

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****WRIT PETITION (PIL) NO. 234 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE ACTING CHIEF JUSTICE****MR. VIJAY MANOHAR SAHAI****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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FARSHUBHAI M GOKLANI.....Applicant(s)

Versus

STATE OF GUJARAT THRO SECRETARY & 3....Opponent(s)

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Appearance:

MR HRIDAY BUCH, ADVOCATE for the Petitioner

MR KAMAL B TRIVEDI, AG WITH MS SK VISHEN, AGP for Respondent No. 1, 3 and 4

MR MIHIR JOSHI, SR. ADVOCATE WITH MR RITURAJ M MEENA, ADVOCATE for Respondent No. 2

NOTICE SERVED BY DS for Respondents No. 3 - 4

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CORAM: **HONOURABLE THE ACTING CHIEF JUSTICE MR. VIJAY MANOHAR SAHAI**  
and  
**HONOURABLE MR.JUSTICE R.P.DHOLARIA**

**Date : 12/03/2015**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE R.P.DHOLARIA)**

1. By way of this writ petition in the nature of Public Interest Litigation, the petitioner challenges the acquisition of lands undertaken by the respondent- Gujarat Power Corporation Limited, which is a govt. company, for establishment and setting up of Phase-I of Gujarat Solar Park at village Charanka, Taluka-Santalpur, District-Patan.
2. For setting up of Phase-I of Gujarat Solar Park, total land required for the project consisted both the government land as well as private land. For the acquisition of the land, the government undertook the process of acquisition of land. The government land of 1020 hectares was acquired by order dated 20.12.2010 and further 91.53 hectares was acquired by order dated 6.1.2014. The private land was acquired by way of two methods, namely, one by consent award and another by regular award. Under the consent award, 666-27-49 hectares of land was acquired, whereas by way of regular award 120.16.94 hectares was acquired. It is alleged that the lands especially the lands belonging to agriculturists in the year

2010-11 belonging to original owners came to be transferred to some speculators at a throw away price by the agriculturists and when the same lands were acquired by the government for the respondent no.2 company, the price paid by way of consent award as well as by regular award was at a very escalated rate of more than 200% and such sale transactions took place between the original landowners, that is, the agriculturists, and the speculators within a short span of two years by consent award as well as regular award, thereby huge loss has occurred to the public exchequer.

3. Earlier, while hearing the present petition on 27<sup>th</sup> August, 2014, this Court extracted a chart and reproduced the details contained in the said chart produced by the petitioner at Annexure:1 to the petition, showing the details of the transactions that took place between the original owners, that is, agriculturists and the speculators. The said details contained survey number of land, name of the original owner, name of the purchaser, area of the land, date of sale deed, sale consideration and compensation that was awarded. At that time, this Court was of the opinion that a thorough investigation into the allegations made by the petitioner was required to be made by the Principal Secretary, Revenue Department as to whether in the land acquisition proceedings excess compensation was paid to the landowners or not. In compliance with the said order dated 27.8.14, a detailed report

has been submitted by Mr. J.N. Singh, Additional Chief Secretary, Revenue, Government of Gujarat in the month of December, 2014 along with affidavit filed by Mr. B.J. Trivedi, Joint Secretary, Revenue Department, Sachivalaya, Gandhinagar. The findings given in the said report by the Additional Chief Secretary, are extracted hereunder:

**“Findings:**

*From the above, it seems that the price at which GPCL purchased the government land was based on certain established rules and procedure. As far as private land was concerned, the valuation was substantially dependent on the rate fixed for government land by the District Level Valuation Committee, to which was added the Rehabilitation Assistance for loss of primary source of income. It is often seen in consent award that the arrived price is slightly higher than the government rate in that area as the landowners expect a premium for giving the consent.*

*However, it has been allegedly by the petitioner that the land was sold earlier at a lower price and then acquired by government at a much higher price. To enquire whether there was an element of coercion or fraud in these sales by original landholders, I enquired in 11 cases through the Talati & Mamlatdar, Santalpur [Annexure-10, Tabulation of the gist of the statement]. They have stated that they have sold this land voluntarily and without any coercion or fraud. Some of them said that this land was not fertile or that they needed for money*

*urgently.*

*I also tried to enquire from the purchasers of these private lands as to how and why they purchased land in Charanka. From their statements, it appears that they came to know from newspapers that this area is going to develop industrially as the Solar park would be set up here. Though they have not specifically mentioned it, but it is apparent that they purchased this land for speculative purposes and could benefit from the arbitrage opportunity. As they were all agriculturists in occupation, there is no ban on their purchase of agricultural land anywhere in Gujarat, subject to normal Land Revenue rules [Annexure-11, The gist of the statements of the purchasers from the original owners]. Hence one cannot say that their purchase was illegal.\**

*Such speculative and arbitrage activity in land is witnessed in several places where new projects are announced. Quite often the well-informed speculators are able to take advantage of their overall awareness and the availability of liquid money with them, while the relatively uninformed native rural people suffer.*

*In this case, I can safely say from the facts gathered by me that the information to set up Solar Park in Charanka was not limited to only a few persons in GPCL office, which could then have pointed out to some conspiracy. I also took statements of two very senior GPCL officials, who stated that they were not aware of the landholders or the purchasers and also that no one from GPCL was involved as far as they knew. [Annexure-12]*



*From the facts brought to my notice, the State Government in a meeting as early as 4<sup>th</sup> November, 2009 had decided to establish Solar Park in Charanka. Accordingly, a survey was carried out from 07.11.2009 to 04.03.2010 for the availability of Government Waste Land [vide Letter of Intent to M/s. M K Soil Testing Laboratory and Design Point Vigor India Consulting Pvt. Ltd]. An interim Report of investigation was submitted to GIDC on 16.01.2010 with a copy to Energy and Petrochemical Department of Government of Gujarat. After the survey, the area of village Charanka was finalized by the Government for establishing Solar park vide letter no. SLR/10/2010/108932/b, dated 15.02.2010 [Annexure-13]. A copy of this letter was marked to the Collector office at Patan as also to the General Manager, Gujarat Industrial Development Corporation. It can thus be safely presumed that large number of people was aware that the Solar Project was coming up in Charanka by now.*

*From the documents shown by the Petitioner, the sale of these land in Charanka started during June 2010 and continued till February 2011, and in one case of S.N. 152/24 as late as on 08.09.2011. However, from the report of Deputy Collector dtd. 31/10/2010 [Annexure-14], it appears that the sale in these lands in Charanka started from 2007 itself, and more than once in several of these survey numbers. That is, of the total 75 sales, only 27 are first time sale from the original land owner, second time sale are 35 in number, third time sale 12 and in one case four times sale. This shows speculative sale and purchase. It may be mentioned that the then CM of Gujarat laid the foundation stone on 30.12.2010, while*

*at least 4 transactions are after that date. So, speculation in land in this area became quite common.*

*At the same time, it is also true that while speculators gain, those who are poor landholders and who do not have sufficient holding capacity, are not able to gain from the development of land prices in that area. To ensure that the benefit of price increases is shared by all, I would recommend to government to consider this aspect and institute an administrative legal mechanism for future so that even the original landholders are able to gain to a large extent from the benefit of price increase due to extraneous developments in that area.*

*In conclusion, I would say the following:*

- 1. The price for Government wasteland was fixed by a properly constituted District Level Valuation Committee headed by the Collector of Patan. The valuation of land by this Committee has been found valid by the Chief Town Planner, Government of Gujarat.*
- 2. The fixation of consent price for private land was substantially dependent on the valuation of Government Land, i.e. a Rehabilitation Assistance money for the loss of primary source of income was added to the valuation done for the government land.*
- 3. The setting up of the Solar Park at Charanka was not a secret known to only a few people located in GPCL, and hence direct collusion of any or all GPCL officials cannot be established.*
- 4. It is a fact that speculators from other parts of Gujarat [outside of Charanka] have gained by buying land from the original landholders. But prima facie there*

*is nothing illegal in it. However, I am recommending to Government to institute an administrative-cum-legal mechanism in future to ensure that the original landholders also get a much fairer deal than what the present market mechanism would allow."*

2. We have heard Mr. Hriday Buch, learned counsel appearing on behalf of the petitioner, Mr. Kamal B. Trivedi, learned Advocate General assisted by Ms. S.K. Vishen, learned AGP for respondent nos. 1,3 and 4 and Mr. Mihir Joshi, learned Sr. Advocate assisted by Mr. Rituraj M Meena, learned counsel appearing on behalf of respondent no.2.
3. Having heard the learned counsel for the respective parties and on going through the material available on record in light of the allegations made in the writ petition, and on going through the report submitted by the Additional Chief Secretary, Revenue Government of Gujarat as also on going through the affidavits-in-reply filed by the respective parties, it is revealed that it was the decision of the government to set up the solar power park with generation capacity of 500 MW in 5000 acres of Charanka village, Santalpur Taluka in Patan District. For the purpose of acquisition, the major land identified by the government belonged to the government and the rate of Rs. 110/- per sq.mt. was paid. So far as the land of the private agriculturists was concerned, it came to be acquired by consent award as well as by way of regular award which came to be passed by the Land Acquisition Officer. It appears that the rate



of Rs. 170.15 per sq.mt is paid under the consent award whereas rate of Rs. 185.65 per sq.mt is paid under the regular award. So far as the payment as regards the acquisition of land belonging to the government for the purpose of setting up of solar power park is concerned, rate of Rs. 110/- per sq.mt is paid, to which there is no dispute. The only allegation levelled as regards the acquisition of land is that the agriculturists sold their land to the speculators and thereafter, the speculators under the consent award as well as regular award have earned nearly 200 times as compared to the price for which they have purchased the land from the agriculturists. So far as the allegation of escalation of the price is concerned, this Court has minutely gone through the report submitted by the Additional Chief Secretary, Revenue, Government of Gujarat, as well as the report of the District Valuation Committee. In the report of the District Valuation Committee it is clearly revealed that the said District Valuation Committee, while considering the valuation of the land has relied upon the comparable sale instances and the price arrived at was Rs. 12.20 per sq.mt. Thereafter, the Committee adopted the methodology as provided in the Govt. Resolution dated 26<sup>th</sup> April, 2011 on point no.3.1 and 50% increment has been given to the sale transactions of the rural areas as well as as per point no. 3.4, after giving 200% increment in the agricultural sale of lands, on the basis of the calculation sheet, the price arrived is at Rs.

47.58 per sq.mt. After adding 30% for the development capacity, the price arrived is at Rs. 61.85 per sq.mt and consequently therefore, the Town Planner, Patan opined to estimate the present market value of the aforesaid land at Rs. 62/- only. Precisely, this valuation was placed before the District Valuation Committee for arriving at a conclusion as to what amount of compensation should be paid with regard to govt. land in the acquisition proceeding. The meeting of the District Level Committee was held on 5.11.2011, which comprised of the Collector, Patan, District Development Officer, Patan, Resident Additional Collector, Patan, Town Planner, Patan and Deputy Collector, Stamp Duty, Patan.. Thus, the District Valuation Committee considered the matter in detail and adopted the procedure to arrive at a market price of the aforesaid land as it has to be used as non-agricultural land. In light of the Govt. Resolution dated 26.4.2011, the District Valuation Committee considered the present development and the capacity of development of the land in question and resolved to estimate the present market value of the land in question at Rs. 110/-, which was also concurred with by the Chief Town Planner and accordingly, the price of the government land as narrated above came to be paid.

4. Negotiations came to be held with various farmers in between 23<sup>rd</sup> May, 2013 to 16<sup>th</sup> December, 2013 for passing consent award and the uniform price of Rs. 170.50 ps. per sq.mt. was

fixed and five consent award came to be passed by the Deputy Collector, acquiring in all 666-27-49 hectares of private land of village Charanka at the consent price of Rs. 170.50 ps per sq.mt. Those who did not accept the consent award went through the regular acquisition, which regular land acquisition award came to be passed by the Deputy Collector, Radhanpur, acquiring 120-16-94 hectares of private land of village Charanka at the market price of Rs. 185.65 under the provisions of the Right to Fair Compensation and Transparency in land acquisition, Rehabilitation and Resettlement Act, 2013.

5. It appears that while acquiring the aforesaid lands, three types of methods were adopted; [i] acquisition of land belonging to the government, [ii] acquisition of land by way of consent award and [iii] acquisition of land by way of regular award in accordance with the Right to Fair Compensation and Transparency in land acquisition, Rehabilitation and Resettlement Act, 2013. The grievance raised is as regards the consent award which came to be passed by the revenue authority in favour of the alleged speculators whereby huge public loss to public exchequer is alleged to have occurred and that is the challenge made before us.

6. Mr. Hriday Buch, learned counsel appearing on behalf of the petitioner has taken us through the aforesaid Annexure-I which he filed along with the comparative prices by which the original landowners have sold their lands to the alleged speculator and

the alleged speculators have then realized huge price by way accepting the consent award.

7. We have also noticed that there is marked distinction between the price at which the original agriculturists sold the land to the alleged speculators and the price they have earned through the the consent award. We have also perused the affidavit-in-reply filed by the respondent no.2 company as well as the affidavit filed by the respondent-State, in light of the various reports that came to be prepared to arrive at a market value of the aforesaid lands. In our view, the price arrived at by the District Valuation Committee is in accordance with the resolution of the government as well as the factors as applicable to arrive at a market value. We have also noticed that the respondent no.2 company has paid the price at Rs. 110/- per sq.mt of land to the respondent-State and it has developed the plots and given them to the developers for establishing the solar power parks at the rate of Rs. 194/- per sq.mt towards the price of the land which is at a higher rate than what the compensation has been paid to the private landowners and farmers. This itself demonstrates that no loss has been caused to the public exchequer and there is no element of public interest involved in this matter. The allegation made as regards the transactions that such transactions have taken place in collusive manner with the officers of the government is not borne out from the material placed on record and in the result, whatever awards

that came to be passed by the government, be they consent awards or regular awards passed by the Land Acquisition Officer are in accordance with the provisions of law and after ascertaining the market price of the lands in question, and in view of the fact that the respondent no.2 company has realized much more price as compared to the land price being paid by the land acquisition agency to the farmers by way of consent awards as well as by regular awards.

8. In this view of the matter, the petition is devoid of any merit and deserves to be dismissed and is accordingly dismissed. Notice is discharged. No order as to costs.

**(V.M.SAHAI, ACJ.)**

**(R.P.DHOLARIA,J.)**

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THE HIGH COURT  
OF GUJARAT

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