

(1999) 05 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No's. 1525, 2137, 2141, 2143, 2144, 2453 and 2457 of 1994

Vira Bhana

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Citation : (1999) 05 GUJ CK 0046

Hon'ble Judges : R.P. Dholakia, J;M.R. Calla, J

Bench : Division Bench

Advocate : Girish Patel and M.J. Yagnik, in Special Civil application Nos. 2137/94 to 2141/94 and 2143/94 and 2144/94 and D.M. Thakkar, in Special Civil application Nos. 1525/94 and 2453/94 to 2457/94, for the Appellant; P.B. Bhatt, A.G.P. for Respondent Nos. 1 and 2 and Harin P. Raval, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Calla J.

1. In all these 13 Special Civil Applications common questions based on identical facts are involved in the matter of challenge to the acquisition proceedings under the Land Acquisition Act and, therefore, we proceed to decide all these 13 Special Civil Applications by this common judgment and order as under:-

2. Petitioners herein are the land owners of villages Navagam and Vadnagar of Taluka Kodinar, District - Amreli (now in Revenue District Junagadh). The lands of these land owners were sought to be acquired under the provisions of the Land Acquisition Act, 1894 at the instance of the Company - respondent No.3. The particulars of the lands concerned in these Special civil Applications are as under:-

Village Vadnagar:

Spl. C.A. 1525/94 S. No. 313 1 Hector 24 Are 86 sq.mt. Spl. C.A. 2453/94 S. No.

371 0 Hector 91 Are 57 sq.mt. Spl. C.A. 2454/94 S. No. 372 0 Hector 47 Are 57 sq.mt. Spl. C.A. 2455/94 S. No. 360 0 Hector 36 Are 83 sq.mt. S. No. 372 Paiki 1 Hector 48 Are 64 sq.mt. S. No. 373 Paiki 2 Hector 14 Are 05 sq.mt. Spl. C.A. 2456/94 S. No. 360 0 Hector 65 Are 40 sq.mt. Spl. C.A. 2457/94 S. No. 311 2 Hector 06 Are 91 sq.mt.

Village Navagam:

Spl. C.A. 2137/94 S. No. 81 0 Hector 67 Are 78 sq.mt. Paiki Spl. C.A. 2138/94 S. No. 81 0 Hector 68 Are 97 sq.mt. Paiki S. No. 81 0 Hector 67 Are 78 sq.mt. Paiki Spl. C.A. 2139/94 S. No. 84 1 Hector 13 Are 47 sq.mt. Spl. C.A. 2140/94 S. No. 71/1 0 Hector 71 Are 35 sq.mt. Spl. C.A. 2141/94 S. No. 85 0 Hector 54 Are 70 sq.mt. Spl. C.A. 2143/94 S. No. 82/2 0 Hector 77 Are 30 sq.mt. Spl. C.A. 2144/94 S. No. 83 1 Hector 11 Are 78 sq.mt. Date: 12.5.99

3. These lands in question were sought to be acquired at the instance of the respondent No.3 i.e. Gujarat Ambuja Cement Ltd., which is a Public Limited Company duly incorporated and registered under the Companies Act, 1956 and it was arrayed as respondent No.3 as per Court's order dt 25.4.94 passed in Civil Application No.518/94 in Special Civil Application No.1525/94. The Gujarat Ambuja Cement Ltd. Company shall be herein-after referred to as "the Company". These lands were sought to be acquired for the purpose of new cement manufacturing Unit and for infrastructure facilities in and around the Unit of the said Company. For that purpose, the proposal for acquisition of the lands in question was made to the State Government on 14.5.92. The Deputy Secretary, then sent a letter dt.20.5.92 to inquire into the proposal and the Collector instructed the Assistant Collector to inquire into the said proposal of the Company. The Assistant Collector then instructed the Mamlatdar to instruct the land owners so as to associate themselves for the purpose of the said inquiry. Certain land owners including Laxman Shardul, Naza Bachu, Natha Karsan and Dava Bhagvan did remain present on 16.6.92 and 19.6.92 and these respondents also submitted their written objections with their signatures. The Assistant Collector then submitted the result of this inquiry to the Collector on 23.6.92 and the Collector submitted reported to the Government on 25/26-6-92. The Collector then made the proposal to the Government for acquisition on 24.7.90. Whereas it was a case of acquisition of an agricultural land of an area more than 20 Acres, prior permission of the Committee consisting of the Ministers were required to be obtained as per the Government Notification dt.20.9.91, a meeting was held accordingly and sanction was granted by this Committee consisting of Ministers on 16.12.92 for the purpose of issuing Notification under S. 4. Accordingly the Notification under S. 4 of the Land Acquisition Act dt.16.12.92 was published on 20.12.92. This Notification was also published in Gujarati Newspapers on 28.12.92 and in English Newspapers on 31.12.92 and it was also pasted at conspicuous places in the concerned villages on 30.12.92 and 1.1.93. Some of the petitioners represented before the Government on 20.1.93 that the concerned lands were rich agricultural lands,

that they were dependent on the agricultural lands only, were not interested to sell their lands, that the entire village was opposed to said acquisition, that there was no public purpose and that these land owners were also supplying sugar cane to sugar cane factories. Thereafter, the notices for hearing were issued on 10.3.93 for the date of 16.3.93. The notices were also issued to objectors on 10.3.93 and certain claimants were present and on behalf of the Company one Shri Rajiv Jain was also present. All those, who were present, also submitted their written objections. The report of S. 5A inquiry was forwarded to the Under Secretary, Land Acquisition, Government of Gujarat on 17.2.93 alongwith the proceedings and the objections recorded in the prescribed form and on 22.2.93 the Deputy Secretary, Revenue Department sent the communication to the Assistant Collector guiding him as regards the conduct of the S. 5A inquiry. It appears that on 26.2.93 on the basis of the complaint made by certain agriculturists in the matter of acquisition of the lands addressed to the Chief Minister, the files with details was called for by the office of the Chief Minister on 26.2.93. On 6.3.93 the file was submitted alongwith the detailed note. Thereafter, the notices dated 10.3.93 for the date of hearing i.e. 16.3.93 were sent and Bhanabhai Thobhanbhai Parmar, Vajesinh Thobhanbhai Parmar, Babubhai Siddibhai Parmar, Narsingh Jagmal, Bhagvan Nathu, Jiviben Siddibhai through her son Vajesingh Siddibhai remained present and on behalf of the Company Shri Rajiv Jain was also present. It further appears that on 11.11.93 the local M.L.A., addressed a letter to the Chief Minister to look into the matter and raised the grievance in the matter of the acquisition of the land. On receipt of such complaint from the local M.L.A., the Chief Minister's office addressed a letter to the Addl. Chief Secretary, Revenue Department calling for the file and on 24.11.93 the Deputy Secretary wrote a letter to the Collector calling for the detailed report with regard to the contents of the aforesaid complaint received from the office of the Chief Minister. Thereafter, on 22.12.93, the Deputy Secretary, Agriculture, Co-operation and Rural Development Department sent a letter to the Deputy Secretary and Member Secretary, Land Acquisition Committee, Revenue Department in the matter of the acquisition of the land for the respondent - Company at Vadnagar and Navagam conveying that the acquisition of the lands of these two villages may go ahead and there was no objection against such acquisition proceedings. The Joint Industrial Commissioner, (Industries Department) also sent a letter on 27.12.93 to the Deputy Secretary and Member Secretary, Land Acquisition Committee, Revenue Department to the same effect that the acquisition of the land for the respondent - Company may go ahead. Thereafter, the Notification under S. 6 dated 28.12.93 was issued and published in the Gazette, which was pasted at conspicuous places in the concerned villages on 30.12.93, the same was also published in the News Papers on 31.12.93. Thereafter, the public notice under S. 9(1) was issued on 25.1.93 and individual notices were also issued under S. 9(3) and S. 9(4) on 10.2.94. The awards were then passed in the matter of the acquisition of the lands of the two villages i.e. Navagam and Vadnagar on 30.5.95 and 20.6.95 respectively.

4. While these proceedings of acquisition are under challenge through these Special Civil Applications before us, it is given out that in certain cases possession of the land in question still rests with the petitioners. It appears that under S. 4 Notification, initially petitioners' lands, which was sought to be acquired, was 107 Acres and 27 Gunthas in all. Out of this, 61 Acres and 11 Gunthas of the lands, which was sought to be acquired, was of village Vadnagar and 46 Acres and 16 gunthas of the land, which was sought to be acquired, was of village Navagam. It is given out that in fact the lands, with regard to the Notification under S. 6, was only 82 Acres because between the date of Notifications under S. 4 and 6 29 Acres of land was purchased by the respondent - Company by private negotiations i.e. 25 Acres in Navagam and 4 Acres in Vadnagar, bringing down the figure to $107-29 = 78$ Acres. After S. 6 Notification 1 more acre was acquired by private negotiations bringing down the figure to 77 Acres and ultimately it has been submitted that the dispute which now remains is of 39 Acres of the land only; 15 Acres of land of Navagam is concerned in Special Civil Applications Nos.2137 to 2141/94 and Special Civil Applications Nos.2141/94, 2143/94 and 2144/94, and 24 Acres of land in Vadnagar in Special Civil Applications Nos.1525/94, 2453/94 to 2457/94.

5. Before we proceed further to deal with the challenge, which has been thrown in these Special Civil Applications, it may be pointed out that efforts were made in these cases from time to time that the controversy is settled between the parties as would appear from the order sheet, which was recorded on 22.9.98 and the subsequent order sheets dated 20.4.99 and 21.4.99. However, no fruitful result could be arrived at.

6. Mr.Girish Patel, learned counsel, for the petitioners has vehemently argued with commitment and conviction that the petitioners are agriculturists since generations, they have their family members, cattle etc.and, whatever land they possess is rich agricultural lands and the lands of all the petitioners form a part of the land producing sugar cane. He also submitted that the petitioners are members of Khand Khedut Sahakari Mandali Udyog Ltd. and these lands give good returns to the agriculturists and after the acquisition of these lands, they will be left with only a little and limited part of the land. He has also submitted that the acquisition of the concerned lands is in the name of public purpose for production of more cement, while the production of agricultural produce is also equally important and that too is a public purpose. In this background, he has submitted that when there is a comparison of such public purpose, the balance should be made to tilt in favour of the agrarian development rather than industrial development. His submission wedded to the cause of land owners is that the production of agricultural produce, crops and the supply to the sugar cane factories cannot be placed at a lower pedestal in comparison to the production of the cement. State's Right of Eminent Domain may be there but when it comes to the acquisition of the lands for the purpose of Companies, the State Government should take care to see that the interest of the agrarian population of this country is not sacrificed at the altar of the development in the

name of the industrial growth. He has further submitted that the requirements and the questions with regard to the public purpose must be different when the land is sought to be acquired for Companies in comparison to the cases when the land is acquired by the Government itself for certain public purposes and a balance must be struck in such cases. Mr. Girish Patel has emphasised the need of a different orientation and approach in the matters of acquisition of land for Companies whether they are Public Ltd. Companies or Private Companies and when the Government wants to put the land to use by itself for the developmental activities or otherwise. He has also submitted that the Companies may purchase the lands from the open market and the tendency to go ahead with the acquisition for the Companies must be discouraged. While referring to the Human Development Report of 1996 published for the United Nations Development Programme (UNDP), New York, Oxford, Oxford University Press, 1996 he has submitted that in the name of modernisation and distorted development we are heading towards the misdirected growth. While quoting from the said report and speaking about the distorted development, he has described the terms like jobless growth, ruthless growth, rootless growth, futureless growth, voiceless growth as under:-

"Jobless growth- where the overall economy grows but does not expand the opportunities for employment. In the OECD (Organisation for Economic Co-operation and Development) countries in 1993 the average unemployment rate was 8% - ranging from 2.5% in Japan to 10% in the United Kingdom, 18% in Finland and 23% in Spain. In the developing countries too, jobless growth has meant long hours and very low incomes for the hundreds of millions of people in low-productivity work in agriculture and the informal sector.

Ruthless growth - where the fruits of economic growth mostly benefit the rich, leaving millions of people struggling in ever-deepening poverty.

Voiceless growth- where growth in the economy has not been accompanied by an extension of democracy or empowerment. Political repression and authoritarian controls have silenced alternative voices and stifled demands for greater social and economic participation.

Policy makers once debated whether they should chose economic growth or extensive participation, assuming that these were mutually exclusive. That debate is dead. People do not want one or the other- they want both. But too many people are still denied even the most basic forms of democracy, and many of the world's people are in the grip of repressive regimes.

Voiceless growth can also be growth that gives women only a minor role in an economy's management and direction. As Human Development Report 1995 showed, human development, if not engendered, is endangered.

Rootless growth- which causes people's cultural identity to wither. There are thought to be about 10,000 distinct cultures, but many risk being marginalised or eliminated. In some cases minority cultures are being swamped by dominant

cultures whose power has been amplified with growth. In other cases governments have deliberately imposed uniformity in the pursuit of nation-building-say, with a national language.

This can be dangerous. The violence in the former Soviet Union and in the Balkan states of former Yugoslavia is a tragic legacy of culturally repressive governance. The nations that have held together best, from Switzerland to Malaysia, are often those that have recognised cultural diversity and decentralised economic and political governance to try to meet the aspirations of all their people.

Fruitless growth- where the present generation squanders resources needed by future generations. Rampant and uncontrolled economic growth in many countries is laying waste to forests, polluting rivers, destroying biodiversity and depleting natural resources.

This damages and destruction is increasing, driven overwhelmingly by demand in the rich countries, inadequate conservation in the developing countries and the pressure of poor people pushed onto marginal lands in poor countries. On past trends, global production will triple by about 2030. Unless serious conservation and pollution controls are in place soon, production will be long past the point of sustainability.

In sum: development that perpetuates today's inequalities is neither sustainable nor worth sustaining."

He has submitted that unless the Government takes timely corrective action, economic growth can become lost sighted and flawed and determined steps are needed to avoid jobless growth, ruthless growth, rootless growth and futureless growth. He has also submitted that the grievance of the agrarian land owners in the matters of compulsory acquisition of land in exercise of the right of eminent domain of the State, it has to be considered that in such cases it is not merely a case of acquisition of their land - it is in fact a case of depriving them of their livelihood and has submitted that money is no substitute for a land. He has also referred to the ensuing Draft amendments in the law relating to land acquisition and has submitted that the land cannot have any substitute other than the land itself in lieu of the land which are acquired, particularly when they form the part of their livelihood i.e. the right which is sacrosanct under Article 21 of the Constitution of India. In such matters of acquisition, the grievance of the land owners is to be examined on the anvil of Article 21 of the Constitution of India. He has submitted that while the provisions of the Act had been held to be valid, the same need to be examined on the anvil of Article 21 of the Constitution of India.

7. In the background, as aforesaid, Mr. Patel has submitted that in the matters of the acquisition of land for the Companies, in exercise of the powers under S. 55 of the Land Acquisition Act, 1894, the Central Government has made the Rules for the guidance of the State Governments and the Officers of the Central Government and State Governments, namely, Land Acquisition (Companies)

Rules, 1963 and these Rules apply to acquisition of land for all Companies under Part VII of the Act. He has submitted that under Rule 3 of these Rules, the Land Acquisition Committee is required to be constituted and under Rule 4 appropriate Government has to be satisfied with regard to certain matters before initiating acquisition proceedings. He has also submitted that no land acquisition committee, as such, had been constituted and that without taking into consideration the views of such acquisition committee and without consulting the committee, the declaration was made under S. 6 of the Act. Whereas the pleadings with regard to the fact that such land acquisition committee had not been constituted and that the same was not consulted and its views were not considered appear to be inserted in one of the petitions and a copy of such inserted leaf had not been made available to the other side as has been recorded in the order sheet dt 3.5.99, the record was summoned and the time was granted to the respondents to file the supplementary affidavit and for that purpose the matter was adjourned on 3.5.99 to 4.5.99 and thereupon the further affidavit in reply dt.4.5.99 was filed by one Shri K.L.Vankar, Deputy Secretary, Revenue Department alongwith certain documents in Special Civil Application No.1525/94 and in Special Civil Application No.2137/94 a further affidavit was also filed by one Shri N.B.Nanavati working as Senior Law Officer with the respondent Company. We have referred to the facts, as contained in the pleadings of Special Civil Application No.1525/94 and also on the basis of the record, as was produced before us for perusal by the learned A.G.P. appearing in these cases.

8. Mr.Patel has raised the following contentions before us:

- (i) There was no proper inquiry under S. 5A of the Land Acquisition Act;
- (ii) There was no inquiry under S. 40 of the Land Acquisition Act;
- (iii) There was no proper inquiry under Rule 4 of the Land Acquisition (Companies) Rules, 1963;
- (iv) That these are three separate, independent and distinct enquiries;
- (v) That the Inquiry under Rule 4 and S. 40 must precede the issue of the Notification under S. 4 of the Land Acquisition Act;
- (vi) That the public purpose is to be tested with reference to S. 40(i)(aa) and that the words, "either on the report of the Collector under S. 5A, sub-clause (2) or" as occurring in S. 40(1) should not be considered in view of the Gujarat Amendment through Land Acquisition (Gujarat Unification Amendment) Act, 1920 of 1965 and S. 19 thereof.

9. Before we proceed to deal with the contentions raised by Mr. Patel on behalf of the land owners, we may usefully reproduce S. 5A and S. 40 of the Land Acquisition Act and Rules 3 and 4 of the Land Acquisition (Companies) Rules, 1963 as under:-

L.A.Act:

"5-A. Hearing of objections,- (1) Any person interested in any land which has been notified u/s 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 authorised 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 u/s 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 purposes 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."

"40. Previous enquiry,- (1) Such consent shall not be given unless the appropriate Government be satisfied either on the report of the Collector u/s 5-A, sub-section (2), or by an enquiry held as hereinafter provided,-

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provisions of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 in the case of a Civil Court."

L.A. (Companies) Rules, 1963:

"3. Land Acquisition Committee,- (1) for the purpose of advising the appropriate Government in relation to acquisition of land under Part VII of the Act the

appropriate Government shall, by notification in the Official gazette, constitute a Committee to be called the Land Acquisition Committee.

(2) The Committee shall consist of-

(i) the Secretaries to the Government of the Departments of Revenue, Agriculture and Industries or such other officers of each of the said Departments as the appropriate Government may appoint; and

(ii) such other members as the appropriate Government may appoint, for such terms as that Government may, by order, specify.

(3) The appropriate Government shall appoint one of the members of the Committee to be its Chairman.

(4) The Committee shall regulate its own procedure.

(5) It shall be duty of the Committee to advise the appropriate Government on all matters relating to or arising out of acquisition of land under Part VII of the Act, on which it is consulted and to tender its advise within one month from the date on which it is consulted;

Provided that the appropriate Government may on a request being made in this behalf by the Committee and for sufficient reasons extend the said period to a further period not exceeding two months."

"4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings,- (1) Whenever a company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely-

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an inquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall-

(i) in any case where the land proposed to be acquired is agricultural land consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company; and

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation,- For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2) the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by the Government to the Committee.

(4) No declaration shall be made by the appropriate Government u/s 6 of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted u/s 5A of the Act; and

(ii) the agreement u/s 41 of the Act has been executed by the company."

10. Mr.H.P.Raval appearing on behalf of the respondent - Company while referring to the Scheme of the Act has pointed out as under:-

"That Sections 39 and 40 were originally enacted at the time when the Act was enacted. That there was no provision contained in the Act providing for hearing of objections by any person interested in the act. That it can safely be presumed that the framers did not wish nor did they intend to give any opportunity of hearing to persons interested in the land when acquisition was for public purpose. However, by drawing a distinction in the matter of acquisition of land for companies, the Legislature had thought it fit to enact certain provisions in the Act so as to safeguard interest of the land owners. The same are found in Sections 39 and 40 of the Act which provide that previous consent of the proper Government and the execution of agreement are necessary. Section 40 provides that such consent shall not be given unless the Government is not satisfied on an enquiry being held as regards the existence of the matters specified in clause (a), (aa) and (b).

That vide Land Acquisition (Amendment) Act, 1923 (Act No.28 of 1923) Section 5A was introduced so as to provide hearing of objections from any person

interested in the land which was notified u/s 40 as being notified or likely to be notified for public purpose or for a company. Thus, it appears that the Legislature thought it fit to grant an opportunity of hearing to the persons interested in land for being heard in the matter prior to the acquisition of the lands and a Notification being issued u/s 6. That, obviously, was an additional safeguard which was introduced by the Legislature so as to provide a second opportunity which could be conducted simultaneously u/s 5A and Section 40 of the Act.

That so far as the State of Gujarat is concerned, there is an amendment in Sections 39 and 40 vide Gujarat Act No.20 of 1965 vide Section 18 thereof with effect from 15.8.1965 on account of which in place of Section 6 the figure 4 is substituted which makes it obligatory on the part of the Government to give previous consent and execution of an agreement becomes necessary before putting into force the provisions of Sections 4-16 and 18-37.

Similarly an amendment has been made in Section 40(1) of the Act vide Gujarat Act No.20 of 1965 vide Section 19 with effect from 15.8.1965 deleting the words "either on the report of the Collector u/s 5A or sub-section (2)". Therefore, it is obvious that such previous enquiries insofar as State of Gujarat is concerned, it shall have to be made before Section 4 Notification and it could not be simultaneously conducted with S. 5A enquiry.

However, it does not mean that three separate inquiries one u/s 40, second u/s 5A and the third under the Land Acquisition (Companies) Rules are contemplated having regard to the scheme of the Act and Rules and as is sought to be contended by the petitioners.

That is so because there was no provision in Land Acquisition (Companies) Rules, 1963 providing for a separate inquiry under the Land Acquisition Act in the matter of conduct of inquiry under S. 40 of the Act it was for the concerned Government to follow the procedure which could vary from State to State or from officer to officer. It, therefore, appears that with a view to codify the nature and scope of enquiry u/s 40 and to provide Rules for the guidance of the State Governments and the officers of the Central Government as well as of the State Government in exercise of power u/s 55 the Central Government has made the Rules. In the submission of respondent No.3 it appears that after the decision of the Hon'ble Supreme Court in the first case of R.L. Arora Vs. State of U.P., decided on 15th December 1961, the Central Government appears to have exercised its power u/s 55 of the Act to frame the Rules providing the manner and method for inquiry for acquisition of the land for companies, that there is no other provision in the Act requiring any other third independent inquiry being carried out under the Rules. That Section 55 confers power upon the Government to make rules consistent with the Act for the guidance of the officers in all matters connected with the enforcement of the provisions of the Act. That proviso to Section 55(1) was inserted by Land Acquisition Amendment No.61 (Act No.31 of 1962) vide section 6 thereof with effect from 12.9.1962 and it is thereafter that the Rules have been framed as notified in the Government

Gazette dated 24th June 1963. Therefore, what is prescribed under the Companies Rules, 1963 cannot be taken and meant to enlarge and/or substitute the provisions of the Act and provide something different or in addition to what is not provided under the Land Acquisition Act. In other words, the said Rules are not framed nor can be made to be taken so as to bring in to existence a third enquiry other than the enquiry u/s 40 and Section 5A since no such enquiry is contemplated."

11. Besides this, it has been submitted that no doubt opportunity is provided for raising objections at enquiry contemplated under S. 5A, however after raising all the objections including non supply of copy of the report of S. 5A enquiry, there is no participation of the aggrieved land owners in the further proceedings. The petitioners concede that non supply of such report does not vitiate the enquiry. Relying on the decision of this Court reported in 4 GLR 326 (Gandalal v. State) it has been submitted that S. 5A is an administrative enquiry and no quasi judicial enquiry and that it is further held in AIR 1997 SC 497 (Kalumiya v. State of Gujarat) that furnishing a copy of the report under S. 5A is not necessary and does not invalidate the land acquisition proceedings. This decision is further an authority laying down the proposition that second hearing is neither contemplated nor essential under the law when the State Government is considering the report under S. 5A for issuing a declaration under S. 6. Therefore, in view of the aforesaid authority of the Hon"ble Supreme Court treating the enquiry to be an administrative inquiry, there is no force in the contention of the petitioners and on that basis the acquisition cannot be held to be vitiated and/or likely to be set aside. It has also been submitted that as per Shyam Nandan Prasad and Others Vs. State of Bihar and Others, no enquiry can be held prior to notification under S. 4. Inquiry or report is not invalidated on that ground and report of the inquiry u/s 5A is not binding on Government and no second opportunity is required to be given. The very authority lays down in para 16 that S. 5A is administrative enquiry. According to Mr.Raval once there is an enquiry as contemplated under S. 40 read with the provisions of the Act, Rules as well as inquiry under S. 5A and the satisfaction of the Government of the need to issue notification under S. 6 as held by the Hon"ble Supreme Court in the case of R.L. Arora Vs. State of Uttar Pradesh and Others, with respect to it is a matter of satisfaction entirely of the Government and it is not for the Court to enter upon a consideration of the question as to how far the terms of the agreement made by the Government sufficiently safeguard the interest of the public. It has also been held in the judgment of the Hon"ble Supreme Court reported in Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others, that satisfaction of the Government cannot be questioned in a court of law. That in the instant case there are no procedural lapses since in substance two enquires have been conducted and the petitioner had two fair and reasonable opportunities of raising their objections and, therefore, the contention deserves to be rejected. It has also been contended by Mr.Raval that as held by the Supreme Court in the case of Digvijay Mote v. Union of India, reported in

1993 (5) JT 1 the petitioners have failed to show any prejudice that has been caused or is likely to be caused even assuming without admitting that the petitioners did not get a reasonable opportunity of hearing. In the instant case neither any prejudice is shown nor is pleaded nor any such objection has been taken that no grant of opportunity of hearing during rule 4 inquiry has caused any prejudice and no such contention is raised under S. 5A enquiry. If at all such contentions were raised the same could have been dealt with since there is nothing in the ACt which could prohibit the consideration of the said questions at the time of inquiry u/s 5A more particularly, when both the inquiries under Rule 4 and S. 5A are carried out by the same officer. Therefore according to Mr. Raval there is no substance in the contention of the petitioners.

12. While replying to the contention of Mr.Patel with reference to the S. 5A inquiry report that it should be supplied to the interested land owners Mr.Raval has submitted that this contention is devoid of any merit and he seeks support from the authorities of the Supreme Court in the case Shyam Nandan Prasad and Others Vs. State of Bihar and Others, and Kalumiya Karimmiya Vs. The State of Gujarat and Others, . Based on these authorities, the submission is that neither such inquiry is contemplated nor available and it would amount to affording an opportunity which is not contemplated under law.

13. Replying to the contention that the supply of the report, though not necessary but is preferable, it has been pointed out that it is apparent from the report that the report of S. 5A inquiry was made available and the procedural requirements were complied with and thus there was full application of mind while conducting the inquiry under S. 5A and considering the objections of the interested persons.

14. According to Mr. Raval there are not three different or separate enquiries. Rule 4 of the Land ACquisition (Companies) Rules only lays down the method of enquiry contemplated under S. 40. S. 5A is a separate inquiry and in the instant case both the inquiries have been held.

15. While meeting the contention raised with reference to Article 21 of the Constitution, it has been submitted that the provisions of S. 4 5A and 6 have been held to be intravires and even while considering the scope of Article 21, such contention cannot be raised. It has been submitted with emphasis that the petitioners do not stand to loose their entire land and only a part of the land of the land owners has come under acquisition and it is only in case of some petitioners only that their land is lost and, therefore, it cannot be said that the petitioners are going to be rendered totally landless. It has also been submitted in this regard that as on today and at the time when the lands in question were acquired, the law provided and provides the monetary compensation to be adequate compensation in lieu of the land and no contention contrary to this position can be raised on the basis of the draft Amendment in the Land Acquisition Act.

16. Mr. RAval has also submitted that the decision has been taken after full application of mind at the highest level and the Revenue Minister and Chief Minister alongwith local M.L.A. had intervned to the benefit of the land owners and the Minister had never intervned at the behest of the Government. The Government has acted independently and the complaints have been looked into at the highest level.

17. With regard to the contention that in case of Land Acquisition (Companies) Rules, 1963, the Collector has to carry out inquiry under the Rules, it has been submitted that the Collector is not defined under the Rules and, therefore, the definition has to be found in the Act for Collector under S. 2(c) and accordingly Assistant Collector is such competent officer appointed to conduct the inquiry and he has in fact conducted the enquiry. It has also been submitted that the allegation that no land acquisition committee had been constituted is factually incorrect and further that the Committee is only of casual nature as has been held by this Court in the case of Abdul Hussein v. State of Gujarat, reported in 8 GLR 856 and that the Government is not bound to wait for the report of the advisory Committee. It has been submitted that there is no quasi judicial enquiry which is to be held by the Committee and no opportunity of hearing has to be given before the Committee.

18. It has been then submitted by Mr. Raval that vires of Sections 4 5 and 6 of the Land Acquisition Act were upheld in the case of Sipai Mamdoobhai Dadabhai v. State of U.P., reported in (1) GLR 746 and this Court has held that in view of more than one decisions of the Supreme Court it is not open to go into the questions of vires even vis a vis Article 21 of the Constitution of India. He has also made reference to the following decisions of the Supreme Court in which the provisions of the Land Acquisition ACT were challenged to be ultravires but the same were upheld:

1. Smt. Somavanti and Others Vs. The State of Punjab and Others,
2. Aflatoon and Others Vs. Lt. Governor of Delhi and Others,
3. Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others,
4. Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others,
5. (1) GLR 502 (Ramgir Uttamgir v.State of Gujarat)

19. It has also been submitted that Clause (aa) of S. 40(1) should not be used in a restricted sense and it is not necessary that the work should be useful for the general purpose.

20. Mr.Girish Patel has placed reliance on the following decisions:-

1. Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others,
2. Munshi Singh and Others Vs. Union of India (UOI), para 7
3. Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of

the City of Ahmedabad and Another, .

4. State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others,

5. XXXVI(1) GLR 746 (Sipai Mamdoobhai Dadabbai v. State of Gujarat)

6. Chameli Singh and others etc. Vs. State of U.P. and another, paras 8 and 18

7. Dalmia Cement (Bharat) Ltd. and Another Vs. Union of India (UOI) and Others, paras 21,22,23,24

8. R.L. Arora Vs. State of Uttar Pradesh and Others,

9. State of U.P. Vs. Smt. Pista Devi and Others,

10. Karjan Jalasay Yojana Assargrath Sahkar Ane Sangarsh Samiti Vs. State of Gujarat and Others,

21. While citing Zaverchand Popatlal Sumeria and Others Vs. State of Gujarat and Others, Mr. Patel has fairly pointed out that this decision was reversed by the Supreme Court in the case of Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria and Others, on an additional ground as the court did not express any opinion on the question of law. In this regard it has been submitted that in cases where a decision of a court has been reversed by higher court on any ground, the decision, which has been reversed, may not be binding jurisprudentially, but it did not losses its importance altogether, it is not deprived of its significance. Even if an authority is over ruled, it still remains an authority for the Court. He has made reference to Salmond on Jurisprudence, 12th Edition pages 26 and 27. The relevant portion is reproduced as under:-

"It sometimes happens that a decision is affirmed or reversed on appeal on a different point. As an example, suppose that a case is decided in the Court of Appeal on ground A, and then goes on appeal to the House of Lords, which decides it on ground B, nothing being said upon A. What, in such circumstances, is the authority of the decision on ground A in the Court of Appeal? Is the decision binding on the High Court, and on the Court of Appeal itself in subsequent cases?"

"It is submitted that the true view is that a decision either affirmed or reversed on another point is deprived of any absolute binding force it might otherwise have had; but it remains an authority which may be followed by a court that thinks the particular point to have been rightly decided."

He has also made reference to Dias Jurisprudence, 5th Edition Page 144. The relevant portion is reproduced as under:-

"A case may be reversed on appeal. The effect of reversal is normally that the first judgment ceased to have any effect at all. The situation is different if the case is affirmed or reversed by an appellate court on a different point from that on which the decision in the lower court was based. In one case, a Master of the Rolls said that in such a situation the previous decision will be "of no effect at

all". This probably goes too far, and in another case it was said that the first judgment remains binding. The truth seems to be that in such a situation a later court has freedom to deal as it pleases with the earlier decision."

On that basis the submission is that the later court is free to deal with the earlier decision as it pleases, even if the decision has been reversed on some other point. Mr. Patel made a pointed reference to para 6 at page 581 from *Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria and Others*, and paras 7,12,17,25,26 and 27 of *Zaverchand Popatlal Sumeria and Others Vs. State of Gujarat and Others*, . On this very aspect of the matter Mr. Raval has also made reference to *Salmond on Jurisprudence (P.J.Fitzgerald) 12th Edition (Reprint Tripathi)* in the Chapter 5 relating to Precedent page 141 at page 147. The relevant portion is reproduced as under:-

"A precedent overruled is definitely and formally deprived of all authority. It becomes null and void, like a repealed statute, and a new principle is authoritatively substituted for the old."

At the same time on the question of meaning of consultation Mr., Patel has referred to 1993 Edition of *Daulat Ram Prem's Judicial Dictionary* (Bharat Law Publications, Jaipur) at page 394 - and has also referred to the 1993 decision of the Supreme Court in *Judges Case i.e. Supreme Court Advocates-on-Record Association and another Vs. Union of India*, . He has also made reference to 1947 2 All E L R 680 *Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation*, and read out the following passage from Page 685 thereof:

"I do not wish to repeat what I have said, but it might be useful to summarise once again the principle, which seems to me to be that the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account, or, conversely, has refused to take into account or neglected to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless, have come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not that of an appellate authority to override a decision of the local authority, but is that of a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in it."

22. We have considered the submissions, as have been made before us, in the light of the Scheme of the Act and on the basis of the record which has been produced by the learned A.G.P. The facts established on record in these cases obviate the need to discuss and deal with the cases which have been cited by the parties. There is sufficient material to hold that the inquiry under S. 5A had been held and it is also settled and clear position of law that the inquiry under S. 5A is

only an inquiry of administrative nature. Merely because the learned counsel has argued that it would have been preferable had the copy of the inquiry under S. 5A would have been made available, it would not vitiate the acquisition proceedings. It is also factually incorrect to say that there is no inquiry at all under S. 40. The record shows that the inquiry under S. 40 had been held as contemplated under the law and it is also clearly born out from the facts and record of this case that the Government had given the consent after arriving at the satisfaction based on the report of the Collector under S. 5A with due regard to the purposes mentioned in S. 40(1)(aa). Such inquiry had also been held by the Officer who was competent to hold the inquiry. In the light of the facts and circumstances obtaining in these cases and on examination with reference to the records, we find that there is no substance in the argument that there is no inquiry under S. 40.

23. Even with regard to the contention that there was no proper inquiry under Rule 4 of the Land Acquisition (Companies) Rules, there is sufficient material on record and it stands established that the Land Acquisition committee as contemplated under Rule 3 had been constituted, views of this committee were obtained, same were duly considered and it is only after the proper consultation that the Government was satisfied that the acquisition may go ahead. In such matters, we find that while the constitution of the Land Acquisition Committee is a must, it is not necessary that in every case there must be a formal meeting of the Land Acquisition Committee. It may be sufficient and substantial compliance if the views of the members of the Committee are obtained. No law has been cited before us to indicate that there must be a formal meeting of such a Committee and only thereafter the report is to be made. It is provided in Rule 3 (4) itself that the Committee may regulate its own procedure and it is this Committee which has to advise the appropriate Government on matters relating to or arising out of the acquisition of land under part 7 of the Act. The affidavit dt.4.5.99, which was filed during the course of arguments on behalf of the Government alongwith the documents, furnish a documentary proof of contemporaneous nature that there was an effective consultation and the decision was arrived at after such consultation and in the instant case the requirements of affording the opportunity of hearing had also been fully complied with and, therefore, the decision of the Supreme Court in case of *State of Gujarat v. Chaturbhai* (Supra) is of no avail to the petitioners. Thus, we do not find any substance in the argument raised on behalf of the petitioners that there was no proper inquiry under Rule 4.

24. So far as the contention that inquiry under S. 5A, S. 40 and Rule 4 are separate, independent and distinct inquiry is concerned, it may be observed that the scope and object of these inquiries is very clear from the language of these provisions. The objects which were sought to be achieved through such inquiries have been fully achieved in the facts of the present case. Even if it is found that these three inquiries are separate, independent and distinct, in the facts of this case we do not find that any of the provisions or part of any inquiry has been

scuttled at any stage in any manner and, therefore, even if we hold that these are separate, independent and distinct inquiries, in the facts of the case the objection of the petitioners does not impinge upon the validity of the acquisition proceedings as such and, therefore, the proceedings cannot be held to be invalid. The learned counsel has also argued that inquiry under Rule 4 and S. 40 must precede the issue of the Notification under S. 4 of the Land Acquisition Act. In this regard it may be straightaway pointed out that in the Scheme of the Act and the provisions, which we have quoted herein-above, such proposition is not at all discernible that inquiry under Rule 4 and S. 40 must be held as a condition precedent or prerequisite to the issue of the Notification under S. 4. All that can be said on the basis of Rule 4(4) is that the statutory requirement is that no declaration has to be made by appropriate Government under S. 6 of the Act unless the appropriate Government has consulted the Committee and has considered the report submitted under this Rule as also the report, if any, submitted under S. 5A of the Act and that the agreement under S. 41 of the Act has been executed by the Company. In the facts of this case, we find that all these steps have been taken prior to the issue of the Notification under S. 6 of the Act and this factual position, that all these steps had been taken prior to the issue of the Notification under S. 6, has not been disputed even on behalf of the petitioners by Mr. Patel. Therefore, this contention raised on behalf of the petitioners fail.

25. Now coming to the question with regard to the public purpose as referred to in S. 40(1)(aa) of the Act and Gujarat Amendment, even if we read S. 40(1)(aa) after the deletion of the words, "either on the report of the Collector under S. 5A sub-clause (2) or" as occurring in S. 40(1), we find that the purpose on which the stress has been laid is fully covered by S. 40(1)(aa) because the acquisition has not to be necessarily for construction of some building, it may be for the work of company, which is engaged or is taking steps for engaging itself in any industry or work, which is for a public purpose. Now it cannot be said that the work with regard to the manufacturing of cement by a Company like respondent No.3 and the requirement of land for extension of such a Unit is not a public purpose. Cement is a material which is used in large number of Projects undertaken by such public sector Companies, which have now become part and parcel and at par with the State enterprises. In the State of Gujarat there are large number of water and irrigation projects in which cement is a very essential material and the acquisition of the land for a Company which is engaged in the production of cement cannot be said to be an acquisition without any public purpose as contemplated under S. 40(1)(aa). In this regard, we may also put on record the facts pointed out by Mr. Raval appearing on behalf of the respondent - Company that the cement industry has been recognised as an industry of public utility under Industries Development Act, 1951. So far as the grievance which has been raised to compare the two public purposes so as to struck a balance between the public purpose of production of cement or other agricultural produce from the lands, which may be useful even for the purpose of sugarcane factories

etc. and the public purpose of Companies engaged in the activities like that of production of cement is concerned, we may point out that it is for the Government to consider as to at what point of time which particular purpose must be given preference. It is for the functionaries of the Government acting under the relevant provisions of the Act to assess as to at what particular point of time which public purpose should get preference over the other public purposes. At a given point of time agricultural produce may be the first priority of the Government, at another point of time the production of cement may be the preference of the Government. It will depend upon the exigencies and the requirements of the execution of the policies and projects which are sought to be undertaken. Government has its own programmes to undertake the various types of developmental activities and it has to be agreed on all hands that so far as the courts are concerned, they have very little say on these aspects of the matter so as to strike a balance between the two public purposes. If the functionaries of the Government had taken the view that at this given point of time the public purpose with regard to the production of cement was preferable, we cannot substitute our opinion on the opinion of the Government. In such cases, even if two views are possible that cannot be a subject matter of judicial review by the Court that the Government ought to have preferred one public purpose over the other public purpose. It is not the field or arena of the Court to take upon itself to decide the preference with regard to the public purposes, lest, it would be a case of crossing the defined limits of judicial review. The purposes and the objects to which Mr. Patel has made reference is a part and parcel of the orientation and approach of making difference between the purposes when the land is sought to be acquired for Companies and when the land is sought to be acquired for the purpose of the Government itself and here we may observe that as the law stands and as the provisions in question have been interpreted in various decisions, to which reference has already been made herein-above, it is not possible for this court to enlarge the scope of the existing provisions and the interpretation thereof. Law itself is the limit with which we are bound. The approach and commitment with which Mr. Patel has made the submissions devoted to the cause of the land owners may be the submissions with very laudable objects, but it would be better if they are advanced and taken care of by those, who are charged with the responsibilities under the Constitution to enact the law and not to the Courts, which have the duty to interpret the provisions of the law as they exist.

26. In any case, having considered the entire scheme of the Act and various contentions, which have been raised at the Bar and which have been dealt with as herein-above and having gone through the record, which had been produced before us, we are satisfied that the relevant provisions of law have been fully complied with and there is no scope of any interference with the acquisition, as has been made in the instant case and there being no scope for any interference by this Court, the acquisition of land, which is challenged in these petitions, does not warrant any interference.

27. Accordingly we do not find any merit in any of these 13 Special Civil Applications and the same are hereby dismissed. Rule is discharged in each of the petitions. No order as to costs.