

**HIGH COURT OF GUJARAT (D.B.)**

**SAIJ GRAM PANCHAYAT**

*Versus*

**STATE OF GUJARAT**

**Date of Decision:** 08 December 1997

**Citation:** 1997 LawSuit(Guj) 598

**Hon'ble Judges:** [K Shreedharan](#), [M S Shah](#)

**Eq. Citations:** 1998 AIR(Guj) 124, **1998 2 GLR 997**, 1997 4 GCD 364

**Case Type:** Special Civil Application

**Case No:** 9631 of 1993

**Editor's Note:**

**Gujarat Industrial Development Act, 1962 - Sec 16 - Constitution of India, 1950 - Art 234-Q - State Government has powers to declare a particular area as industrial area without complying with provisions of Municipalities Act - As the action, in instant case was taken prior to amendment in Chapter IX A of the Constitution of action to declare the area as industrial area not illegal - Petition dismissed**

**Acts Referred:**

[Gujarat Industrial Development Act, 1962 Sec 16](#)

**Final Decision:** Petition dismissed

**Advocates:** [K G Vakharia](#), [Tushar Mehta](#), [S N Shelat](#), [Kamal Mehta](#), [M R Bhatt](#), [R P Bhatt](#), [S N Shelat](#), [R J Oza](#), [Y N Oza](#), [R C Jani](#), [A K Clerk](#)

**K. SREEDHARAN, C. J.**

**[1]** Petitioners - Saij Gram Panchayat, its Sarpanch and elected members - in all 14 in number, have challenged Notification issued by the State Government on 7-9-1993, declaring Kalol (Mehsana) industrial estate as industrial area under Sec. 16 of the Gujarat Industrial Development Act, 1962 (hereinafter referred to as the G.I.D. Act).

**[2]** In Special Civil Application Nos. 6653 and 6739 of 1997 notification issued by the State Government under Sec. 16 of the G.I.D. Act constituting Vithal Udyognagar

Industrial Area (Additional), was questioned. By judgment dated 21-11-1997 a Division Bench of this Court, to which one of us (K. Sreedharan, C. J.) was a party, upheld the notification. The questions raised in those Writ petitions were identical to the one raised in this petition as well but according to the learned Counsel representing the petitioners herein, the impact of Seventy-third and Seventy-fourth Amendments to the Constitution, on Sec. 16 of the G.I.D. Act was not considered in that decision and, therefore, a full-fledged hearing should be had in this petition. In deference to his request we heard him at length. We are not in a position to find out any justifiable reason for differing from the view expressed by this Court in the abovementioned petitions. Even so we proceed to express our views on the arguments advanced by the learned Counsel representing the petitioners.

**[3]** The argument is that Part IX of the Constitution defines "Panchayat" and "Panchayat area" in contradistinction to "Metropolitan area" and "Municipal area" as dealt with in Part IXA of the Constitution. Panchayats are to be local bodies in the rural areas. Administration of such areas after being vested in the persons chosen by direct election from the territorial constituency are not to be changed to the Municipality coming within the purview of Part IXA of the Constitution.

The Municipalities in Part IXA of the Constitution, may be a Nagar Panchayat, a name given to the transitional area or Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area. Any one of these three can be changed to an industrial township. That can be done invoking the provisions contained in proviso to Art. 243 Q of the Constitution. Since the area, to begin with, was not a transitional Municipal Borough or a Municipal Corporation, no

industrial township can be created. In other words, the argument is that under no circumstances any portion of a Panchayat can be declared as an industrial area or industrial township. If the Government declares any area comprising within a Panchayat, which is a rural area, and constitutes an industrial township it will be in violation of the provisions contained in Art. 243 Q of the Constitution. So invalid.

**[4]** In the instant case, vide notification dated 7-9-1993 an industrial area has been constituted and notified under Sec. 16 of the G.I.D. Act. That took within its ambit area comprised within Saij Gram Panchayat. Saij Gram Panchayat is a rural area. That rural area could not have been declared as an industrial area. As per Art. 243 Q of the Constitution only a transitional area or an urban area could be notified as industrial township or industrial area. Therefore, the notification dated 7-9-1993 is illegal, arbitrary and violative of provisions of the Constitution.

**[5]** The impugned notification makes mention of earlier Government notification dated 29-9-1972 which was modified by notification dated 24-8-1978. As per the abovementioned two earlier notifications, area comprised in Schedule II to the impugned notifications was already declared as industrial area. Thus, the area covered by the notification to be the industrial area can never be treated as a rural area. It must fall within the category of transitional area. In that view of the matter, such a notification notifying the industrial area as a notified area under Sec. 16 of the G.I.D. Act, is not open to challenge on the ground that it violates Art. 243Q of the Constitution. Area comprised in various survey numbers in Saij Gram Panchayat of Taluka Kalol were notified by the Government way back on 29-9-1972 as industrial area. Certain mistakes which had crept in while describing the survey numbers were rectified by subsequent notification dated 24-8-1978. The areas that were so declared as industrial areas as per the abovementioned two notifications are shown as Schedule II to the impugned notification dated 7-9-1993.

**[6]** Learned Counsel representing the petitioners advanced an argument that the declaration of an area as an industrial area is an administrative action, having far-reaching consequences on the inhabitants of that area. Consequently the Government, it is contended, should have afforded an opportunity of being heard to the affected parties. Since no such opportunity was given to the inhabitants of Saij Gram Panchayat the impugned notification cannot be considered as a valid one. This argument, even if it is conceded as tenable, has no factual basis to support the same. Notification dated 7-9-1993 (Annex. C) issued by the Development Commissioner, Gujarat State, Gandhinagar, makes a mention of consultation with Mehsana District Panchayat, Kalol Taluka Panchayat and Saij Gram Panchayat of Kalol Taluka, prior to the publication of the notification. The fact that the District Panchayat, Taluka Panchayat and the Gram Panchayat were consulted by the Government is conceded by the petitioner. Though the petitioners' attempt in the petition was to give a very wide meaning to the term 'consultation', no arguments were urged on that score at the hearing of the petition.

**[7]** As a matter of fact, it is seen that the Government did consult the District Panchayat, Taluka Panchayat and the Saij Gram Panchayat before issuing the impugned notification dated 7-9-1993. So, even conceding petitioners' contention for the sake of argument that the action of the Government was an administrative one and it had adverse consequences on the inhabitants of the area, the notification cannot be struck down as such hearing was given to the concerned bodies. Here we hasten to add that a notification under Sec. 16 of the G.I.D. Act is not an administrative act. It is a conditional legislation and consequently no hearing was called for.

**[8]** Notification dated 17-9-1993 was one issued under Sec. 16 of the Act. Such a notification, as per that Act, will be deemed to be one notifying the area as such under

the Gujarat Municipalities Act. As a legal fiction, notification under Sec. 16 of the G.I.D. Act will be treated as one issued under the Municipalities Act. For such an area, to be notified area under the Municipalities Act, one need not examine whether the provisions of the Gujarat Municipalities Act have been complied with or not. Validity or otherwise of that notification would stand on the compliance with the provisions of the G.I.D. Act. The petitioners have no case that any of the provisions of the G.I.D. Act has been violated in issuing the impugned notification. Consequently, an examination by this Court as to whether the requirement of Municipalities Act have been complied with or not is not called for.

**[9]** Long prior to the Constitutional amendments by which Chapters IX and IXA were introduced in the Constitution, areas comprised within the Saij Gram Panchayat of Kalol Taluka in Mehsana District, were notified as industrial areas as per notification dated 29-9-1972 as amended by notification dated 24-8-1978. When the areas covered by those notifications were thus declared as industrial areas it is too late in the day for the petitioners to raise a contention that the area is a rural area not capable of being notified as industrial area.

As per the notification, area comprised in various survey numbers in Saij Gram Panchayat has been declared as industrial area. According to the petitioners there can be no notification declaring any area as industrial area but can only be as an industrial township. Since the notification used the words "industrial area" that notification cannot be taken as one declaring "industrial township" coming within the ambit and scope of the proviso to Art. 243 Q of the Constitution. We are not impressed by this argument. The industrial area which was declared way back by notifications dated 29-9-1972 and 24-8-1978 are now sought to be declared as notified area under the Municipalities Act. When those areas are developed, they will become industrial estate and industrial township. The "industrial area" is a generic term which can take within its ambit and scope "industrial estate" as also "industrial township". It is not possible for this Court to interfere with the impugned notification on the sole ground that it made mention of an "industrial area".

**[10]** As held by this Court in the judgment in S. C. A. No. 6653 of 1997 and the connected case, Municipalities Act and G.I.D. Act govern entirely different fields.

There is no conflict between the two legislations. They are having their impact in different fields and this Court has rightly held that validity of a notification issued under Sec. 16 of the G.I.D. Act is not to be tested on compliance or otherwise of the provisions of the Municipalities Act. The non-obstante clause in Sec. 16 of the G.I.D. Act and the provisions contained in Sec. 57 of the G.I.D. Act, make it clear, beyond doubt that sustainability or otherwise under the G.I.D. Act is not to be

tested on the basis of the compliance or otherwise with the provisions contained in the Municipalities Act.

**[11]** As stated earlier, area comprised in various survey numbers of village Saij of Taluka Kalol was notified as industrial area more than a decade prior to the Constitutional amendment. Such area is now declared as "industrial area" under Sec. 16 of the G.I.D. Act. No provision of the G.I.D. Act has been contravened in publishing the said notification. Validity of the said notification is not to be tested on the touch-stone of the requirements of the provisions of the Municipalities Act.

**[12]** In view of what is stated above, we do not find any ground to doubt the correctness of the decision in Spl. C. A. Nos. 6653 and 6739 of 1997. The said decision applies on all fours to the facts of the present case. We find no merit in this petition. It is accordingly dismissed. Rule is discharged.

**[13]** Since the petitioners got the benefit of stay and collected octroi for the past so many years, we do not find any justification for not saddling the petitioners with costs. The petitioners are, therefore, directed to pay costs of Rs. 10,000/- to the G.I.D.C.

**[14]** Learned Counsel representing the petitioners prays for continuance of the interim stay for a further period of eight weeks. We do not find any justification for that. They were collecting octroi without any justification of any manner. This request is, therefore, declined. The petitioners must desist from collecting any octroi right from today.

Petition dismissed.