

HIGH COURT OF GUJARAT

PATEL JAYANTIBHAI PRAHLADBHAI & 5

Versus

REGIONAL MANAGER & 3

Date of Decision: 17 June 2013

Citation: 2013 LawSuit(Guj) 617

Hon'ble Judges: [G R Udhwani](#)

Case Type: Special Civil Application

Case No: 6389 of 2012

Subject: Civil, Property

Acts Referred:

[Land Acquisition Act, 1894 Sec 4](#)

Final Decision: Application dismissed

Advocates: [R C Jani And Associate](#), [Rituraj M Meena](#)

Cases Referred in (+): 2

G R Udhwani, J.

[1] Though repeatedly called out, none present for the petitioners.

[2] The petitioners, claiming to be owners of the lands which were acquired way-back in the year 1986, had instituted Regular Civil Suit No.40 of 1995 in the Court of learned Civil Judge (Junior Division), Gandhinagar questioning the lands acquisition proceedings initiated on 24/11/1980 by issuance of Section 4 notification and concluded on 28/05/1986 by declaration of the award in respect thereto. Learned Counsel for the respondent No.1 states that even possession was taken over on 28/05/1986 and is handed over to the third parties for industrial development.

[3] The said suit being RCS No.40 of 1995 was dismissed for default. Thereafter, another suit being Regular Civil Suit No.154 of 2006 was instituted and application Exh.5 was moved therein, which was granted on 15/12/2006. In appeal, being Civil Misc. Application No.2 of 2007, that order came to be set aside on 15/10/2007. It appears that even that suit being RCS No.154 of 2006 has been dismissed for default.

A certified copy of the suit and order is placed on record by the learned Counsel for the respondent No.1. The petitioners remained silent for a period between 2007 and 2012 and in the meanwhile the three plots of the acquired lands were allotted to three parties for industrial purposes on 28/02/2012 and possession was also handed over to them. However, the petitioners appear to have encroached upon the said plots of land and the order passed in 2007 in above Mics. Appeal came to be challenged after the allotment of the three plots without even explaining inordinate delay in preferring the present petition.

[4] While the learned Counsel for the petitioners has remained consistently absent though repeatedly called out, having considered the submissions made by learned Counsel for the respondent No.1, it is eloquent that the petitioners have resorted to abuse of the process of the Court by repeatedly preferring one proceeding or the other. The first suit itself was preferred after a period of nine years of the award. On its dismissal, in the year 2006, another suit came to be filed wherein as discussed above, appeal preferred by the respondent was allowed.

[5] In [Laxmi Chand & Ors. Vs. Gram Panchayat, Kararia & Ors.](#), 1996 7 SCC 218 as relied upon by learned Counsel for the respondent No.1, the Hon'ble Supreme Court ruled that since the scheme of the Land Acquisition Act is complete in itself, Civil Court has no jurisdiction to give declaration on invalidity of acquisition and that can be done by the High Court or Supreme Court under Article 226 and 136 of the Constitution of India respectively. Similar view has been expressed in [S.P. Subramanya Shetty & Ors. Vs. Karnataka State Road Transport Corporation & Ors.](#), 1997 11 SCC 250.

[6] In above view of the matter, when the suit itself was not maintainable, there can be no question of interim-relief.

[7] The filing of the delayed proceedings by the petitioners at all stages as mentioned above indicates that the litigation resorted to by the petitioners was not bona-fide. The petitioners appear to have formed a habit of abusing the process of the Court by repeatedly compelling the Courts to invest their public valuable time resulting into further delay of genuine cases which deserve attention. Therefore, while dismissing this petition, it is deemed appropriate to impose exemplary cost upon the petitioners and direct the trial Court to consider the above two decisions of the Hon'ble Supreme Court, in the event of petitioners instituting further proceedings in the trial Court / appellate Court.

[8] Under the circumstances, a cost of Rs.51,000/- is imposed upon the petitioners which shall be paid by them within a period of four weeks from the date of the receipt

of this writ, failing which it shall be recovered as land revenue under the Bombay Land Revenue Code.

[9] In view of the above, the petition is dismissed. Notice is discharged.

[10] In view of the disposal of the main petition, Civil Application does not survive and the same is accordingly dismissed.

