 notifications were on 03.08.2011 (Lavarpur), 04.08.2011 (Shahpur) and 05.08.2011 (Ratanpur).

(d) Date of award was on 14.08.2013.

7.2 The State in the context of counting the period of limitation of two years has taken a two fold defence that declarations under Section 6(2) have to be in the Official Gazette, in daily newspapers and in the locality. The last date of such publication shall be the date of publication. Since according to the State, a common notification was issued under Section 6 on 14.03.2011, the last date of the three publications i.e. in the case of Ratanpur being 17.08.2011, the award is made within two years on 14.08.2013. The other submission is that both Section 6(2) and Section 9 notices were simultaneous. Measurements were made when notification was issued under Section 4 and therefore the only formality was of making an award.

8. Let us test both these defences of the State, in context of the facts on hand. Undisputed it is that notifications under Sections 4 & 6 were made on 10.03.2010 and 14.03.2011 respectively. However, there is a serious dispute on the publication of a declaration under Section 6 vis-a-vis the three villages Lavarpur, Shahpur and Ratanpur.

- **LAVARPUR** In case of Lavarpur, the award and the reply state that the date of declaration under Section 6 of the Notification and public notice under Section 9 was 18.07.2011. The Panchnama at Page 145 dated 18.7.2011 does not indicate to be one as a declaration under Section 6 of the Act. It reads about notice of hearing under Section 9(1) of the Act on 3.08.2011. Therefore, it can safely be inferred that it is a procedure under Section 9 and not a declaration under Section 6 of the Act. Even when this Panchnama is compared with the one provided by the Talati at PAGE 138 dated 1.08.2011, they reveal that they are the same. The date "18.07.2011" is overwritten. The Panchnama at Page 136 dated 1.08.2011 also shows that Section 6 and 9 notices were published on 1/08/2011. However, it refers to two letters, one of which is dated 18.08.2011. Clearly, therefore the Panchnama is not reliable. Therefore, both Panchnamas of 1.08.2011 and 18.07.2011 cannot be said to be genuine documents. In substance both are not declarations under Section 6 of the Act.

- **RATANPUR** The Panchnama pertaining to Ratanpur (PAGE 146) claims that a declaration under Section 6 and Section 9(1) was published on 17.08.2011. The Panchnama shows hearing is fixed on 5.08.2011. This is 12 days prior to the date of the Panchnama. The award also records that the hearing was on 5.08.2011. This would show that it was not a declaration under Section 6 of the Act. Both, Panchnamas of Lavarpur and Ratanpur have the same language and therefore can be construed to be one under Section 9(2) of the Act and not declarations under Section 6 of the Act. The claim of the State that time of declaration of the last three as 17.08.2011 would save the limitation cannot therefore be accepted.

- SHAHPUR If this Panchnama (PAGE 147) is the only one beyond doubt, then it records the date of 14.07.2011 and therefore even if this is taken as the date, even then the award is not within two years i.e. on 14.08.2013.

9. All these circumstances, seriously bring the date of actual declaration under Section 6(2) under a cloud. All these panchnamas are clearly a concoction. The date in case of Ratanpur even if taken to be last in the series, being 17.08.2011, the other flaw is that Section 9 hearing on 05.08.2011 could not have preceded the declaration under Section 6(2). Such an exercise obviously is like putting the cart before the horse. The scheme of the sections laid out hereinabove would clearly reveal that a Collector under Section 9 only proceeds to hear interested parties after a declaration under Section 6. The words of Section 9 are amply clear to say that the "Collector shall then cause notice to be given". Therefore, such proceedings are only after declaration under Section 6 and marking and measuring of land.

9.1 That the DILR measured the land under Section 4, in Ms. Thakore's submission, is a misnomer. The exercise could not have been to be one exempting the procedure under Section 8 being followed. Obviously therefore hearing of Section 9 of 05.08.2011, could not precede Section 6(2) declaration. Panchnamas produced at pages 136, 138, 145 and 146 of the paper book clearly suggest tampering to bring out a case to change the date from 01.08.2011 to 18.07.2011 in case of Lavarpur and panchnama at page 146 in case of Ratanpur dated 17.08.2011 shows the date of 05.08.2011 which also raises doubt. On these counts, therefore, the submission on behalf of the State that the award is within two years from the date of declaration, the date being 17.08.2011 has no legs to stand on.

10. Since it is an undisputed fact that the lands in question are required for public purpose for expansion of road and at the same time State machinery has been exhausted by undertaking exercise in issuing notification under Sections 4 and 6 of the old Act coupled with the fact that possession of lands have not been taken over and compensation is not paid, it will be in the interest of justice to strike a balance by issuing the following directions:

(a) As the entire procedure under the Land Acquisition Act, 1894 has been followed, in the peculiar facts of this case, it will not be necessary for the State to undertake the exercise of Social Impact Assessment as envisaged under Chapter II of the Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013').

(b) The awards in question and which are the subject matter of these petitions shall be deemed to be awards made under Section 25 of the Act of 2013.

(c) As more than 8 years have gone by after the issuance of the notifications under Sections 4 & 6 of the Act, the State shall undertake the exercise to redetermine the market value in accordance with the provisions of Section 26 of the Act of 2013. The determination of market value of the land shall be done in accordance with the said provisions of the Act of 2013 as per the market value prevailing as on today i.e. the date of this judgement and the redetermined amount of compensation as per the Act

of 2013 shall be paid to the petitioner forthwith, with all statutory benefits preferably within a period of six months from the date of receipt of the writ of the order of this Court. It will be open for the petitioners to prefer reference under Section 64 of the Act of 2013 if they are not satisfied with such award.

With the aforesaid directions, petitions are disposed of.

sd/-

(ANANT S. DAVE, ACJ) sd/-

(BIREN VAISHNAV, J) DIVYA