

(2004) 02 GUJ CK 0071

In the Gujarat High Court

Case No : Special Civil Application No. 6667 of 2003

Krishnamurarilal G. Agrawal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63
Constitution of India, 1950 — Article 226, 254, 256, 257(1), 258
Explosive Substances Act, 1908 — Section 7
Gujarat Town Planning and Urban Development Act, 1976 — Section 22(4)
Land Acquisition Act, 1894 — Section 11, 16, 17, 17A, 4
Railways Rules — Rule 17

Citation : (2004) 2 GLR 959

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

Bench : Division Bench

Advocate : Mihir Joshi and Amrita M. Thakore, for the Appellant; Mukesh A. Patel and R.M. Vin for Respondent No. 1, S.N. Shelat, General and Harsha Devani, AGP for Respondent Nos. 2-3 and D.N. Patel, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The petitioners have filed this petition under Article 226 of the Constitution of India seeking direction to the respondent No.2 to release from acquisition and restore possession of the lands belonging to the petitioners bearing Survey No. 346/3, 350/1 and 351 situated at village Thaltej, Dist. Ahmedabad, admeasuring about 16,672 Sq. Mts. (hereinafter referred to as "the subject land"). The petitioners have also prayed for writ of prohibition against the respondent Nos.2 and 3 restraining them from allotting the subject land to any person or using it for any purpose whatsoever. The petitioners have also prayed for directions to the respondent Nos.4 and 5 to make due provision for service of notice, affording opportunity of hearing and provide for compensation or transfer of rights of the petitioners in the subject land by way of compensation and/or allotment of reconstituted/Final Plot, in the Town Planning Scheme No. 37/38, (Thaltej).

2. The factual profile as it emerges from the memo of the petition is that the Executive Engineer (Construction) of the respondent No.1 had proposed by his letter dated 22.05.1981 to acquire certain agricultural lands at Thaltej admeasuring about 5,00,000 Sq. Yds. situated at village Thaltej, Tal. Daskroi, Dist. Ahmedabad for the purpose of constructing Inland Container Depot at Ahmedabad. On behalf of the respondent No.1 which was the acquiring body, acquisition proceedings were initiated by the respondent No.2 and on 30.07.1981, a Notification u/s 4 of the Land Acquisition Act, 1894 was published in the Official Gazette to the effect that certain lands admeasuring about 5,00,000/- Sq. Yds., including the subject land, were likely to be needed for the purpose of construction of an inland container depot for Western Railway. Thereafter, on 01.12.1981, the respondents published a declaration u/s 6 of the Act for acquisition of the said land.

3. It is the case of the petitioners that all the land owners of the land proposed to be acquired, filed writ petitions in this Court challenging the acquisition proceedings on the ground, inter alia, that land belonging to the State Government was available for the purpose of respondent No.1 at village Sola and village Chharodi and it was, therefore, unreasonable for the respondent Nos.1 and 2 to acquire private lands for the said purpose. The petitioners were informed that the said contention raised in the writ petition of land owners of about 3,00,000 Sq. Yds. of land was accepted by the Court and thereafter, the respondent No.1 constructed and established the Inland Container Depot at village Jamiatpur and village Khoraj - Khodiyar. It is, further, stated that the petition in respect of other lands, including the subject land was not accepted and thereafter, the Additional Special Land Acquisition Officer made an award on 23.09.1986 granting an amount of Rs.21.25 per Sq. Mts. as compensation for the lands to be acquired. The petitioners have received the amount under the award under protest and, thereafter, the respondent No.1 took over possession of the said land in or about October, 1986 which was handed over by the petitioners under protest. The relevant entries in the revenue records were mutated and the name of the respondent No.1 was entered as the owner in respect of the subject land.

4. It is further stated that despite this fact, the petitioners continued to be and are presently in possession of the subject land. The petitioners had also preferred a Reference to the District Court at Ahmedabad against the compensation awarded under the award dated 23.09.1986. Pending hearing of the said Reference, a letter dated 28.08.1991 was written by the Chief Engineer (Survey & Construction) of the respondent No.1 that the railway authorities have decided to give back lands to the original owners and to take back the amount of compensation given to the owners along with 12% interest. It is further stated that even in the pending Reference, on 21.12.1992, a pursis was tendered in the Court on behalf of the respondent No.1 stating that the subject lands were no longer required by the Western Railway since other lands had been acquired for the same purpose and hence, these lands were required to be denotified. The

railway authorities vide their letter dated 19.11.1992 requested the respondent No.3 to denotify the subject land. However, the Reference Court has not taken any cognizance of the said pursis and Reference was partially granted by the Reference Court and the amount of compensation was enhanced to Rs.47.13 per Sq. Mts. It is the say of the petitioners that they have still not received such additional amount and have also not challenged the judgment in view of the express decision and direction of the respondent No.1 of returning the subject land to the petitioners.

5. It is further stated by the petitioners that the petitioners have made repeated requests, both oral and written to the respondent authorities that the subject land be released from acquisition and possession thereof be restored to the petitioners. The petitioners have also indicated their readiness to return the amount of compensation received. The petitioners have alleged that the respondent No.2 is obstructing the release of the subject land from acquisition and the handing over possession thereof to the petitioners. It is further alleged that even earlier, the respondent No.2 had admitted to allot the subject land to the Popular Construction Company and the Sarawati Smruti Kheti Sahakari Mandli, though the same were under acquisition. The petitioners have initiated proceedings before the appropriate forum and by order of the Gujarat Revenue Tribunal dated 13.03.2002, the said allotment was cancelled. The petitioners have come to know that the respondent No.2 is proposing to allot the subject land to the Indian Institute of Legal Studies Society, a project of Education Department of State of Gujarat invoking Section 17A of the Land Acquisition Act, 1894, and the said fact has been recorded in the order dated 27.11.2002 in S.C.A. No. 439 of 1996.

6. It is further stated that respondent No.4 had initiated the procedure for making and finalising a Town Planning Scheme which included the subject land. The State Government had appointed the respondent No.5 to carry out the statutory functions assigned to such officer including, interalia, determination of shares of interested persons in the original plots and providing for transfer of any such right in the final plot, etc. Since the subject land stood in the name of respondent No.1 in the relevant revenue record, no notices were issued to the petitioners. It is further stated that out of the total land of the above referred Survey Nos., 16,672 Sq. Mts. were acquired while the balance 2524 Sq. Mts. continued to be of the ownership and in the possession of the petitioners. However, in respect to the said land, the Mamlatdar and ALT started proceedings for violation of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 and held that the petitioners were not agriculturists and therefore forfeited the land to the Government by order dated 28.01.1991 which was finally set aside by the Gujarat Revenue Tribunal on 27.02.2002 and the matter was remanded to the Mamlatdar for denovo inquiry pursuant to which an order was passed on 11.07.2002 in Ganot Case No. 14/02 holding interalia that there was no breach of the provisions of the Bombay Tenancy and Agricultural Lands Act and the petitioners were agriculturist and, therefore, lawful transferees thereof.

The petitioners therefore addressed letters dated 27.03.2001, 25.02.2003 and 19.04.2003 to the respondent No.5 requesting that in view of the subsequent development, the petitioners should be afforded an opportunity of hearing and should be considered as persons having an interest in the subject land. However, no notices have been issued by the respondent No.5 to the petitioners and the petitioners are apprehending that the rights in the original plots and the reconstitution of the allotment of the final plot relatable to the subject land would be made without considering the rights of the petitioners and would, therefore, irretrievably prejudice them.

7. It is in the above background of the facts, the present petition is filed before this Court seeking the aforesaid reliefs by invoking the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

8. Mr. Mihir Joshi with Ms. Amrita M. Thakore, learned advocates appearing for the petitioners submitted that the subject land is not required by the acquiring body for the purpose of establishing an Inland Container Depot as the said Depot is already established elsewhere and the acquiring body i.e. respondent No.1 has already made it very clear that the land is not required for the said purpose. He has, therefore, submitted that the respondent authorities are not entitled to retain the possession of the subject land and they should be directed to hand over the possession to the petitioners. Mr. Joshi has further submitted that the respondent No.2 had no power or authority to make use of the subject land for a purpose other than that for which the same was acquired and any attempt sought to be made by the respondent No.2 in that direction is absolutely unlawful, unauthorised, mala fide, contrary to the provisions of the Act and they should, therefore, be restrained from making use of the said land for any other purpose. Mr. Joshi has further submitted that Section 4 of the Act deals with publication of preliminary Notification and powers of officers there upon. The word "appropriate Government" means, in relation to acquisition of land for the purposes of the unions, the Central Government and, in relation to acquisition of land for any other purposes, the State Government. Since the subject land was required by the Central Government for the purpose of establishment of Inland Container Depot, the powers were delegated to the State Government to initiate acquisition proceedings and upon passing of the award u/s 11 of the Act, the possession was taken u/s 16 on making payment to the original land owners and the land there upon was vested in the Central Government. Once having vested the land in the Central Government, it is not open for the State Government to make use of the said land for any other purpose, as per the provisions contained in Section 17A of the Gujarat Amendment Act. It states that when any land vests in the State Government or in a Corporation or controlled by the State Government under the provisions of this Act, it shall be lawful that the previous sanction of the State Government, to use such land also for any public purpose other than that for which its possession was taken. Since the land is not vested in the State Government, there is no question of making use of the said land for any other purpose.

9. Mr. Joshi has further submitted that the Central Government has already made it clear by passing a pursis before the Reference Court that the subject land is not required by the Central Government for establishing the Inland Container Depot. The subject land is required to be denotified and possession thereof should be restored to the petitioners. In this connection, Mr. Joshi has invited our attention to the letter dated 28.08.1991 written by the Chief Engineer (Survey & Construction) wherein it was stated that some land owners have filed suit before the Court for price difference and he has instructed to enter into compromise with the said land owners and to take money back with 12% interest and to give back their land. He has further submitted that based on the said instruction, a pursis was filed before the Additional District Judge, Mirzapur Court, Ahmedabad in LAQ No. 25/1987 on 21.12.1992 wherein it was stated that the Western Railway was given other land for establishing Inland Container Depot and hence, the subject land was not required. The Central Government has, therefore, instructed the State Government to denotify the subject land and since certain legal formalities were to be observed, the time was sought for on this ground. Mr. Joshi has, therefore, submitted that the subject land should be returned to the petitioners forthwith.

10. Mr. Joshi has further submitted that with regard to one parcel of land admeasuring 2524 Sq. Mts., the petitioners have succeeded before the Revenue authorities and 84C proceedings initiated against them were dropped, the petitioners should be given an opportunity to present their case before the Town Planning authorities considering them as persons having an interest in the subject land. He has, therefore, submitted that necessary directions be issued to the Town Planning authorities.

11. Mr. Joshi has alternatively submitted that if the petitioners are not entitled to restitution of the lands, the respondent authorities be directed to pay additional compensation in accordance with law as awarded by the Reference Court.

12. Mr. M.A. Patel with Mr. R.N. Vin, learned advocates appearing for the respondent No.1 i.e. Union of India submitted that Notification dated 20.08.1987 was issued by the Union of India, in exercise of powers conferred under Article 258(1) of the Constitution of India and by virtue of the said Notification, the President with the consent of the State Government, entrusted the functions of the Central Government under the Land Acquisition Act, 1894 to the State Government. He has further submitted that a proposal was received from the Central Government i.e. the acquiring body for acquiring the subject land for the public purpose of the Inland Container Depot. On being satisfied that the land was needed for public purpose, the land acquisition proceedings were initiated and possession of the land was taken over by the Special Land Acquisition Officer u/s 16 of the Act and compensation was also paid to the land owners. He has further submitted that by virtue of Section 16 and 17 of the Act when the Collector has made an award u/s 11, he may take possession of the land which shall thereupon vests absolutely in the Govt. free from all encumbrances. He has

further submitted that the Central Government, by simply withdrawing from acquisition, cannot divest of its title and return it to its original owner. He has further submitted that the petitioners are not in actual possession of the land as the same was already handed over to the Railway by the State Government. If the petitioners are in possession of land even after receiving compensation and handing over the land, the petitioners' status is only of encroacher on the railway land, which is public property.

13. He has further submitted that letter dated 28.08.1991 of Chief Engineer (Survey & Construction) on which a reliance was placed by the petitioners, only conveys the view of General Manager, orally expressed in course of discussion. The second para of the said letter is about awaiting High Court's decision in the pending decision and action is to be taken in case the decisions which may be given. Even in the last para of the said letter, it was made clear that finally action are to be taken as per the railway rules and regulations. He has invited the Court's attention to the rules relating to the land not required by railways contained in para 1038 of Indian Railway Engineering Code which says that even if the Railways land is not required, it is to be disposed of in a prescribed manner only. He has, therefore, submitted that the land was offered to the State Government and the relinquishment proposal was also sanctioned by the Railway Board, but the same was not materialized due to encroachments made on the land by the petitioners and others. Mr. Vin has further submitted that the Reference pending before the District Court was decided on 10.10.1994 and additional compensation was also awarded by the Court. This additional compensation was deposited by the Railway with the State Government. He has further submitted that adjournment pursis filed on behalf of the Railway before the District Court was rejected and even in that pursis also, the Reference was made to the land which was not taken over by Railway and the same was to be denotified whereas the land which is already taken over by the Railways is to be relinquished and for that the rates of land were asked. He has further submitted that as per the provisions contained in Land Acquisition Act and the settled position of law, it is lawful to use such land for any other public purpose other than that for which its possession was taken. Mr. Vin has further submitted that there is no conflict between the Central Government and the State Government and even if there is any conflict or dispute, the petitioners are not concerned with that. The petitioners are not entitled in any manner whatsoever to the restitution of the land and the prayer made in the present petition with regard to the restitution of the land deserves to be rejected.

14. So far as the submission regarding effect of provisions contained in Section 17A of the Act is concerned, Mr. Vin has submitted that it has no application to the facts of the present case. In this connection, he has invited our attention to the decision of the Hon'ble Supreme Court in the case of Sat Pal Vs. State of Punjab and others, wherein it is held that "The conferment of executive power on the States in relation to a subject with respect to which the legislatures of the States have no power to make a law under Article 258(2) must necessarily be

subject to the administrative control of the Union under Articles 256 and 257(1), to the giving of such directions to the States as may appear to the Government of India to be necessary for that purpose."

15. Mr. Vin has further relied on the decision of the Hon"ble Supreme Court in the case of State of M.P. Vs. Bhupendra Singh, wherein it is held that the power of granting consent u/s 7 of Explosive Substances Act, 1908 rests with the Central Government. The Central Government has delegated it to the District Magistrate. It is not competent for the State Government to further delegate to the Additional District Magistrate, a power of the Central Government which the Central Government has delegated to the District Magistrate."

Based on the aforesaid two decisions, Mr. Vin has submitted that Section 17A of the Gujarat Amendment Act would not over ride the effect of the powers conferred on the Central Government under the Land Acquisition Act.

16. Mr. S.N. Shelat, learned Advocate General with learned AGP Mrs. Harsha Devani, appearing for the respondent State submitted that pursuant to the Notification issued u/s 4 and 6 of the Act and after undergoing the requisite formalities, the Land Acquisition Officer was handed over the possession by the owners of the respective land in presence of Surveyor and representative of the acquiring body on 28.10.1996 and land was vested in the State Government on taking over the possession from the owners u/s 16 of the Act. He has further submitted that as per the provisions contained in Section 17A of the Act, when any land vests in the State Government, it shall be lawful to use such land for any other public purpose other than that for which its possession was taken. He has further submitted that the word "vests" used in Section 17A is a word of variable import. Sections 16 & 17 of the Land Acquisition Act provide that the property so acquired, upon the happening of certain events, shall "vests absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 & 17, the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it very clear that the vesting of the property is not for limited purpose or limited duration. Provisions of Section 48(1) of the Act clearly vests the power with the State Government, who is the dominant owner whether to drop the acquisition proceedings. The State Government can only withdraw from the acquisition at any stage before the possession is taken. Once the possession of the land is taken and the land vests absolutely in the Government, the State Government is not at liberty to withdraw from the acquisition. There is no vested right or any legal right for the acquiring body or for the owner of the land to compel the Government to drop the proceeding. He has further submitted that once possession is taken over by the Government and it is vested, it is not open for the original owners of the land to claim restitution of the said land. For this proposition, he has relied on the decision of the Hon"ble Supreme Court in the case of Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, wherein it is held that

land acquired for public purpose can be utilised for any other public purpose. Possession of land taken and land vested in the Municipality free from all encumbrances. It is not intended that any land which remained unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification."

17. Mr. S.N. Shelat has further relied on the decision of the Hon"ble Supreme Court in the case of C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, wherein it is held that "acquired land having vested in the State and compensation paid to the claimant, thereafter, claimants are not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for any other purpose."

18. Mr. S.N. Shelat has further relied on the decision of the Hon"ble Supreme Court in the case of State of Kerala and others Vs. M. Bhaskaran Pillai and another, wherein it is held that "if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the State policy under the Constitution."

19. Mr. Shelat has further relied on the judgment of the Division Bench of this Court in case of SUBODHCHANDRA GULABBHAI DESAI V/S. STATE OF GUJARAT 2002 (3) G.L.R. 2134 wherein it is held that "the position of law on this aspect is settled that as and when the land is acquired by Government for a particular public purpose, it can be utilised for any public purpose and once the land is acquired, it becomes vested in the Government, and there is no question of any enforceable right with the original land owner in case the same is not utilised. Such lands may remain in the process of utilisation and may be utilised by the Government or the acquiring body for whose benefits such lands are acquired and no regrant can be claimed by any party as enforceable right before the Court of law."

20. Mr. Shelat has further relied on the decision of the Hon"ble Supreme Court in the case of Northern Indian Glass Industries Vs. Jaswant Singh and Others, wherein it is held that "if the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land."

21. Mr. Shelat has further relied on the Division Bench Judgment of this Court in the case of NAROTTAMBHAI NATHUBHAI PATEL V/S. SPECIAL LAND ACQUISITION OFFICER in S.C.A. No. 7226/2001, delivered on 20.12.2001, wherein one of us (Mr. J.N. Bhatt, J.) was a party, wherein it is held that "this petition at the instance of erstwhile owners of the acquired land is totally misconceived and after having taken into consideration the overall factual

landscape and the relevant legal aspects, the petitioners have totally failed to establish their right to return or reallocate the lands acquired for public purpose."

22. As far as challenge to the notification issued u/s 4 by the State Government for the purpose of acquiring the land for establishment of Inland Container Depot, and subsequently the land is sought to be used for any other public purpose, relying on the provisions contained in Section 17A of the Act is concerned, Mr. Shelat has relied on the decision of this Court in the case of LATABEN S. SHAH AND ANOTHER V/S. STATE OF GUJARAT AND OTHERS 1998 (1) G.L.H. 467 wherein it is held that "There is no manner of doubt that while issuing notification u/s 258 (1) of the Constitution, the Central Government confers its authority of law on the State Government to acquire land subject to certain conditions which may be stipulated in the notification. Therefore, State Government exercising powers in pursuance of notification issued under clause (1) of Article 258 of the Constitution will be acting with authority of law if it acquires any land for the purpose of Central Government." The Court has further held, after considering the relevant case law on the subject that neither the notification issued u/s 4 of the Act nor declaration made u/s 6 of the Act can be set aside on the ground that property of the petitioners are sought to be deprived by the State Government without authority of law. The effect of Presidential Notification is that wherever the expression "appropriate Government" occurs in the Act in relation to provision of acquisition of land for the purpose of the union, the words "appropriate Government" or State of Gujarat must be deemed to have been substituted.

23. In the above view of the matter, Mr. Shelat has strongly urged that no case is made out by the petitioners for the purpose of restitution of the subject land and hence, the petition be dismissed.

24. Mr. D.N. Patel, learned advocate appears on behalf of respondent No.4 i.e. Ahmedabad Urban Development Authority. An Affidavit is filed on behalf of the respondent No.5 i.e. Town Planning Officer. It is stated that the Government of Gujarat through its Panchayat Housing and Urban Development department's Notification, has constituted Ahmedabad Urban Development Authority vide Sub-section 4 of Section 22 of the Gujarat Town Planning & Urban Development Act, 1976. After consultation with the Chief Town Planner, Gujarat State, the AUDA had declared its intention to prepare the draft Town Planning Scheme No. 38, Thaltej on 05.07.2000, u/s 41 of the said Act. After following the procedure laid down in the said Act and the Rules framed thereunder, the AUDA had prepared tentative proposals for the Draft Town Planning Scheme and called owners meeting on 27.03.2001 under Rule 17 of the said Rules. Thereafter, the authority has published the draft Town Planning Scheme u/s 42 of the said Act, for inviting objections and suggestions from the owners as well as interested persons. After finalising the draft Town Planning Scheme proposals, the authorities have submitted the draft Town Planning Scheme to the State Government for the sanction u/s 48 of the said Act on 25.09.2001.

25. It is further stated that under the proviso of Sub-section 1 of Section 50 of the said Act, the State Government through Urban Development and Housing Department's resolution No. TPV/102001-5067/V dated 15.12.2001 appointed the Town Planning Officer Ghatlodia as Town Planning Officer to finalise the said draft scheme. The Town Planning Officer had entered upon his duties on 05.02.2002. In the record of the sanctioned draft scheme, the ownership of revenue Survey Nos. 350/1, 350/2, 351, 346/3 shown as Western Railway. The Town Planning Officer has issued notices on 28.05.2002 to the owners whose names were reflected in the revenue records at the relevant point of time. It is further stated that when the notices were issued as per the record of village form No.7/12 for revenue Survey No. 351, the land having area of 2524 Sq. Mts. belong to the State Government. Therefore, the question of issuing notice to the petitioners did not arise. It is further stated that the Town Planning Officer has yet not finalised the draft Town Planning Scheme. After scrutinising the collected records and representations before him, the Town Planning Officer if finds any interest or rights of the petitioners in the land, then appropriate notice will be issued. It is further stated that the representation made by the petitioners is still under consideration of the Town Planning Officer and if the interest or rights of the petitioners are established before the Town Planning Officer by producing relevant documents, then the petitioner will be issued notice during the procedure of the finalisation of the draft town Planning Scheme. It is further stated that the Town Planning Officer has already published a notice in the local newspaper "Prabhat" dated 16.06.2002 and invited interested persons to inspect the Scheme and file objections and suggestions, if any. The Town Planning Officer has not received any representation from the petitioners addressed to him. It is also stated that during the finalisation of the draft Town Planning Scheme, if the petitioners would make representation to the Town Planning Officer to establish their rights in the said land by submitting relevant records and documents, the same would certainly be considered before the Town Planning Scheme is finalised. It is, therefore, submitted that the petitioners' prayer with regard to the land admeasuring about 2524 Sq. Mts. is premature at this stage.

26. After giving our anxious thoughts to the submissions made and contentions raised by the learned advocates appearing for the respective parties and after having considered the documents produced before us as well as looking to the relevant statutory provisions pressed into service and the authorities cited and relied upon before us, we are of the view that the petitioners are not entitled to the restitution of the subject land admeasuring about 16,672 Sq. Mts., simply because the said land is not now required for the purpose for which it was originally acquired. The only condition which is to be fulfilled is that the acquired land must be used for public purpose and the public purpose may, however, be varied depending upon the facts of each case and the need of the acquiring body or the State Government / Central Government, as the case may be. The catena of decisions referred, hereinabove, undisputedly and unequivocally endorses the view which is to be taken by us in the present case that once the land is acquired

and possession is taken on or after payment of compensation to the land owners, land vests in the Govt. and the land owner has, thereafter, no right whatsoever to ask for the restitution of the said land even if it is not used for the purpose for which it is originally acquired. The Government is free to make use of the said land for any other public purpose.

27. We do not find any force or substance in the submission of Mr. Joshi, learned counsel appearing for the petitioners that since the subject land was not required by the railway authorities for the purpose of establishment of Inland Container Depot and since the said Depot is already established elsewhere and when they have already decided to withdraw from the acquisition proceedings and to relinquish the land in favour of the State Government and when pursis to this effect was filed before the District Court, where the land Reference case was pending at the relevant time, the possession of the land must be restored to the land owners. First of all, what was filed before the District Court was an adjournment pursis. It is, no doubt, true that time was asked for on the ground that the western railway was given other land for establishment of Inland Container Depot and hence, the subject land was not required and instructions were given to denotify the land, but certain legal formalities were to be observed which would take some time. However, the request made in the said pursis was not acceded to by the Court and award was passed by the Court enhancing the compensation from Rs.21.25 to Rs.47.13 per Sq. Mts. and that has become final. The petitioners are, therefore, only entitled to the enhanced compensation and not the restitution of the subject land.

28. The submission of Mr. Joshi that since the subject land does not vest in the State Government by virtue of Section 17A of the Gujarat Amendment Act, the said land cannot be used for any other public purpose, is also not found favour with the Court. If we examine this submission from any angle, we do not find any embargo or restriction which prevents the Central or State Government from making use of the subject land for any other public purpose. By virtue of the notification referred to above, the Central Government has delegated its power to the State Government and the land was acquired by the State Government in accordance with the statutory provisions contained in the Act. After taking over the possession u/s 16 of the Act, the land was vested in the State Government and thereafter the possession was given to the railway authorities. If the land is vested in the State Government, then in that case, by virtue of the provisions contained in Section 17A of the Act, the State Government can make use of the said land for any other public purpose. If it is accepted that the land is vested in the Central Government, in that case, there is no restriction in the principal Act that the land cannot be used for any other public purpose. On the contrary, the catena of decisions referred to above supports the view that once the land is acquired and vested in the Government, it can be used for any other public purpose. If we believe that the land is vested in the Central Government, in that case, Section 17A has no application. Here in the present case, there is no dispute between the Central Government and the State Government as the

Central Government has been given another land for establishing the Inland Container Depot and the land was relinquished in favour of the State Government which can be used by the State Government for any other public purpose, either for establishment of Judicial Academy or for any other public purpose. Even if there is any dispute between these two organs of the State, the petitioners are not concerned with that and that would not confer any entitlement on the petitioners to claim restitution of the subject land.

28.1 Even on the touch stone of provisions contained in Articles 254 and 258 of the Constitution of India, it cannot be said that by virtue of the provisions contained in Section 17A of the Gujarat Amendment Act, the respondent authorities are not empowered to make use of the subject land for any other public purpose.

29. With regard to the petitioners' grievance about the land admeasuring 2524 Sq. Mts., we are of the view that since the respondent Nos.4 and 5 have made it clear that it is open for the petitioners to make proper representation pursuant to the notice issued by them inviting the objections from the interested persons and to lead necessary evidence establishing their title to the said land, no interference is called for at this juncture. We, however, direct the respondent Nos.4 and 5 to consider the objections which are raised or to be raised before them by the petitioners and take appropriate decision in accordance with law.

30. As far as petitioners' right to claim enhanced compensation is concerned, we are of the view that there is no reason to withhold the said enhanced compensation for any more period. The award was passed by the District Court long back in the year 1992 and more than 12 years have gone and still the enhanced compensation was not paid to the petitioners. We, therefore, direct the respondent State Government to consider the case of the petitioners with regard to payment of enhanced compensation, more particularly, when it has been stated on behalf of the Central Government that the amount of enhanced compensation has already been deposited with the State Government. We, therefore, direct the State Government to make the payment of such enhanced compensation to the petitioners as expeditiously as possible, preferably within three months from the date of receipt of the writ from this Court or from the date of receipt of certified copy of this order, whichever is earlier.

31. Subject to the aforesaid directions, the petition is dismissed. Notice discharged without any order as to costs.