

(2004) 02 GUJ CK 0018
In the Gujarat High Court

Case No : Special Civil Application No's. 4716 and 8703 of 2002 and 83 of 2004 with Civil Application No. 8094 of 2003

Bhatt Indravadan Nathalal

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 52
Constitution of India, 1950 — Article 243 R, 243 S, 243 U, 243 V, 243 W
Gujarat Municipalities Act, 1963 — Section 146, 147, 148, 2(22), 258
Land Acquisition Act, 1894 — Section 4, 50, 52, 5A, 6

Citation : (2004) 24 GLH 224 : (2004) 2 GLR 1365

Hon'ble Judges : K.A. Puj, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : A.K. Clerk, M.C. Bhatt, P.R. Nanavati, A.J. Shastri and J.C. Bhatt, for the Appellant; Harsha Devani, AGP for Respondent Nos. 1-2 and Murali N. Devnani, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—Since common issue is involved in all these matters, the same are being disposed of by this common judgment.

2. In Special Civil Application No. 4716 of 2002, there are in all 11 petitioners and they have challenged Notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 and prayed for stay against the respondent authorities restraining them from proceeding further, pursuant to the said Notifications.

3. In Special Civil Application No. 8703 of 2002, there are in all 32 petitioners and they have prayed for quashing and setting aside the land acquisition proceedings, including the Notification issued u/s 4 on 27.07.2001 and u/s 6 on 16.05.2002 and the notice issued u/s 9 on 16.07.2002. They have also prayed for stay against further proceedings in respect of the impugned land acquisition proceedings and restraining the respondent authorities from taking over the

possession of the shops of the petitioners unless and until an alternative sight for rehabilitation of the petitioners are made available to them.

4. In Civil Application No. 8094 of 2003, the petitioners have prayed for stay against the respondents from taking over the possession of the applicants' shops as per the details given in Annexure "B" to the said application.

5. In Special Civil Application No. 83 of 2004, the petitioner has challenged the Notification issued u/s 4 on 27.07.2001 and also the notice issued u/s 9 of the Act on 16.07.2002 and further prayed for stay against the respondents restraining them from taking possession of the petitioner's property.

6. In Special Civil Application No. 4716/2002, the petitioners are the statutory tenants of the properties situated in Dakor on Survey Nos. 6265 to 6278 and 5323 to 5329 and are earning their livelihood from the said properties since their forefathers and the said properties belong to Trikamji Mandir Trust, respondent No.4 herein. It is the case of the petitioners that as the building belonging to the Trust was old, the same was pulled down as per the instruction of the Collector with an understanding that the same was to be reconstructed and on completion of the construction, the properties were to be reallocated to the respective tenants. As the petitioners were statutory tenants and were to be evicted with a view to re-allot the same area of plot, a suit came to be filed in the Court and a compromise decree was passed by virtue of which the petitioners have handed over the possession upon a compromise to rebuild the shops within a period of three months and if there was any delay, the petitioners were to be paid Rs.5,000/- per month till the building is constructed and allotted to the petitioners. Thereafter, a building permission was granted to the Trust on 28.12.1998 by the Dakor Municipal Borough, the respondent No.3 herein, and the construction was started. However, the Collector, in exercise of his powers u/s 258 of the Gujarat Municipalities Act, suspended the operation of the resolution of the Municipal Borough giving building permission and stopped the construction vide his order dated 13.10.1999. The said order was the subject matter of the other proceedings before this Court and it was quashed and set aside. Even the subsequent order u/s 258 is also the subject matter of different proceedings. In the mean time, the respondent authorities have initiated acquisition proceedings to acquire the land in question which belong to the private trust and issued Notifications u/s 4 & 6. It was challenged on the ground that what could not be achieved by passing the order u/s 258 of the Gujarat Municipalities Act was tried to be done by resorting to the provisions of the Land Acquisition Act and, therefore, the said proceedings were mala fide and ought to be stayed.

7. By an order dated 27.06.2002, this Court (Coram :- R.K. Abichandani & M.C. Patel, JJ.) observed that merely because an order was made u/s 258 by the Collector staying the Resolution of the Municipality permitting construction of the disputed land, it cannot be said that the power of eminent domain of the State to acquire the land in question cannot be exercised under the provisions of the Land Acquisition Act. The Court has further observed that the purpose of acquisition is

to acquire land for the convenience of the pilgrims by providing adequate passage and traffic arrangement at Dakor. It cannot, therefore, be said that the purpose for which the lands are acquired is not a public purpose. The Court has, therefore, not thought it fit to issue any interim order which would have the effect of preventing the provisions of the Acquisition Act from operating and interim relief was accordingly refused.

8. In Special Civil Application No. 8703/2002, the petitioners are carrying on their business in their respective shops and they are the tenants of either the respondent No.5 i.e. Balchandra Gopalrao Tambekar, Trustee of Shri Ranchhodraiji Temple, Dakor or of Dakor Temple Committee since many years. It is the case of the petitioners that because of an unfortunate incident took place in 1994 whereby due to stampede four people lost their lives. Because of this, Temple administration decided to widen the road and to provide more open land in the vicinity of temple and for this purpose, at first phase 6 shops adjacent to main gate of Temple were acquired, with a promise to the displaced persons to accommodate them by giving alternative place. In the second phase, the respondents have decided to acquire shops of the present petitioners and for this purpose, Notification u/s 4 was issued on 27.07.2001 and the petitioners have submitted their objections on 24.08.2001 u/s 5-A of the Act. Thereafter, Notification u/s 6 was also issued on 15.06.2002. The petitioners have made detailed representation to the State Government, including the concerned Minister and the petitioners were assured that alternative accommodation would be provided to them. Notice u/s 9 was issued on the petitioners and being aggrieved by all these actions of the respondent authorities, the petitioners have filed the present petition on the ground that the initiation of the impugned action is without authority of law, illegal and unjust.

9. This Court has issued rule on 01.07.2003 and it was ordered to be heard along with S.C.A.No. 4716/2002. The Court has further recorded the statement made on behalf of the petitioners to the effect that since the petitioners were pursuing the matter with the concerned authorities for amicable solutions, the petitioners did not press for interim relief at that stage and the interim relief was accordingly refused.

10. Since the negotiations of the petitioners with the respondent authorities did not yield any fruitful result, they filed Civil Application No. 8094/2003. By an order dated 14.11.2003, this Court (Coram :- D.K. Trivedi & Sharad D. Dave, JJ.) granted order of status-quo and after examining the case records, relevant files and considering the submissions of the respective parties, on 21.11.2003, this Court has extended the order of status-quo till the application is heard finally. Thereafter, by an order dated 17.12.2003, this Court has directed the office to notify both the above matters as well as Civil Application for final hearing. The matters, however, could not be heard till the Winter Vacation.

11. During the Winter Vacation, S.C.A. No. 83/2004 was filed and while challenging the acquisition proceedings, it was contended that the petitioner has

purchased the property in the year 1999 and he was the bonafide purchaser and his possession should not be disturbed. It was contended that since other similar situated persons who are the tenants outside and just adjacent to the property of the petitioner, were served with similar notices and have filed the Special Civil Application before this Court being S.C.A. No. 8703/2002 in which RULE was issued and it was ordered to be heard along with S.C.A. No. 4716/2002, the said petition should also be admitted and be heard along with the other matters.

12. Accordingly, all the above matters are heard together by this Court.

13. Heard Mr. A.J. Shastri, learned advocate appearing for the petitioner in S.C.A. No. 4716/2002, Mr. P.R. Nanavati with Mr. M.C. Bhatt, learned advocates appearing for the petitioners in S.C.A. No. 8703/2002 and C.A. No. 8094/2003 and Ms. J.C. Bhatt, learned advocate appearing for the petitioner in S.C.A. No. 83/2004. Heard Mrs. Harsha Devani, learned AGP for the State of Gujarat as well as for the Land Acquisition Officer in all these matters, Mr. A.K. Clerk, learned advocate appearing for the Dakor Temple Committee, Mr. Murali N. Devnani, learned advocate appearing for Trikamji Mandir Trust.

14. Mr. M.C. Bhatt, learned Senior advocate has taken the lead for making his submissions and other learned advocates have virtually adopted the arguments of Mr. Bhatt.

15. Mr. Bhatt has submitted that the initiation of the Land Acquisition proceedings in the present group of cases is misconceived in law and the Land Acquisition Officer has no authority and/or jurisdiction to initiate such proceedings under the Act as the entire purpose of acquiring land/shops of the petitioners is nothing but for widening of street vested in Dakor Municipal Borough, and, therefore, it is the Municipality who can acquire the land/shops for the purpose of widening the street under the provisions of the Gujarat Municipalities Act and, therefore, the recourse taken by the concerned Land Acquisition Officer under the Act is absolutely misconceived and without jurisdiction and, therefore, without any authority of law. Mr. Bhatt has further submitted that subject of maintenance of public streets, laying of public streets, widening of public streets etc. are within exclusive jurisdiction of local authority under the Provisions of Gujarat Municipalities Act. He has, therefore, submitted that the local authority has to first apply its mind and come to the conclusion that the widening of public street is required for public purposes. Since the Dakor Municipal Borough has not passed any resolution with regard to acquisition of the petitioners land/shops and it has never requested the State Government to acquire the land for widening the public street and hence, the State Government has no authority, power or jurisdiction to initiate proceedings for acquisition of land under the Land Acquisition Act. In support of his submission that only the Dakor Municipal Borough has the power or jurisdiction to initiate acquisition proceedings, Mr. Bhatt has relied on the decision of the Bombay High Court in the case of SHASTRI RAMCHANDRA DINANATH V/S. AHMEDABAD MUNICIPALITY 2 B.L.R. 395 wherein it is held that " A Municipality can only acquire land when it is

acquired for the purposes of the Bombay District Municipal Act which deals with public streets and it vests these only in the Municipality and allow the Municipality to light, water, cleanse, construct, alter and maintain them. The Court has further held that the Municipality had a discretion and its application of the Municipal funds was proper and reasonable and the same cannot be questioned in the Civil Court. Mr. Bhatt has further relied on the decision of the Hon'ble Apex Court in the case of Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others, wherein while considering the provisions contained in Bombay Municipal Boroughs Act, 1925, the Court has taken the view that the Municipality had the power to acquire land needed for municipal purposes including widening, opening, enlarging or otherwise improving any public street or municipal road. The Court has further held that the scheme of the land acquisition Act is that whenever the land is needed for the public purpose or is likely to be needed for a public purpose, the Govt. may resort to the machinery provided under the Act for acquiring the land. Whether the public purpose is a purpose for local authority and the provisions of the Land Acquisition Act are put in force for acquiring land at the cost of any fund controlled or managed by a local authority, Section 50 of the Land Acquisition Act provides that the charges of an incidental to such acquisition shall be defrayed from such fund.

16. Mr. Bhatt has further submitted that the impugned acquisition proceedings are bad in law and are not in the spirit of the constitutional mandate provided by the Legislatures vide Constitution (74th amendment) Act, 1992, wherein local authorities like Dakor Municipal Borough are empowered to use their power by way of delegated legislation and after addition of the said Chapter XI - A under the head of "The Municipalities" by way of Article 243P to 243 ZG, the Municipalities like Dakor Municipal Borough is one of the three limbs of the State under the Constitution of India. He has, therefore, submitted that the initiation of acquisition proceedings is contrary to the provisions contained in the Constitution of India whereby those powers are vested in the Municipalities and the action of the Land Acquisition Officer is amounting to encroachment upon the powers of the local authority like Dakor Municipal Borough and hence, it is required to be quashed and set aside on this ground.

17. Mr. Bhatt has further submitted that the Land Acquisition Act is a general Act making provisions for land for public purposes all over the country, whereas specific provisions are made in Gujarat Municipalities Act for acquisition of land required for public street. He has, therefore, submitted that the Special law must prevail over General law. He has further submitted that even otherwise Gujarat Municipalities Act is later in point of time with reference to enactment of Land Acquisition Act and hence, the law enacted later in time should prevail over earlier enactment on the same subject. For the proposition that the Gujarat Municipalities Act being the Special law would prevail upon the General provisions contained in the Land Acquisition Act, Mr. Bhatt has relied on the decision of the Rajasthan High Court in the case of ARJUN SINGH V/S. THE

STATE OF RAJASTHAN AND OTHERS, AIR 1975 RAJ 217 wherein the Court has taken the view that ordinarily, if the language employed in a statute or a statutory instrument is plain, then the ordinary grammatical meaning should be assigned to the words used therein. In cases where two provisions, one general and another applicable to a special class, are contained in the same statute or in different statutes dealing with the same subject-matter, the cardinal rule of construction laid down by their Lordships of the Supreme Court, in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, is :-

" When there is a law generally dealing with a subject and another dealing particularly with one of the topics comprised therein, the general law is to be construed as yielding to the special in respect of the matters comprised therein."

On the basis of the aforesaid submissions, Mr. Bhatt has submitted that the acquisition proceedings initiated by the Land Acquisition Officer in respect of the land/shops of the petitioners is not in accordance with the statutory provisions, without any authority of law, beyond the powers vested in the State Government and hence, they are required to be quashed and set aside.

18. Mr. Bhatt has further submitted that even if it is assumed that the State Government is well within its right to initiate such land acquisition in the public interest, in that case also, the State Government is under an obligation to consider the hardship which caused to the petitioner due to proposed acquisition and the State Government must consider before proceeding with the acquisition the hardship of the connected persons. Since the petitioners are tenants of the premises under acquisition, the whole compensation in respect of shops which may be ultimately determined by the concerned Land Acquisition Officer will go to the owner of the property and the petitioner would hardly get anything out of such compensation particularly when the petitioners are likely to suffer the total loss of their business and will also lose their goodwill for 50 years.

19. Mr. Bhatt has further submitted that the respondent authorities are estopped from proceeding with land acquisition proceedings on the principle of Promissory Estoppel as it is not open to the concerned respondents to proceed with the Land Acquisition Proceedings unless and until the promise given by the concerned Minister of providing alternative site is made available to the petitioners. He has, therefore, submitted that the impugned action of the respondents are required to be quashed and set aside on the ground of non-fulfillment of the promise. Even otherwise, alternative availability of site to carry out public purpose is one of the important and relevant factors in the land acquisition proceedings.

20. He has further submitted that the impugned action of the respondents is suffering from the vice of malafides and the entire process has been initiated at the behest of the original land owners since the land owners are not in a position to achieve their goal of removing the petitioners as tenants. They want to achieve this goal and to earn compensation now to remove the petitioners by utilising influence in the Government. He has further submitted that there was

total non-application of mind while initiating acquisition proceedings. The objections raised by the petitioners were not properly dealt with or considered and removal of shops would not have any impact in controlling crowd within the Temple premises. He has further submitted that the shops of the petitioners are not creating any hindrances either to the traffic or to the crowding people and roads provided by the Dakor Municipal Borough on all sides of the Temple are all adequately widen to meet with number of pilgrims visiting to the Temple.

21. Mr. A.J. Shastri, learned advocate appearing for the petitioners in S.C.A. No.4716/2002 has made one more submission, over and above the submissions made by Mr. Bhatt on behalf of the petitioners that there was a legal malafide in initiating the acquisition proceedings against the petitioners as the District Collector could not achieve his goal by passing his order u/s 258 of the Gujarat Municipalities Act and hence, at his behest the acquisition proceedings were initiated. In support of his submission, he relied on the decision of the Hon''ble Supreme Court in the case of State of Punjab and Another Vs. Gurdial Singh and Others, wherein it is held that "where acquisition is sought for establishing a grain market, it is no doubt for public purpose. However, when acquisition of a particular land was earlier declared by the Court to be vitiated by mala fides and the Government again seeks to acquire it after some years under emergency powers and it is found that the real intention is to take away land of particular persons to vent the hostility of a local politician and ex-Minister, the acquisition must be held to be mala fide."

22. Mr. Murali N.Devnani, learned advocate appearing for Trikamji Mandir Trust i.e. respondent No.4 in S.C.A. No. 4716/2002 has also opposed the acquisition proceedings and relied on the affidavit-in-reply and submitted that initiation of acquisition proceedings is totally unjustified in as much as the respondent No.4 has given various proposals from time to time, which would ensure the public interest in allowing convenient movement of traffic. However, without taking into consideration these aspects and minimizing the loss, which may be caused to the trust and the petitioners, the State Government has proceeded arbitrarily. He has further submitted that the alternative accommodation should be provided to the Trust also as the Trust is the legal owner of the subject land and in case the present proceedings are held to be legal and justified, the Trust should be compensated by providing other alternative accommodation.

23. Ms. Jyoti Bhatt, learned advocate appearing for the petitioner in S.C.A. No. 83 of 2004 submitted that pursuant to the notice dated 15.12.2003, the petitioner gave reply on 20.01.2004 wherein it was pointed out that the land sought to be acquired includes the land admeasuring about 90.85 Sq.Mt. land on which Laxminarayan Temple of the petitioner is situated and if the said Temple on the land would be pulled down, the religious feelings of the petitioner would adversely be affected and hence the said portion of the land should not be acquired. She has also prayed for the alternative accommodation of the land in lieu of the land sought to be acquired.

24. Mrs. Harsha Devani, learned AGP appearing for the State Government, on the other hand, strongly opposed the contentions raised in this group of petitions and defended the action of the respondent authorities. She mainly relied on the affidavit-in-reply filed on behalf of the respondent No.3. She has submitted that Ranchhodraji Temple Committee Trust, Dakor and Secretary, Gau Sanvardhan Devsthan Sanchalan & Yatralu Prabhag, General Administration Department, Govt. of Gujarat proposed to acquire 41 shops/properties bearing City Survey No. 2 to 34, 568, 569, 5265 to 5269 and 5330 for the purpose of regulation of the pilgrims and the traffic. She has further submitted that the temple is being visited by many pilgrims through out the year and it is very difficult to control the rush of the pilgrims and to regular the flow of the pilgrims as well as to control the traffic. To meet with the said situation, the acquisition proceedings were initiated. She has further submitted that purpose of acquisition was not merely the widening of street but it was also for the purpose of providing facilities to the pilgrims and to control the traffic and this being the purpose the State Government is empowered to initiate land acquisition proceedings and it is in no way contrary to the provisions contained in the Gujarat Municipalities Act. She has further submitted that provisions of Article 243P of the Constitution of India has no relevance so far as the petitioners' case is concerned as the General Administration Department of the State Government has proposed to acquire the land and it would not amount to any encroachment upon the powers of the local authorities. She has further submitted that Section 4 Notification clearly describes the public purpose of facilitating the pilgrims and regulating the traffic and not for widening the street as alleged by the petitioners. She has further submitted that there is no substance in the proposition that the provisions are made in the Gujarat Municipalities Act for acquisition of land required for public street and, therefore, special law must prevail over general law. She has further submitted that simply because Gujarat Municipalities Act is later in point of time with reference to enactment of the Land Acquisition Act, the same would prevail upon the Land Acquisition Act. Article 254 of the Constitution of India is very clear wherein it is stated that inconsistency between laws made by parliament, whether passed before or after law made by legislature of such State shall prevail and law made by the Legislature of State shall to the extent of the repugnancy, be void. She has further submitted that there is no question of any breach of promissory estoppel and since the land is required for public purpose, the petitioners are not justified in challenging the said proceedings before this Court in the present petition. She has further relied on the affidavit filed in February - 2003 wherein it is made clear that at present, the Govt. has no alternate place for shop owners to accommodate them for their business. But when the Dakor town as well as Gomtighat can be developed in future, the Govt. will consider to accommodate these shop keepers i.e. shop keepers whose shops are acquired in the present proceedings. It was also made clear that the petitioners would not be given alternate place forthwith. But their cases would be considered at the time of development of Dakor town as well as Gomtighat.

25. In support of her submissions, she relied on the decision of the Bombay High Court in the case of THE GOVERNMENT OF THE PROVINCE OF BOMBAY V/S. GUNVANTRAI MANEKLAL AND ANOHTER, AIR (39) 1952 BOM 134 wherein it is held that "Section 52 of the Bombay Municipal Boroughs Act only gives one illustration of the exercise of the powers by the Provincial Government for compulsory acquisition of land under the provisions of the Land Acquisition Act. It cannot be said that the power which the Provincial Government may exercise by having recourse to the Land Acquisition Act, 1894, would be exercisable only in the event of there being a hindrance to the permanent or temporary acquisition by the Municipality upon payment of any land or building required for the purposes of the Act. In the enactment of Sec. 52 there is no limitation or restriction on the powers of the Provincial Government to compulsorily acquire the land for the public purpose within the meaning of the Land Acquisition Act, 1894."

26. Ms. Harsha Devani, learned AGP further relied on the decision of this Court in the case of LATABEN S. SHAN AND ANOTHER V/S. STATE OF GUJARAT AND OTHERS 1998 (1) G.L.H. 467 wherein it is held that "Notification u/s 4 cannot be set aside on the ground that it is result of mala fide exercise of power by the State Government - the acquiring body. It is further held that it is not open to the Court to sit in appeal over the decision of the State Government in this behalf and acquisition proceedings cannot be quashed on the ground that other suitable land are available for public purpose or that hostile treatment is meted out to the petitioners by acquiring their lands."

27. After having heard learned advocates appearing for the respective parties and after having considered their pleadings as set forth in the memo of petitions, reply as well as rejoinders and after having minutely examined the relevant statutory provisions contained in the Land Acquisition Act as well as Gujarat Municipalities Act and the Constitutional Provisions and also the authorities cited before us, we are of the view that the real controversy which arose before us is whether the State Government is empowered to initiate present acquisition proceedings, whether the purpose set out in the Notification issued u/s 4 is in real sense a public purpose and whether there is any legal obligation on the part of the State Government to provide alternative accommodation to the petitioners whose land/shops are sought to be acquired under the impugned acquisition proceedings. For this purpose, it is necessary to have a close look at the relevant statutory provisions.

28. The main thrust of Mr. Bhatt's argument is that under the Gujarat Municipalities Act, it is the Dakor Municipal Borough only who is empowered to initiate the present acquisition proceedings and the State Government has no role to play in absence of any request having been made by the Municipality. According to Mr. Bhatt, land was sought to be acquired for widening of the public street. The word "Public Street" is defined in Section 2(22) of the Gujarat Municipalities Act which reads as under :-

"(22) "Public Street" means any street -

- (a) over which the public have a right of way; or
- (b) heretofore levelled, paved, metalled, channelled, sewerred or repaired out of municipal or other public funds; or
- (c) which under the provisions of Section 147 or 148 is declared by the municipality to be, or under any other provisions of this Act becomes, a public street;

29. Section 80 empowers the Municipality to acquire and hold property for the purpose of the Act. Clause (f) of Sub-section 2 of Section 80 deals with public streets. It reads as under :-

"(f) All public streets and the pavements, stones and other materials thereof and also all trees, erections, materials, implements and things provided for such streets;"

30. Section 146 of the Act discusses powers about public streets and acquisition of adjacent land from street. It reads as under :-

"146. POWERS REGARDING PUBLIC STREETS :-

(1) It shall be lawful for a municipality to lay out and make new public streets; to construct tunnels and other works subsidiary to public streets; to widen, open, enlarge or otherwise improve, and to turn, divert, extend, discontinue or stop up any public street; subject to the provision of sub-section (2) of section 65 to lease or sell any such land, therefore used or acquired by the municipality for the purposes of such streets, as may not be required for any public street or for any other purposes of this Act:

Provided that no proposal for permanently discontinuing any public street shall be sanctioned by a municipality unless one month at least before the meeting at which the proposal is decided, a notice signed by the Chief Officer has been put up on the notice board in the office of the municipality and in the street or part of street which is proposed to be so discontinued informing the residents of the said proposal not until the objections, if any, to the said proposal made in writing any time before the day of the said meeting have been received and considered by the municipality.

(2) ACQUISITION OF ADJACENT LAND FROM STREET :-

In laying out, making, turning, diverting, extending, widening, opening, enlarging or otherwise improving any public street, in addition to the land required for the carriage-way and foot-ways and drains thereof, the municipality may acquire the land required for the construction of houses and buildings to form the said street; and subject to the provisions contained in sub-section (2) of section 65, may sell and dispose of such additional land in perpetuity or on lease for a term of years with such stipulations as to the class and description of

houses or buildings to be erected thereon as it may think fit."

31. Section 69 of the Act empowers the State Government to take recourse to the Land Acquisition Act, 1894. It reads as under :-

"69. Recourse to the Land Acquisition Act, 1864 :- When there is any hindrance to the permanent or temporary acquisition by a municipality upon payment of any land or building required for the purposes of this Act, the State Government may, after obtaining possession of the same for itself under the Land Acquisition Act (I of 1894), vest such land or building in the municipality on its paying the compensation awarded and on its repaying to the State Government all costs incurred by the State Government on account of the acquisition."

32. The plain reading of the aforesaid provisions of the Gujarat Municipalities Act would not strengthen the case of the petitioners as there is no conflict between the powers to be exercised by the State Government under the Land Acquisition Act or by the Municipalities under the Gujarat Municipalities Act. There is no encroachment by the State Government on the exercise of powers of the Dakor Municipal Borough while issuing Notification u/s 4 & 6 or taking possession of the lands / shops for the purpose of providing facilities to the pilgrims and to control the traffic. The purpose or object mentioned in the notification is very clear. It is not only for the purpose of widening of street as contended by the petitioners. When land is sought to be acquired for any public purpose, the State Government is empowered to initiate proceedings under Land Acquisition Act. Section 80 of the Gujarat Municipalities Act does not curtail or restrict the power of the State Government under the Land Acquisition Act.

33. As rightly observed by the Bombay High Court in the case of the GOVERNOR OF THE PROVINCE OF BOMBAY V/S. GUNVANTRAI MANEKLAL AND OTHERS (SUPRA), Section 52 of the Bombay Municipal Boroughs Act merely contains one illustration of the exercise of the powers by the Provincial Government for the compulsory acquisition of land and in no way it puts any restriction or limitation on the powers of the Provincial Government to compulsorily acquire the land for the public purpose within the meaning of the Land acquisition Act, 1894. Provisions contained in Section 52 of the Bombay Municipal Boroughs Act and Section 69 of the Gujarat Municipalities Act are more or less analogous and what is held in respect of Section 52 of the Bombay Municipal Boroughs Act is equally good in respect of Section 69 of the Gujarat Municipalities Act. Even otherwise, decision rendered by the Bombay High Court in the above case is the decision of pre-bifurcation of the Bombay State and hence it may have binding effect on this Court. We are also in agreement with the ratio laid down in the said case and are of the view that Section 69 of the Gujarat Municipalities Act is not a bar or ban on the exercise of the powers of the State Government to acquire the land for public purpose.

34. We are, further, of the view that the decision of the Hon"ble Supreme Court in the case of AMBALAL PURSHOTTAM (SUPRA) does not render any assistance to

the petitioners before us as the Hon"ble Supreme Court has made it clear that Section 52 merely sets out alternative modes of acquiring property and in any case, the power of appropriate Government u/s 4 of the Land Acquisition Act to notify land needed for a public purpose is not subject to restriction contained in section 52 of the Municipal Boroughs Act. Even otherwise, there is no conflict between the State Government and the Dakor Municipal Borough as the acquisition proceedings are not opposed by the Municipality and though the Municipality is a party in this petition and is duly served with the process, has not thought it fit either to support or oppose the case of the petitioners, especially when the State Government is taking the cause of the Municipality. Even if it is assumed that there may be some conflict between the State Government and the Municipality and conflicting situation may arise while taking recourse to the provisions contained in Land Acquisition Act and/or Gujarat Municipalities Act, the later should give way to the former on the basis of Constitutional provisions contained in Article 254 wherein it is stated that inconsistency between laws made by Parliament, whether passed before or after law made by legislature of such state shall prevail and law made by the legislature of such state shall to the extent of repugnancy, be void.

35. Taking any view of the matter, we are not inclined to accept the proposition canvassed by Mr. Bhatt, the learned advocate appearing for the petitioners that the State Government has no power or jurisdiction to acquire the lands/shops of the petitioners by taking recourse to the provisions contained in the Land Acquisition Act.

36. We are also not much impressed by the submissions made on behalf of the petitioners that the acquisition proceedings initiated by the State Government are malafide in nature as the Collector having been failed in his attempt to exercise his power u/s 258 of the Gujarat Municipalities Act, has resorted to the provisions of Land Acquisition Act, this Court, while rejecting the prayer for interim relief in one of these petitions, has rightly observed that merely because an order was made u/s 258 by the Collector staying the Resolution of the Municipality permitting construction of the disputed land, it cannot be said that the power of eminent domain of the State to acquire the land in question can not be exercised under the provisions of the Land Acquisition Act. The decision of the Hon"ble Supreme Court in the case of GURDIAL SINGH AND OTHERS (SUPRA) relied on by the petitioners to allege malafides against the respondent authorities would not give much support to the petitioners as in that case, proceedings were initiated earlier under the Land Acquisition Act and were declared by the Court to be vitiated by malafides and again recourse was taken to the emergency powers and again there was an allegation of hostility between a local politician and ex-minister. Here in the present case, no such situation arose. Earlier the powers were exercised by the Collector u/s 258 of the Gujarat Municipalities Act and now the powers of eminent domain of the State are exercised under Land Acquisition Act. Such powers can not, therefore, be treated to have been coloured by malafides.

37. An issue regarding Promissory estoppel raised by the petitioners would not detain us much. There is no provision under the Land Acquisition Act to provide alternative accommodation to the owners/occupants of the property sought to be acquired. Under the Act, they are entitled to the compensation only. Simply because on humanitarian ground, some assurances are given to provide alternative accommodation, it would not confer any legal right on the petitioners or under any legal obligation on the state to fulfil it. The petitioners plea therefore, cannot be accepted that unless and until any alternative accommodation is provided to them, they would not vacate the premises sought to be acquired. The State Government has, however, made it clear that the Government, at present, has no alternative place for shop owners to accommodate them for their business. But when the Dakor town as well as Gomtighat can be developed in future, the Government will consider their cases. In this view of the matter, no further directions are required to be given. The respondent authorities will take an appropriate decision with regard to awarding of compensation and/or providing alternative accommodation to the owners/occupants of the lands/shops in accordance with law.

38. Subject to the aforesaid directions and observations, all these petitions and civil applications are dismissed. Rule / Notice shall stand discharged without any order as to costs. Interim relief in whichever matter granted, shall stand vacated.

39. Mr. M.C. Bhatt, learned Senior Counsel, for the petitioners, at this stage, submits that the interlocutory relief, may be directed to be continued for a further period of eight weeks so as to facilitate the petitioners to avail further legal redressal. Mrs. Harsha Devani, learned Assistant Government Pleader, has strongly objected.

40. After having heard them and considering factual profile and our observations and findings recorded in the judgment, we are of the opinion that there is no any case for further continuance of interlocutory relief. We are, therefore, unable to accede to the request of Mr. Bhatt. Request, therefore, shall stand rejected.