

Gujarat High Court

State Of Gujarat & 15 vs State Of Gujarat And Others ... on 31 August, 2015

C/SCA/14810/2014

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14810 of 2014

With

SPECIAL CIVIL APPLICATION NO. 8781 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE C.L. SONI Sd/-

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1 Whether Reporters of Local Papers may be No allowed to see the judgment ?

- 2 To be referred to the Reporter or not ? Yes
- 3 Whether their Lordships wish to see the fair copy of the judgment ? No
- 4 Whether this case involves a substantial question No

of law as to the interpretation of the Constitution of India or any order made thereunder ?

===== PLATINUM AAC BLOCKS PRIVATE LTD.

Versus STATE OF GUJARAT & 15 =====
 Appearance in Special Civil Application 14810 of 2014: MR SAURABH SOPARKAR, SR ADVOCATE with MR BHAVIN S RAIYANI, ADVOCATE for the Petitioner MR JANAK RAVAL, ASSTT GOVT PLEADER for the Respondent No.1 MR MUKESH A PATEL, ADVOCATE for Respondent Nos.5 to14 MR PRADEEP PATEL, ADVOCATE for Respondent No.2 MS KRUTI M SHAH, ADVOCATE for Respondent No.16 Appearance in Special Civil Application 8781 of 2015: MS KRUTI M SHAH, ADVOCATE for the Petitioners MR JANAK RAVAL, ASSTT GOVT PLEADER for Respondent Nos.1-8 MR SAURABH SOPARKAR, SR ADVOCATE with MR BHAVIN S RAIYANI, ADVOCATE for the Respondent No.9 =====
 CORAM: HONOURABLE MR.JUSTICE C.L. SONI Date : 31/08/2015

1. In Special Civil Application No.14810 of 2014 (to be referred as 'First Petition') filed under Article 226 of the Constitution of India, the petitioner company has made following prayers in para HC-NIC Page 1 of 24 Created On Tue Sep 01 01:36:16 IST 2015 7:-

"(A) YOUR LORDSHIPS be pleased to issue a writ of mandamus of any other appropriate writ, order or direction, directing the respondents not to obstruct

installation, function of industrial unit of petitioner and/or further not to obstruct the petitioner from using the public road passing through the village and permit the petitioner to carry its machinery for the purpose of installation in its industrial unit, in the interest of justice;

(B) YOUR LORDSHIPS be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to permit the petitioner to construct the public road, as stated in the petition, at its own cost so as to permit the petitioner to transport its vehicles and machineries to its industrial unit, in the interest of justice;

(C) YOUR LORDSHIPS be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent police authorities to see that the situation of law and order may not be disturbed and to take appropriate immediate action against the wrong doers who are obstructing to the functioning of the petitioner company, in the interest of justice;

(D) YOUR LORDSHIPS be pleased to direct the respondent authorities to permit the petitioner to transport its vehicles and machineries with police protection, pending the admission, hearing and final disposal of this application, in the interest of justice;

(E) YOUR LORDSHIPS be pleased to grant such other and further reliefs, as may be deemed fit by this Hon'ble Court, in the interest of justice."

2. The case of the petitioner is that for its industrial unit engaged in manufacturing of Autoclaved Aerated Concrete (AAC) Blocks, it has taken all necessary permissions from the concerned authorities. However, it was not permitted to carry out construction and installation of the plant by certain headstrong persons and therefore, it was required to ask for police protection. It is further case of the petitioner that such headstrong persons are frequently obstructing the vehicles passing through the village towards its industrial unit carrying its machineries and it was compelled to file complaint to prevent such illegal activities. It is averred in the petition that to the shock and surprise of the petitioner, even the Gram Panchayat and its office bearers have HC-NIC Page 2 of 24 Created On Tue Sep 01 01:36:16 IST 2015 also joined hands with headstrong persons by passing one after another illegal resolution/ order to stop the petitioner from passing through the village. For such purpose, the Gram Panchayat passed resolution not to widen the road which is required to permit the petitioner to pass its vehicles and further resolved not to surface/ repair or construct the existing road. The Panchayat has also passed another resolution not to grant alternative road to the petitioner company. The petitioner company can provide sufficient opportunity of employment, however on account of obstructive and illegal activities of unscrupulous persons, the petitioner company is under constant threat and is being deprived of use of the road to reach its industrial unit though it has offered to construct the road at its own cost. It is the case of the petitioner that the petitioner has installed huge machineries, some of which are waiting for its transportation to its industrial unit, cost of which is worth of Rs.17 crore approximately.

3. This petition is opposed by filing affidavit-in-reply on behalf of respondent No.2-Mohangam Gram Panchayat, inter alia stating that there is no public road but the villagers have made arrangement through their fields for internal movement surfacing thereof (3 meters in width and 310 meters in length) has been made from the grant of M.P. in the year 2009/2010 and it is not correct to say that there is a public road of 9 meters width. The private respondents, some of whom are petitioners of Special Civil Application No.8781 of 2015 (To be referred as 'the second Petition'), have also filed different affidavits, opposing the petition inter alia stating that there is no public road passing through the village but there is a katcha private road passing through the agricultural fields of the farmers, including their fields, which is meant to be used for agriculturists. It is also stated that by misrepresentation as to existence of public road of 9 meters in width, the petitioner got permission under Section 65B of the HC-NIC Page 3 of 24 Created On Tue Sep 01 01:36:16 IST 2015 Bombay Land Revenue Code ('the Code') and that industrial unit of the petitioner has violated environmental norms and even the Pollution Board has also made a report that the unit is not placed at the distance of residential area of the village. It is also alleged that the State authorities are hand in glove with the petitioner company and helped the petitioner by abusing their powers. Many other allegations are made in the affidavit which, if required, shall be referred later on.

4. In second petition filed under Article 226 of the Constitution of India, the petitioners who are owners of agricultural lands situated in village Mohangam have alleged that respondent No.9 company- the petitioner of the first petition wants to use the road passing through their private agricultural fields though such is not the public road and though their lands are not acquired for such purpose. Many other allegations are made against respondent No.9 and the State authorities as regards highhanded action of respondent No.9 in collusion with public authorities. With such background of facts, following prayers are made in para 7 of the second petition:-

"(a) admit and allow this petition.

(b) issue appropriate writ order or direction against the respondent state authorities to immediately stop the respondent no.9 company from using the road passing from Daman Road and Survey No.41/3 passing through several private agricultural fields and reaching to Survey No.35/8 situated at village Mohangam, Taluka Umargam, District Valsad for the purpose of transportation of heavy vehicles or any other purpose by the respondent no.9 company.

(c) issue appropriate writ order or direction to the State Authorities to pay the compensation to the petitioners for illegal usage of their lands situated Block/ Survey No.41/1, 41/2, 41/3 Pardi No.12, 12/1, 12/2, 37/2, 37/2/1, 37/1, 36/2, 35/1, 36/3, 35/8 of village Mohangam, Taluka Umargam, District Valsad.

(d) issue appropriate writ order or direction restraining the State authorities from making any pakka construction on the road starting from Survey No.41/3 passing through HC-NIC Page 4 of 24 Created On Tue Sep 01 01:36:16 IST 2015 several private agricultural fields and reaching to Survey No.35/8 situated at village Mohangam, Taluka Umargam, District Valsad.

(e) Pending admission, final hearing and disposal of this petition, direct the respondents not to allow the respondent no.9 company to use road passing from Survey No.41/3 passing through several private agricultural fields and reaching to Survey No.35/8, situated at village Mohangam, Taluka Umargam, District Valsad.

(f) Pending admission, final hearing and disposal of this petition, direct the State Authorities to maintain status quo regarding further construction and extension of the road passing from Survey No.41/3 passing through several private agricultural fields and reaching to Survey No.35/8 situated at village Mohangam, Taluka Umargam, District Valsad.

(g)"

5. This petition is opposed by respondent No.9 company by affidavit-in-reply inter alia stating that the road in question was prepared and constructed from the fund of the Member of Parliament in the year 2009-10 and therefore, it is a public road. It is also stated that the road is being reconstructed/ repaired from 100% funds contributed by the company and the company had already deposited Rs.6,82,000/- for reconstruction of the road. It is also stated that permission under Section 65B of the Bombay Land Revenue Code ('the Code), for using the land of the company for industrial purpose was granted after considering the objections raised by the Gram Panchayat and the village people. The respondent No.9 company has also referred to the order passed in Writ Petition (PIL) No.279 of 2014 and in Misc. Civil Application (For Review) No.3683 of 2014 to contend that the subject dispute is no longer res intergra.

6. Learned senior advocate Mr. Soparkar appearing with Mr. Rayani for the petitioner company submitted that the company has established the industrial unit after obtaining necessary permission from all the concerned authorities, including permission under HC-NIC Page 5 of 24 Created On Tue Sep 01 01:36:16 IST 2015 Section 65B of the Code from the Collector to use the land for non-agricultural industrial purpose. Mr. Soparkar submitted that in fact, the Gram Panchayat had given no objection for establishment of the industrial unit by the company, however subsequently at the instance of some unscrupulous persons who wanted to blackmail the petitioner company, the Panchayat took up opposite stand against the company. Mr. Soparkar submitted that after the unit was constructed and some of the machineries were installed by using public road passing through the agricultural lands of the village people, suddenly some headstrong persons created obstruction against permitting the vehicles of the company to pass through the road and therefore, the company had no other option but to lodge criminal complaint and ask for police protection as also had to represent before the concerned authorities, like Collector, Executive Engineer, etc. Mr. Soparkar submitted that undisputably, the road passing through the agricultural lands of the villagers is made by using public funds and therefore, it is a public road in the eye of law and a public street as defined in Gujarat Panchayat Act, 1993 ('the Act') and therefore, the petitioner company and its officers have got absolute right to use such public road to have ingress and egress through such road for their vehicles also.

7. As against the above arguments, learned advocate Mr. Mukesh Patel appearing for some of the private respondents in the first petition has raised preliminary objections against maintainability of

the petition under Article 226 of the Constitution of India on the ground that no fundamental right of the petitioner is violated, that if any civil right is violated, remedy is not under Article 226 of the Constitution of India, that good drafting or tactful pleading would not make the petition maintainable under Article 226 of the Constitution of India, that unless violation of established right is shown, remedy under Article 226 of the Constitution of HC-NIC Page 6 of 24 Created On Tue Sep 01 01:36:16 IST 2015 India is not available, that there are disputed questions of fact involved in the petition on the question as to whether there exists a public road or not, and as to whether the petitioner company has right to use the private road passing through the agricultural lands, and that the resolutions passed by the Gram Panchayat against the company are not challenged and remedy to challenge such resolutions is available under the Act. Mr. Patel submitted that the claim of the petitioner company as regards existence of public road of 9 meter in width is not supported by any official record. Mr. Patel submitted that there is also no other record to suggest that there is a public road even of lesser width use of which could be claimed as a matter of right by the company. Mr. Patel submitted that the road claimed as public road is in fact a private road meant to be used by village people for their agricultural fields and such private road is only of 300 meters in length for which if some funds were utilized in past, the same would not convert it into public road, especially when beyond 300 meters, there is no even katcha road till the unit of the petitioner, which is further 200 meters away. Mr. Patel submitted that the private road through the agricultural lands of the village however is only 3 meters in width and it is not possible to use such road for big vehicles to carry heavy machineries through such road and therefore, such road cannot be claimed to be a public road for the purpose of using the same by the petitioner company. Mr. Patel submitted that the permission under Section 65B of the Code to the petitioner company was on misrepresentation as regards existence of road of 9 meter in width.

8. Learned advocate Ms. Kruti Shah appearing for some of the private respondents in the first petition and also for the petitioners in the second petition submitted that the petitioner company has established the industrial unit within 500 meters of the residential area of the village. Ms. Shah submitted that taking of permission HC-NIC Page 7 of 24 Created On Tue Sep 01 01:36:16 IST 2015 from different authorities, including permission under Section 65B of the Code for establishment of the industrial unit near the village area would not ipso facto establish that there exists a public road which could be claimed as a matter of right by the petitioner company to reach to its industrial unit through the private fields of the village people. Ms. Shah submitted that it was wrongly represented by the company before all authorities that there exists a road of 9 meters in width without disclosing the correct fact that there is no such road of 9 meter in width and that the road claimed through private land of the village people is not till terminal point of the unit. Ms. Shah submitted that there is a private road of only 300 meters in length meant to be used only by village people which cannot be termed as a public street as sought to be contended by learned senior advocate Mr. Soparkar. Ms. Shah submitted that it is because the petitioner is a mighty company, the State authorities have gone beyond their authority in helping out the petitioner company to use the private road to permit its heavy vehicles to pass through it causing lot of damages to the agricultural fields of the villagers and but for such help extended by the State authorities. Ms. Shah submitted that nowhere from any public record, it is established that there is a public road as claimed by the petitioner company and there are highly disputed questions of fact which could not be examined in the petition filed under Article 226 of the Constitution of India.

8.1. As regards second petition, Ms. Shah submitted that the agricultural lands of the petitioners could not be permitted to be used by the respondent No.9 company under the guise that the private road passing through the agricultural lands is a public road and unless such private road is acquired and the petitioners are paid compensation for putting private road to public use, nobody including the company has right to use the same. Ms. Shah submitted that since the respondent No.9 was permitted to use the HC-NIC Page 8 of 24 Created On Tue Sep 01 01:36:16 IST 2015 private road by the State authorities unauthorizedly, the State authorities and the respondent No.9 company are required to pay compensation to the petitioners who are owners of the agricultural lands through which the private road is passing. Ms. Shah submitted that the State authorities have got no right or authority to make any pakka construction of the road through the private agricultural fields of the petitioners and therefore, the respondent authorities are required to be prevented from making any pakka construction on the road passing through the private lands of the petitioners.

9. Learned advocate Mr. Pradeep Patel appearing for respondent No.2 Panchayat submitted that the petition of the company is nothing but a clever device to settle the civil disputes by resorting to remedy under Article 226 of the Constitution of India. Mr. Patel submitted that the powers of this Court under Article 226 of the Constitution of India could be invoked only when there exists an established public right in respect of which violation could be complained of. Mr. Patel submitted that there are highly disputed questions of fact involved as to existence of public road as claimed by the petitioner company and therefore, remedy of writ is not available to the petitioner company for the prayers made in the first petition. Mr. Patel submitted that the petitioner company has misled all authorities for taking different permission including permission under Section 65B of the Code by relying on the layout plan claiming existence of 9 meter road in width through the agricultural lands of the village people. Mr. Patel submitted that there is no evidence whatsoever as regards existence of a public road of 9 meter in width, and the Sarpanch of Gram Panchayat in his affidavit has clearly stated that the road claimed by the petitioner company as public road is in fact a private road of only of 300 meters in length and 3 meter in width and such short and narrow private road is made by the village people to reach to their HC-NIC Page 9 of 24 Created On Tue Sep 01 01:36:16 IST 2015 fields which if at all was surfaced in past with the funds of the then Member of Parliament, the same would not convert it into a public road. Mr. Patel submitted that initially the Gram Panchayat granted no objection to the unit of the petitioner company but later on, it came to know that the company has misrepresented before various authorities as regards existence of the public road, and therefore, Gram Panchayat passed resolution opposing the use of the private road by the company and of surfacing and/or constructing upon the private road. Mr. Patel submitted that the industrial unit is 200 meters away from existing private road of 300 meters in length and use of heavy vehicles and heavy machineries by the petitioner company since has damaged the agricultural lands, the petitioner company is not entitled to any relief as prayed for in the first petition.

10. Learned Assistant Government Pleader Mr. Janak Raval appearing for the State authorities submitted that the allegations made against the State authorities are not correct and that the prayers made in the second petition cannot be granted as the second petition raises disputed questions of fact and unless it is established that the State authorities are responsible for causing any damage or have made illegal use of the land of the petitioners, the petitioners are not entitled to any

compensation from the State authorities.

11. Having heard learned advocates for the parties, it appears that though the petitioner claims that it has right to use the public road passing through village Mohangam and seeks direction against the respondents not to obstruct the petitioner from using the public road and not to obstruct installation and functioning of the industrial unit of the petitioner and permit it to construct the public road at his own cost, nowhere in the petition, the petitioner has stated which road the petitioner is claiming to be public road. The petitioner has also not provided any details or particulars as HC-NIC Page 10 of 24 Created On Tue Sep 01 01:36:16 IST 2015 regards geographical situation of its unit. Thus, in absence of requisite pleadings, the petitioner is not entitled to claim reliefs prayed for in the petition. However, in the context of permission granted by the Collector under Section 65B of the Code, Mr. Soparkar submitted that layout plan refers existence of 9 meters road in width. The Collector's order granting such permission is placed on record at Annexure-F, wherein what is found mentioned is that there exists a village road touching to Mohangam - Dhuya (Khatkimata) road for ingress and egress to the company. In this very order, opinion given by the Town Development Department dated 14.5.2013, copy whereof is placed at Annexure-C, for construction for FSI of 4161.99 Sq. Mtrs. for industrial purpose is referred. In such opinion, as per condition No.(2), the competent authority was to verify as regards availability of 9 meter road in width as mentioned in the layout plan submitted by the petitioner. Such opinion of the Town Development Department and permission under Section 65B of the Code is for installation of the unit on the land bearing Revenue Survey No.37/4/1, area of which is shown as 12444 Sq. Mtrs., in the limits of Mohangam village. However, it appears from the copy of the layout plan that 9 meter road in width is shown from Nikoli to Mohangam and 7.5 meter wide road is shown as internal approach road for the unit. Such 9 meter road in width is thus not the same road either as mentioned in the order of the Collector for permission under Section 65B or for passing through agricultural fields of the village people. There is no other public record to show existence of 9 meter road for ingress and egress to the company. As stated above, altogether different road is mentioned, i.e. Mohangam- Dhuya (Khatkimata) road in the order of Collector for ingress and egress to the company which is stated to be touching the village road. The village road stated to be passing through the agricultural fields of the private respondents and other villagers is described as Khatkimata Mandir (Temple) to Khandmora road and as per the affidavit of the Sarpanch, such is HC-NIC Page 11 of 24 Created On Tue Sep 01 01:36:16 IST 2015 internal village road of 3 meter in width (about 9 ft.) and 310 meter in length. Such description of the road could not be disputed by the petitioner. However, learned senior advocate Mr. Soparkar however submitted that even if length of the road is of 300 meter and width is of 3 meter, it being a public road, the petitioner has got right to use such road to have ingress and egress to the unit not only for the officers of the company but also for the vehicles of the company and nobody, including the respondents, can obstruct them from using such road. Mr. Soparkar submitted that on account of obstruction created by the private respondents and some other village people, including the Gram Panchayat, it is not possible for the petitioner to complete the installation of the heavy machineries in the industrial unit of the company. To establish that such short and narrow road is a public road, Mr. Soparkar has relied on a communication dated 12.6.2015 from the Gram Panchayhat at Annexure-SS1 (page 225) annexed with the Additional Affidavit filed on behalf of the petitioner, wherein it is mentioned that in the year 1992-1993, 1998-1999, 2001-2002, 2002-2003 and 2010-2011, different amounts were

spent for the road from Khatkimata Mandir to Khandmora. Mr. Soparkar, therefore, submitted that since public money has been spent on such road, it is a public street as defined under Section 2(17) of the Act. Definition of 'Public Street' in the Act reads as under:

"2(17) "Public street" means any street-

(a) over which the public have a right of way, or

(b) heretofore levelled, paved, metalled, channelled, served or repaired out of a panchayat fund or other public fund, or

(c) which under the provisions of this Act is declared by a panchayat to be or which under the provisions of this Act becomes a public street."

As per this definition, any street, to be a public street, has to satisfy the criteria mentioned in the definition. The definition of 'street' in Section 2(24) reads as under:-

HC-NIC Page 12 of 24 Created On Tue Sep 01 01:36:16 IST 2015 "2(24) "Street" means any road, footway, square, court, alley or passage accessible whether permanently or temporary to the public, whether a thoroughfare or not."

As per the definition of 'street', a road to be called as street has to be accessible whether permanently or temporary to the public, whether a thoroughfare or not. Therefore, before any street to be called as public street, it is required to be proved that it is accessible to public. The say of Gram Panchayat and private respondents is that it is purely a private road. Therefore, it is a matter of dispute which could only be resolved on the basis of evidence before appropriate forum. Clause (b) in the definition of Public Street starts with word 'heretofore', meaning thereby the legislature intends any street to be a public street if before the day of coming into force of the Act, it was levelled, paved, metalled, channelled, served or repaired out of a panchayat fund or other public fund. Thus, it is not that all streets which are levelled, paved, metalled, channelled, served or repaired out of a panchayat fund or public fund are to be taken as public streets. As per the communication from the Gram Panchayat dated 12.6.2015, which is relied by the petitioner, the fund of the Member of Parliament was stated to be spent in the year 1992-93 and in subsequent years. As per the affidavit filed by Sarpanch, the private road was surfaced with the grant of M.P. in the year 2009/2010. Therefore, it is to be proved with exactness that the road which is alleged to be public street passing through the agricultural fields was levelled, paved, metalled, channelled, served or repaired out of a panchayat fund or other public fund before the day the Act came into force. Such being the disputed question, the contention of Mr. Soparkar that the road passing through the agricultural fields of the private respondents and other villagers is a public street cannot be accepted.

12. The Court finds that the petitioner has taken different stands at different stages and before different authorities. The petitioner HC-NIC Page 13 of 24 Created On Tue Sep 01 01:36:16 IST 2015 has consciously not provided any particulars/ details in the petition for the road to which it claims right to use as a public road. Mr. Soparkar however submitted that Division Bench of this Court in

PIL has taken note of a road of 7.5 meters in width. The attention of the Court was drawn by Mr. Soparkar to an order dated 14.11.2014 passed in Writ Petition (PIL) No.279 of 2014 at page

184. In the said order, the Court (Coram: Hon'ble Acting Chief Justice Mr. Vijay Manohar Sahai and Hon'ble Mr. Justice R.P. Dholaria) has observed in para 6 as under:-

6. In grounds H and O of the petition, it has been stated that heavy traffic is passing from the 7.5 meter wide road as shown in the map produced by respondent No.12 before the Authorities. We have gone through the photographs at page 47 of the petition. It appears that there is a road of 7.5 meter wide but some grass has grown on the side of the road due to rainy season. Therefore, we do not find any substance in the argument of the learned counsel for the petitioner. The vehicle movement is from a road to the industry and there is no disturbance to the residential population or schools etc. and the Gujarat State Pollution Control Board has also issued a certificate to the effect that there is no environmental issues involved in setting up the industry.

13. The petitioners of the said petition, then moved Misc. Civil Application (for Review) No.3683 of 2014, stating that nowhere in their petition, they had mentioned that the road was of 7.5 meter. However, the Court rejected such application by observing that the Court while considering the photographs at page 47 of the said petition, was of the opinion that road was 7.5 meter wide but some grass has grown on the side of the road due to rainy season. But, it is pointed out that such observations were made when other parties were not before the Court and what was observed was on the basis of photographs. However, now the heart of the issue is debated before this Court by the rival parties, including the Gram Panchayat. Since there is a clear stand of the Panchayat as regards availability of the village road of only 300 meter in length and of 3 meter in width, which could not be disputed by the petitioner, and HC-NIC Page 14 of 24 Created On Tue Sep 01 01:36:16 IST 2015 which is none other than the road called as Khatkimata Mandir to Khandmora road and since the petition lacks pleadings on the subject matter, it is not possible to believe that there exists a public road of either 9 meter in width or 7.5 meter in width passing through the agricultural fields of the private respondents and other village people. A short and narrow road made through agricultural fields cannot be assumed to be a public road to have open access to an industrial unit for its heavy vehicles to pass through which may cause damage to agricultural fields especially when undisputedly, the unit of the petitioner is situated 200 meters away from the road.

14. At this stage, a reference is required to be made to a communication from the office of the District Inspector of Land record, Valsad dated 15.6.2015 at page 300, addressed to the Collector, stating that as per the instructions of the Collector, measurement of the road passing through Survey Nos.41/1, 41/2, 63/1, 63/2, 63/3 was taken and as reported, the company is situated on Survey No.37/4, and the road is presently passing through the land bearing Survey No.63/1 and 63/2 (Government number) and except Survey No.63/2, other survey numbers are of private ownership as mentioned in extract of 7/12 form. It is further stated that in the measurement-sheet, presently road of about 4 meter is shown and a road of 5.50 meter approximately is also shown. Thus, as per this report also, it is not clear that the road is exactly of what width and length. As

stated above, the petitioner is not certain about its claim and at different stages, road of different length and different width is shown to exist. Photographs placed with the present petition show that heavy truck loads being pulled through a narrow strip of road. The respondents have alleged highhanded action not only of the company but also of the State HC-NIC Page 15 of 24 Created On Tue Sep 01 01:36:16 IST 2015 authorities, including the police to facilitate the petitioner company to get its heavy vehicles with heavy machineries passed through the narrow road through their agricultural lands and also alleged damage to their agricultural lands. In such fact situation, the petitioner is not entitled to invoke writ jurisdiction of this Court as the petitioner has tried to establish existence of public road and right to use such public road which is not permissible. Violation of the right could be complained of by petition under Article 226 of the Constitution of India when there exists established right.

15. At this stage, reference needs to be made to the decision of Hon'ble Supreme Court in the case of Dipak Babaria and Another Vs. State of Gujarat and others reported in (2014)3 SCC 502, wherein Hon'ble Supreme Court has held and observed in para 71 to 76 as under:-

71. Now, the effect of all that is stated above is that the land which was purchased by respondent No. 4 for Rs. 70 lakhs is permitted by the Government of Gujarat to be sold directly to respondent No.5 at Rs. 1.20 crores to set up an industry which could not have been done legally. It is undoubtedly not a case of loss of hundreds of crores as claimed by the appellants, but certainly a positive case of a loss of a few crores by the public exchequer by not going for public auction of the concerned property. It is true as pointed out by Mr. Venugopal, learned senior counsel that in a given case the State may invite an entrepreneur and give an offer. However, in the instant case, the sale of the land for industrial purpose is controlled by the statutory provisions, and the State was bound to act as per the requirements of the statute. The Minister's direction as seen from the record clearly indicates an arbitrary exercise of power. The orders passed by the Government cannot therefore be sustained. As seen earlier, there is neither a power nor a justification to make any special case, in favour of the Respondent No 5. Such exceptions may open floodgates for similar applications and orders, even though the Gujarat Government is contending that this order is purportedly not to be treated as a precedent.

72. In our view, considering the scheme of the act, the process of industrialization must take place in accordance therewith.

As stated earlier if the law requires a particular thing should HC-NIC Page 16 of 24 Created On Tue Sep 01 01:36:16 IST 2015 be done in a particular manner it must be done in that way and none other. The State cannot ignore the policy intent and the procedure contemplated by the statute. In the instant case, the State could have acquired the land, and then either by auction or by considering the merit of the proposal of respondent No.5 allotted it to respondent No.5. Assuming that the application of the Respondent No. 5 was for a bona fide purpose, the same had to be examined by the industrial commissioner, to begin with, and thereafter it should have gone to the Collector. After the property vests in the Government, even if there were other bidders to the property, the Collector

could have considered the merits and the bona fides of the application of Respondent No. 5, and nothing would have prevented him from following the course which is permissible under the law. It is not merely the end but the means which are of equal importance, particularly if they are enshrined in the legislative scheme. The minimum that was required was an enquiry at the level of the Collector who is the statutory authority. Dictating him to act in a particular manner on the assumption by the Minister that it is in the interest of the industrial development would lead to a breach of the mandate of the statute framed by the legislature. The Ministers are not expected to act in this manner and therefore, this particular route through the corridors of the Ministry, contrary to the statute, cannot be approved. The present case is clearly one of dereliction of his duties by the Collector and dictation by the Minister, showing nothing but arrogance of power.

73. The High Court has erred in overlooking the legal position.

It was expected to look into all the earlier mentioned aspects. The impugned judgment does not reflect on the issues raised in the petition. It could not be said that the petition was delayed and merely because investment had been made by the respondent No. 5, the court would decline to look into the important issues raised in the PIL.

Epilogue:

74. Before we conclude, we may observe that India is essentially a land of villages. Although, urbanization and industrialization is taking place, the industry has not developed sufficiently, and large part of our population is still required to depend on agriculture for sustenance. Lands are, therefore, required to be retained for agricultural purposes. They are also required to be protected from the damage of industrial pollution. Bona fide industrial activity may mean good income to the entrepreneurs, but it should also result into good employment and revenue to the State, causing least pollution and damage to the environment and adjoining agriculturists. While granting the permission under Section 89A (5) the Collector has to examine all these aspects. This is because the only other exception for conversion of agricultural lands to non-agricultural purpose HC-NIC Page 17 of 24 Created On Tue Sep 01 01:36:16 IST 2015 is for those lands which are in an industrial zone. As far as the conversion of lands otherwise than those in the industrial zone is concerned, all the aforesaid precautions are required to be taken when a decision is to be arrived at as to whether the application is for a bona fide industrial purpose.

75. In the instant case, there were newspaper reports of apprehensions and protest of the adjoining farmers. The Revenue Secretary and the Chief Secretary had placed the statutory provisions on record. It was expected of the Government and the Revenue Minister to take cognizance of these apprehensions of the farmers as well as the statutory provisions brought to her notice by the secretaries. She has simply brushed aside the objections of the secretaries merely because the Chief Minister's secretary had written a letter, and because she was the Minister concerned. While over-ruling the opinion of secretaries to the concerned department, the Minister was expected to give some reasons in support of the view she was taking. No such reason has come on record in her file notings. She has ignored that howsoever high you may be, the law is above you.

76. Development should not be measured merely in terms of growth of gross domestic product, but it should be in terms of utility to the community and the society in general. There is a certain inbuilt wisdom in the statute which is the mandate of the legislature which represents the people. The Minister has clearly failed to pay respect to the same.

16. The Pollution Board after inspection of the unit on 13.10.2014 has observed as under :-

Crux-IR of M/s. Platinum AAC Block Pvt. Ltd.- GPCB ID:41618, Inspection ID-311283 dated 13-10-2014.

- During visit, it is observed that the unit is still under erection. It is informed that all the required machineries has arrived and may take another 2 to 3 months to commission the plant. They have constructed 2 nos of interlinked sheds of size 25 mts X 65 mts and 25 mts X 100 mts resp. They are going to provide 7 nos Autoclave, each of capacity of 36 cubic meter. Erection of one such autoclave is in progress; rest are have arrived and lying at nearby area as informed. They have erected 2 nos of cranes. A boiler of capacity 6.0 MT/Hr is under erection. Stack @ 30 mtr ht is erected. Housing for Bag Filters is partially erected. They have not proposed any additional measures for SO₂ for lignite. They have elevated floor area of sheds and adjoining manufacturing activity by @ 1 to 1.5 feet fy filling earth and stone / kapachi, gradient is towards river.

- Premises is situated just on the bank of river Darotha (kalu).

HC-NIC Page 18 of 24 Created On Tue Sep 01 01:36:16 IST 2015 The administration of Daman have constructed a wier (checkdam) pm downstream of this river at a dist of @ 3.0 kms to supply drinking water to Daman. The river is on south side. Industry has done pitching work to make smooth slope from its boundary towards river. On north side, mango farm of Mr. Madhusudan Bhatt also containing 8 nos of residential houses is located at a distance of @ 70 mts. Approx 3 mts wide kutchra road is dividing the premises of this unit and said mango farm. On West side, anotehr mango farm located adjacent to this unit and having common boundary is located whereas East side is partly open land with grass and shrubs.

- Reportedly, they propose to procure cement and lime through bulkers and unload the same in respective silos each of storage capacity of 300 MT. They have already erected these silos, but the APCM proposed (single bag on vent of silo) is not adequate. They have further informed that they now propose to procure moist pond ash from TPS of Reliance Power, Dahanu, Maharashtra through trucks, which they propose to store in pits yet to be provided in open area near silo.

- Source of water is own borewell, having 6 inch dia and approx 100 ft depth. They have proposed to install RO plant of capacity 6000 lits per hr to generate boiler feed water. RO reject water and the steam condensate is proposed to be used in process of manufacture.

- High tension line is passing through the premises of this unit and a steel tower structure (pole) is erected @ 10 ft from their shed. They have informed Person contacted has informed that they have got NOC of Power Grid Corporation of India Ltd to construct shed.

- They have projected @ 25 -30 trips of trucks/ day to bring raw materials. This will make total @ 50-60 trips of trucks or even more, which will have to ply on of approx 400 mts Long 3 mts kutch road connected to the Mohangam Fatak to Daman road. On the both side of the road are mango farms of Shri Madhusudan Bhatt & others.

- Then we visited farm of Shri Madusudan Bhatt alongwith Mrs. nayanaben J Dhodi (Member, Jilla Panchayat), Mr. Chintubhai halapati, Satishbhai Amtrutbhai Halpati, Mr. Mukundbhai Narayanbhai Nayak, Mr. Nitinbai Bhat and other village people. They represented that there are about 1.5 to 2 lakh mango trees & @ 150 to 200 mango farms in 2 kms radius surrounding to this unit. This project will emit dust which will destroy leaves of mango trees and crop of mango, which is their lively hood. This area receives torrential rain each other and the flyash and other materials will be washed out with rainy water and pollute river Darotha which supplies drinking water to Daman. Large no HC-NIC Page 19 of 24 Created On Tue Sep 01 01:36:16 IST 2015 of heavy vehicles will be plying on narrow kutch road which will further create air pollution and nuisance as their farms and houses are located very closely to this Kutcha road.

- It is learnt from the village people that the Mohangam consists of 12 Falias and total population is approx 8000. Their main earning is from mango farming and agriculture. This unit and the mango farm of Madhusudanbhai Bhatt is located at Khandmora Falia.

- They further mentioned that handling of flyash, emission of dust from boiler, movement of vehicles etc will create air pollution which will affect their farms and health of people residing in the houses located in the farm. The unit will also cause noise pollution.

- They have represented that due to this project, width of river bed is reduced and hence there is risk of flooding of near by land / farm located on opposite side of bank of River Darotha (from this unit) which has lower elevation.

17. What is stated by the respondent Nos.5 to 14 in para 5(iii),

(iv), (ix), (x) and para 6 of their affidavit is reproduced as under:-

5(iii) I say that in the past the petitioner company had attempted to forcefully pass it's truck carrying machinery of the same size of machinery (i.e. 45x2 mts) and it had stuck because of narrowness and curves and because of that the village people were land locked for 48 hours. Not only that the mussel power was sought to be applied by the officers of the petitioner company and the frequent instances of disturbance to the public peace as well as the harassment to the villagers have taken place and is continued at the instances of the petitioner company and its influences. The copy of the one of the complaint is annexed herewith and marked as ANNEXURE R-1 to this

affidavit.

(iv) It is submitted that the hut over the PRD No.12/2 was set fired and the compound wall- fencing had been damaged on 19/04/2015 which belong to the deponent- respondent No.8 and UI had given a complaint which was not accepted by police and hence it was required to be sent by Registered post and the police recorded statement on 21/07/2015. This it self shows the approach of the police authorities. The copy of the photograph is annexed herewith and marked as ANNEXURE R-2 to this reply. The fencing reflect in the photograph was old & existing since long and the same is damaged.

(ix) It is submitted that the lands survey number of the respondent No.5 to 14 had been measured and the map was prepared by the DILR (page 161 to 164). Thereafter the HC-NIC Page 20 of 24 Created On Tue Sep 01 01:36:16 IST 2015 collector issued oral instruction on 09/06/2015 for measurement and accordingly ultimately the DILR submitted report dated 30/06/2015 showing proposed road of 5.5 Mt. width as per oral instruction given by the collector. It is well known that every thing in the government always takes place in writing on the file but in the present case innocuously it took place on oral instructions of the collector. Question also arises as to what was the reasons for getting the map prepared again once it was on record and prepared by DILR in recent past. This also shows the influence of the petitioner company over the government authorities.

(x) It is submitted that pending the petition the petitioner alleged encroachment by land owners, ultimately the dy. Executive engineer has stated that it falls within the domain of the panchayat. Then question arises as to how the instruction fallowed from the collector or executive engineer to make a road with the help of the police force, though on record it is apparent that it is on the private land. This is one more instance of influences of the petitioner company worked over the government authorities. The similar situation of pressurizing the gram panchayat to favour the petitioner and to ignore the interest of villagers also have taken place which will be explained at the time of the hearing of the petition.

6. I say that the petitioner rely on the map page No.175/ which is a map of the site of the petitioner misrepresenting & by giving wrong description and on the basis thereof the other permissions have been obtained by the petitioner. On the northern side adjacent to the land of the petitioner, the road of 9 meter from Nikoli to Mohangam is wrongly shown. The said description further stands falsify from the petitioners own statement and even the DILR reports etc from which it is clear that as such there is no road from Nikili to Mohangam touching to boundary of the petitioner's land and the petitioner's site is at the distance of 500 meters and between the said area the land of villagers including of the respondent No.5 to 14 are located. In the map of the petitioner there is no description/ reference of the approach road or provision made of approach road to main State road at distance of 500 mtrs.

18. The Collector in his affidavit-in-reply at page 200 has stated in para 10 as under:-

"10. It is stated that so far as the objections which are raised against the petitioner company by the villagers and the Resolution No.3 passed by the village Panchayat restraining the petitioner from constructing new road and Resolution HC-NIC Page 21 of 24 Created On Tue Sep 01 01:36:16 IST 2015 No.6 restraining the petitioner from using the road is concerned, I say and submit that the road belongs to Gram-Panchayat and therefore, the Gram- Panchayat will have jurisdiction for granting or non-granting permission to the petitioner. "

Consciously, nothing is said about existence of the public road as claimed by the petitioner.

19. The Panchayat has passed a specific resolution for not permitting use of the road in question for passing heavy vehicles as the village people have represented that such heavy vehicles would cause lot of damages to their properties and agricultural fields.

20. Considering all the above aspects, the petitioner cannot be permitted to invoke jurisdiction of this Court under Article 226 of the Constitution of India for the reliefs claimed in the petition. The first petition thus deserves to be dismissed.

21. As regards second petition, the Court is of the view that no restraint order as prayed for in para 7(b) can be issued against respondent No.9 in exercise of powers under Article 226 of the Constitution of India as such relief could be claimed in civil remedy before competent Civil Court. So far as the prayer made in para 7(c) to direct the State authorities to pay compensation to the petitioners is concerned, such prayer also cannot be granted in the petition under Article 226 of the Constitution of India on account of availability of alternative remedy to the petitioners to establish illegal use of their lands by leading evidence based on which compensation could be prayed before alternative forum. In absence of assessment of quantum for compensation for alleged illegal use of their lands, which could be done only by adducing evidence before appropriate forum, the relief for compensation in ordinary circumstance cannot be granted. However, as regards prayer 7(d) to restrain the State authorities from making any pakka construction on the road passing through agricultural lands of the HC-NIC Page 22 of 24 Created On Tue Sep 01 01:36:16 IST 2015 petitioners is concerned, the State authorities are required to be directed not to make any pakka construction of the road on the land of the petitioners without following due procedure of law.

22. In the case of Mohanlal Nanabhai Choksi (deceased by L.Rs.) Vs. State of Gujarat and others reported in 2011(1) GLH 357, Hon'ble Supreme Court has held and observed in para 31 as under:-

31. The right of property, may no longer be a fundamental right, but it enjoys the protection of Article 300A of the Constitution to the extent that there can be no deprivation of property save by authority of law. Authority of law would obviously mean valid authority of law. In a case of deprivation of property by acquisition, ultimately by Land Acquisition Act, 1894, which is a drastic and expropriatory piece of legislation, the owners of property, the appellants herein are admittedly entitled to raise all legally permissible objections to the legality of an acquisition proceeding.

23. In the case of Laxman Lal (Dead) Through LRs and Another Vs. State of Rajasthan and others reported in (2013)3 SCC 764, Hon'ble Supreme Court in the context of Article 300A of the Constitution of India and compliance of the provisions of Section 5A and 17 of the Land Acquisition Act, 1894, has held and observed in para 16 and 22.4 as under:-

16. Article 300-A of the Constitution mandates that:

"300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.

Though right to property is no longer a fundamental right but the constitutional protection continues inasmuch as without the authority of law, a person cannot be deprived of his property. Accordingly, if the State intends to appropriate the private property without the owners' consent by acting under the statutory provisions for compulsory acquisition, the procedure authorised by law has to be mandatorily and compulsorily followed. The power of urgency which takes away the right to file objections can only be exercised by the State Government for such public purpose of real urgency which cannot brook delay of few weeks or few months. This Court as early as in 1964 said that the right to file objections HC-NIC Page 23 of 24 Created On Tue Sep 01 01:36:16 IST 2015 under Section 5-A is a substantial right when a person's property is being threatened with acquisition; such right cannot be taken away as if by a side wind (Nandeshwar Prasad v. State of U.P.) 22.4. Section 5-A, which gives a very limited right to an owner/person interested, is not an empty formality. The substantial right under Section 5-A is the only right given to an owner/person interested to object to the acquisition proceedings. Such right ought not to be taken away by the State Government sans real urgency. The strong arm of the Government is not meant to be used nor it should be used against a citizen in appropriating the property against his consent without giving him right to file objections as incorporated under Section 5-A on any ostensible ground. The dispensation of enquiry under Section 17(4) has to be founded on considerations germane to the purpose and not in a routine manner. Unless the circumstances warrant immediate possession, there cannot be any justification in dispensing with an enquiry under Section 5-A. As has been stated by this Court in Anand Singh⁴, elimination of enquiry under Section 5-A must only be in deserving and in the cases of real urgency. Being an exceptional power, the Government must be circumspect in exercising power of urgency.

24. In light of above, if the lands of the petitioners are to be utilized for construction of the road for public purpose, the State authorities will be required to follow due process of law.

25. For the reasons stated above, first petition, being Special Civil Application No.14810 of 2014, is dismissed. Notice discharged. Second petition, being Special Civil Application No.8781 of 2015, is partly allowed. It is directed that the petitioners shall not be deprived of any portion of their lands for the purpose of making construction of the road from their lands for public purpose without

following due procedure of law. Rule is made absolute to the aforesaid extent.

Sd/-

(C.L.SONI, J.) Omkar HC-NIC Page 24 of 24 Created On Tue Sep 01 01:36:16 IST 2015