

Gujarat High Court

4 Whether This Case Involves A ... vs The Petitioners on 20 October, 2015

C/WPPIL/136/2015

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) NO. 136 of 2015
 With
 SPECIAL CIVIL APPLICATION NO. 13902 of 2015
 With
 CIVIL APPLICATION NO. 10152 of 2015
 In
 SPECIAL CIVIL APPLICATION NO. 13902 of 2015
 With
 CIVIL APPLICATION NO. 10192 of 2015
 In
 WRIT PETITION (PIL) NO. 136 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE
 MR. JAYANT PATEL

and

HONOURABLE MR.JUSTICE N.V.ANJARIA

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- | | | |
|---|---|-----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | Yes |
| 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 of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

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JAM AALA AJABHAI & 56....Applicant(s)

Versus

ESSAR POWER GUJARAT LIMITED & 4...Opponent(s)

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Appearance:

MR ND NANA VATY, LD. SR. ADVOCATE WITH MR RAJESH K SAVJANI,
ADVOCATE for the Applicant(s) No. 1 - 57

MS MANISHA SHAH, LD. GOVERNMENT PLEADER for the Opponent(s) No.
3-4

MR MIHIR JOSHI, LD. SR. ADVOCATE WITH MR.KEYUR GANDHI WITH MR
RAHEEL PATEL for NANA VATI ASSOCIATES, ADVOCATE for the
Opponent(s) No. 1

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
MR.JAYANT PATEL
and
HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 20/10/2015

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE N.V.ANJARIA) The petitioners, stating to be the agriculturists, have invoked the public interest jurisdiction of this court under Article 226 of the Constitution, and have filed the present petition questioning the justifiability of allotment of government land in favour of respondent No.1-company.

2. By order dated 15th May, 2015, which is prayed to be set aside, the land admeasuring 12-44-45 Hectors in total comprising of government waste land and Gauchar land at three different villages came to be granted at total price of Rs.18,74,35,608/-. The allotment of land was for industrial purpose of setting up a coal conveyor corridor connecting the stock-yard at the project site of the company to the HC-NIC Page 2 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT jetty. Three main grounds are raised to assail the order-that the allotment was done without any defined policy, the land granted included Gauchar portion and that the process of auction was not resorted to, ultimately the allotment was against public interest.

3. Marshalling the facts from the record of the petition, it appears that respondent No.1-company and the State Government signed Memorandum of Understanding during the Vibrant Gujarat Global Investor Summit, 2007 for supply of power to M/s. Gujarat Urja Vikas Nigam Limited. Respondent No. 1 was selected in capacity of lowest bidder for the project to supply the power at the

rate of Rs. 2.4 per unit. The company set up 1,200 Mega Watt Thermal Power Plant. Out of that it was to supply 1,000 MW to M/s.Gujarat Urja Vikas Nigam Limited. The respondent company constructed imported coal based power plant. The project envisaged setting up of a coal import facility comprising of jetty stock-yard and conveyor transportation system.

3.1 For setting up the project, respondent No.1 company needed total land of the area 237-47-78 Hectares. For the said total need, the company privately purchased 209-38-76 Hectares of surrounding land of Villages Nana Mandha, Mota Mandha and Parodia by way of registered sale deed directly from the land owners. It appears that the company applied to the State Government requesting to acquire total 18-03-41 Hectares of land, whereupon the State Government acquired 16-63-26 Hectares for the company under the HC-NIC Page 3 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT Land Acquisition Act, 1879. It appears that the company was in need of further land in order to complete corridor conveyor belt, therefore applied on 29th August, 2007 and again on 31st July, 2008 for allocation of 153-88-33 Hectares of land being the parcels of Gauchar land and Government waste land at Nana Mandha Village.

3.2 It appears that subsequently, the company revised its demand and requested the State Government to grant lesser area. The details of initial demand and gradually reduced demand made by the company in this tabular form.

Date of different application	Government waste land Area in Hector	Gauchar land Area in Hector
31.07.2008	12-70-20	96-99-98
19.09.2009	10-09-30	66-08-43
30.12.2011	10-09-30	29-00-00
06.12.2013 (Last updated demand of company)	10-09-30	3-22-43 1-37-46

3.3 Thus initially in application dated

July, 2008, respondent No.1 demanded Government waste land of the area admeasuring 12-70-20 Hectares and Gauchar land admeasuring 96-99-98 Hectares which was gradually reduced in the subsequent applications dated 19th September, 2009 and 30th December, 2011, ultimately reducing the same to 10-09-30 Hectares for HC-NIC Page 4 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT Government waste land and 1-37-46 Hectares out of Gauchar land.

3.4 The total area of 12-44-45 Hectares of land came to be granted to respondent No.1. The details thereof is as under, HC-NIC Page 5 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT Sr. Village Survey Total Area Area of No. No. of the Land Survey No. Allotted (in to hectares) Respondent No.1 (in hectares) 1 Mota Mandha 488/1/P2 261-30-60 03-32-42 2 Nana Mandha 3/1/1/P1 304-06-74 03-42-12 3 Nana Mandha 3/1/1/1 116-87-39 00-97-69 4 Parodia 342 05-74-66 00-67-61 5 Parodia 340/3 61-97-80 01-97-82 6 Parodia 285/1 00-28-33 00-28-33 7 Parodia 285/2 02-07-40 00-41-00 8 Parodia 423 08-33-66 00-04-39 9 Parodia 424 14-87-23 00-13-19 10 Parodia 425 10-31-95 00-11-61 11 Parodia 426 09-96-56 00-04-11 12 Parodia 427 04-99-79 00-06-47

4. This court heard learned senior counsel Mr.N.D. Nanavaty assisted by learned advocate Mr.Rajesh K. Savjani for the petitioners, learned senior counsel Mr.Mihir Joshi for Nanavati Associates Advocate for respondent Nos.1 and 2 - the Company and learned Government Pleader Ms.Manisha Shah for respondent Nos.3 and 4.

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JUDGMENT

4.1 Learned senior counsel for the petitioners

assailed the grant of land to respondent No.1 company as against public interest. He submitted that out of the total area of land allotted, the parcels of Gauchar land was also included and that the Gauchar land could not have been allotted. It was next submitted that the entire allotment was not based on any policy. It was submitted that there was no well- defined or codified policy framed or followed by the State Government for the purpose of grant of government land to the private industrial houses. Learned senior counsel further submitted that respondent company relied on the policy of the year 1947 and modified by Resolution of 1956, however the same was subsequently repealed by virtue of the Bombay Land Revenue Rules. Learned senior counsel further submitted that under Section 62 of the Bombay Land Revenue Code, 1879 read with the relevant Bombay Land Revenue Rules, the allotment of government land was required to be made by adopting the method of auction only.

4.2 Learned senior counsel vehemently submitted that in all cases where the State Government or its instrumentality disposes of property or in the matters or grant of largesse by the State, the normal rule is to allow participation of all interested parties by inviting offers and hold auction for disposal of property so that maximum revenue could be generated for the State exchequer. It was submitted that the allotment of lands to respondent No.1 company was without following any such process and the departure HC-NIC Page 7 of 32 Created On Tue Oct 27 00:26:33 IST 2015

C/WPPIL/136/2015 JUDGMENT from normal rule was not justified and it amounted to arbitrarily favouring private respondent company. Learned senior counsel emphasise that the allotment was not for any charitable or philanthropic purpose but was for industrial purpose to a private industrial house, therefore it ought to have been guided by a well-defined policy which has to be fair and transparent in itself.

4.3 Learned senior counsel for the petitioner relied on the following decisions in support of this submissions-(1) Jagpal Singh Vs State of Punjab [(2011) 11 SCC 396], para 17, 21 and 23, (2) Institute of Law, Chandigarh Vs Neeraj Sharma [(2015) 1 SCC 720], para 15.3 to 31, (3) City Industrial Development Corporation Vs Platinum Entertainment [(2015) 1 SCC 558] para 36 to 55, (4) Humanity Vs State of West Bengal [(2011) 6 SCC 125] para 23 to 27, 30, 40, 43, 50 to 53, (5) Akhil Bhartiya Upbhokta Congress Vs State of Madhya Pradesh [(2011) 5 SCC 29] para 45 to 68, 81, (6) Sachidanand Pandey Vs State of West Bengla [1987] 2 SCC 295] para 40, (7) Ramana Dayaram Shetty Vs International Airport Authority of India [(1979) 3 SCC 489] para 11 to 18, (8) M/s.Kasturi Lal Lakshmi Reddy Vs State of Jammu [(1980) 4 SCC 1] para 14, (9) LPA No. 1211/2013 dated 03/03/2015 para 12 to 14, (10) Manohar Lal Sharma Vs Principal Secretary [(2014) 9 SCC 516], (11) Saroj Screens Private Limited Vs Ghanshyam [(2012) 11 SCC 434], (12) Gohil Jesanbhai Paysangbhai Vs State of Gujarat [(2014) 5 SCC 199] para 21, (13) Natural Resources Allocation In. Re. Special Reference No.1 HC-NIC Page 8 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT of 2012 [(2012) 10 SCC 1], para 80,81,89,90 to 105, 107 to 112, 113 to 115, 146, 147 to 150.

4.4 On behalf of the State Government, the Joint Secretary, Revenue Department filed affidavit-in-reply. Learned Government Pleader relied on the same and submitted that before making application for allotment of land, respondent company had sought permission from the Energy and Petrochemicals Department for seeking sanction for the public utility project. At that time the company had given an undertaking also to the government that it shall be bound by the policies of the State Government and the power would be supplied to Gujarat Urja Vikas Nigam Limited. She produced the correspondence being letter dated 30th July, 2014 addressed by the Collector's office to the Joint Secretary, Revenue Department mentioning about the claim of land by the company and the valuation fixed by the District Valuation Committee in respect of difference parcels of land at different villages demanded by the company, as well as copies of various Resolutions and Circulars reflecting the policy. Learned Government Pleader placed reliance on all those documents and submitted that the allotment of the land was as per the policy practice by the State Government and the lands were properly valued and the allotment price was ultimately worked out and fixed at Rs.01,381/- per Sq. Meters.

4.5 Learned senior counsel for the respondent No.1 company submitted that the project for which the land demanded was contemplated as back as in the year HC-NIC Page 9 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT 2007. At the initial stage the requirement of the company was for larger area of land, however company purchased out of its own resources a large chunk of land and certain Hectors were also acquired by the State Government for the company upon its request. He submitted that the allotment of Gauchar land was small part of the total allotment, for which the company, reimbursed the equal area of land by purchasing such

area and giving the same in lieu of the Gauchar land allotted to it. He submitted that the requisite amount as per the policy was paid by the company for Gauchar part as well as in respect of government waste land. Countering the case of the petitioners that there was no policy evolved by the State Government, learned senior counsel sought to highlight that there was an Industrial Policy of 2003 which was in vogue and practiced by the State Government which was taken note of by Division Bench of this Court in Writ Petition (PIL) No.02 of 2012. He drew attention of the policy Resolution of 1947 as well as of 1956 passed by the State Government which, according to him, were in the inception of the policy followed by the State Government time-to-time modified and updated.

4.6 Learned senior counsel for respondent No.1 company thereafter highlighted the importance of the project that the project was Thermal based Power Project which generated power and supplied the same to Gujarat Urja Vikas Nigam Limited, a government based company. He submitted that the project has commissioned and the land was badly needed for conveyor belt to connect the jetty with the coal HC-NIC Page 10 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT stock-yard at the power plant. He submitted that there was no damage done to the Gauchar use of the land and that the belt passed the Gauchar area, it was designed to have an elevated corridor. He submitted that the corridor was a long strip of land extending over 7.5 K.M. long which was a peculiar need and necessity of the company only. He submitted that on 17th July, 2009, the Ministry of Environment and Forests, Government of India granted environment clearance to the company's project.

4.7 Respondent No.1 company in its affidavit-in- reply has stated the facts about its Thermal based Power Project set up located at village Khajurda, Taluka Khambhaliya in Devbhoomi Dwarka District. These facts are as such not disputed and may be noticed. It is inter alia stated that company invested Rs.5,315 crores for the construction and upcoming of the power plant. It consumes coal in the range of 3 to 3.75 Million Metric Tone per annum depending upon the quantity of coal and the off-take of energy by Gujarat Urja Vikas Nigam Limited. The company stated that all the coast located power plants own a jetty and have constructed a coal conveyor corridor from the jetty to the coal stock-yard of the power plant. In case of the respondent company the coal is proposed to be received at Salaya jetty, constructed by a Special Purpose Vehicle of the Essar Group to meet the requirement of coal handling of Essar Power Limited. It is further stated that this jetty at Salay is located at about 15 kms. from the power plant and about 6 kms. into the sea which is to be connected through a coal conveyor HC-NIC Page 11 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT corridor. The coal conveyor corridor would take off from the jetty land at the Land Fall Point and thereafter through a 7.5 km long conveyor, would reach the coal stock-yard at the power plant. It is stated that such is a normal design for any imported coal based power plant and that the land was needed for having the facility of such conveyor corridor.

4.8 According to the company the coal jetty with coal conveyor corridor is essential for the power plant. It is stated that one of the considerations for having the dedicated jetty and coal conveyor from the jetty is the long distance from the government owned (of Gujarat Maritime Board) jetty at the port which distance is in the present case about 60 kms. The company at present transfers the coal through dumpers by road. It is further stated that the proposed conveyor would be a hooded conveyor capable of transporting about 20,000 to 25,000 Tones of coal per day which is the normal

average consumption at the full capacity-running of the power plant. From the standpoint of said handling of the coal, conveyor is a necessity, it was stated. The conveyor transportation is also stated to be hazard free in terms of fugitive dust emission; the possibility of accident is minimized. In other words it is non-accident prone, unlike transportation by trucks and dumpers. It was stated that currently the movement of coal from stock-yard to jetty involves about 1,000 dumpers every day plying through the State highway. Another advantage of the corridor conveyor, as per the company, is the availability of berthing place at the port. It is HC-NIC Page 12 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT stated that it would reduce the demurrage payment liability which arise because of delay in discharge of vessel for want of berthing place at the port. The coal could be efficiently transported and thus the transportation of the coal through conveyor corridor was safe, reliable and economic and would insulate from fluctuating freight costs. It was submitted by the company that all the factors such as wharf limitations leading to delay in the discharge of vessel and consequently incurring of port charges and expenses of such nature could be minimized.

4.9 It is further stated that the overall land requirement on Gauchar land was reduced to 01-37-46 Hecter from 95 Hecter originally sought by its letter of 31st July, 2008. The size of the coal stock-yard was also reduced so that at any point of time not more than 30 days coal can be stocked in the stock-yard opposed to a minimum of 60 days storage capacity for imported coal based power plants. The company claimed that by virtue of setting up the coast located power plant, it has created employment in the region and has employed about 550 persons from the local area, and created employment for nearly 1000 persons of whom 799 persons are from Gujarat besides a large number of indirect employment who are dependent on the running of the Power Plant. It is asserted that this aspect demonstrates the public importance of the Project.

5. Adverting to the subject matter controversy, it appears that the application by the company was processed. On 24th March, 2014, the revenue department HC-NIC Page 13 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT of the State Government called for report from respondent No.3-Collector containing details of valuation and measurement of the Government waste land and the Gauchar land being 1,00,930 Sq. Meters and 13,746 Sq. Meters (in Hectares 10-09-30 and 1-37-46) respectively. On 30th July, 2014, Collector sent a proposal to the Revenue Department. The Government waste land and Gauchar land of three different villages as per the impugned order came to be allotted. The parcels of lands situated at different villages demanded by the company were valued for fixation of price.

5.1 It appears that during the consideration of the demand of the respondent No.1 company, the Energy and Petrochemicals Department of Government of Gujarat communicated on 03rd March, 2014 to the Principal Secretary, Revenue Department requesting to consider the request of the company for grant of 1.37 Hectares of Gauchar land. The said letter inter alia stated thus, "Since the bulk of power being generated from the Power Project, i.e. around 1000 MW is being supplied to GUVNL. The State Government nominated Agency for supplying the same to end consumers of the State, the Coal Conveyor Corridor for transportation of coal from jetty to Coal Stock Yard has to be considered as a Project in the larger public interest. Therefore, as directed, I am to request you kindly to consider the request of M/s. EPGL and grant the allotment of 1.37 Hectares of Gauchar

Land for the propose of Coal Conveyor Corridor."

5.2 As per the details in paragraph 3.2 above, the company gradually reduced its demand for land. The village-wise details of the government waste land HC-NIC Page 14 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT demanded as well as Gauchar land demanded at different times earlier and the total government waste land as well as total Gauchar land granted are as per following details.

Particulars	Government land In Hectors	Gauchar land In Hectors
Nana Mandha	3-15-07	95-00-00
Mota Mandha	5-39-57	-----
Parodiya	4-15-56	01-99-98
Total land demanded at the time of first application	12-70-20	96-99-98
Nana Mandha	3-42-12	62-86-00
Mota Mandha	3-32-42	-----
Parodiya	3-34-76	03-22-43
Total land demanded at the time of second application	10-09-30	66-08-43
Nana Mandha	3-42-12	29-00-00
Mota Mandha	3-32-42	-----
Parodiya	3-34-76	03-22-43
Total land demanded at the time of third application	10-09-30	32-22-43
Nana Mandha	3-42-12	0-97-69
Mota Mandha	3-32-42	-----
Parodiya	3-34-76	0-39-77
Total land finally granted	10-09-30	1-37-46

5.3 It appears that the allotment of the lands to respondent No.1 was approved by the

Government as per Resolution dated 11th February, 2015. The lands were granted for industrial purpose of commission of Coal stock-yard and Conveyor Belt.

Respondent	No.1	company	paid	total	price
Rs.18,74,35,608/-		which	amount	comprised	
Rs.17,86,78,908/-		towards	the	value	of

Rs.60,58,478/- as additional amount towards allotment of Gauchar land, Rs.07,46,670/- towards conversion tax plus the amount of stamp duty.

6. In the above factual background, proceeding to examine the contentions on behalf of the petitioners which were in three limbs as stated above, as to whether the allotment of Gauchar part of land was permissible and was based on any policy; whether the rest of the land which was government waste land was properly allotted in terms of any policy in vogue for the same, and whether non-conducting of auction to allot the land to respondent company was arbitrary and was against or worked against public interest.

6.1 Examining the above aspects in their order, the Revenue Department of the State Government by its resolution dated 27th January, 1999 delineated the policy guidelines for allotment of Gauchar land for industrial purpose. By resolution dated 22nd November, 004, it was provided that the said resolution dated 27th January, 1999 would be applied only in respect of those cases where the Gauchar area was adequately available. It appears that the revenue Department issue circular dated 01st April, 2015 dealing with the questions of administration of Gauchar land in light of the directions and observations issued by this Court in certain public interest litigations about allotment and use of Guachar land, whereafter the Revenue Department brought out detailed policy in relation to the allotment of Gauchar land.

6.1.1 The said Policy Resolution dated 01st April, 2015 inter alia outlined that for the purpose

development of Gauchar, a nodal agency as well as Gauchar Development Revolving Fund is created. Provisions are made to earmark funds for the development of Gauchar and for undertaking various related works by formulating the Gauchar Development Committee at State, District, Taluka and Gram levels. The Resolution on the Gauchar Policy, in its Part II, contemplates allotment of land out of Gauchar land, and prescribes the conditions. It inter alia provides that where the Gauchar land is required to be taken for governmental purpose and for the government corporations

being Gujarat Energy Transmission Corporation, Department being Sardar Sarovar Narmada Nigam for the works of larger public utility and for the governmental agencies for the purposes of constructing bridges, railway, etc., the concerned Department shall have to purchase equal area of land out of the government waste land situated nearest and place them under the control of the Collector, which in turn Collector shall earmark as Gauchar to be placed under the Gram Panchayat concerned. It is the additional prescription that 30% of the Jantri price of such Gauchar land taken, in addition to the equal portion of the land to be given as above, shall have to be paid to the Government. The policy also provides for allotment.

6.1.2 The policy regarding Gauchar allotment also provides that in ordinary circumstances, Gauchar land should not be allotted for industrial purpose, however HC-NIC Page 17 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT if its necessary to allot and without allotment of Gauchar, industry cannot be established, the Gauchar land can be allotted to an industrial unit on fulfillment of certain conditions, including that the industrial unit getting Gauchar land would purchase adjacent private land in equal area and in exchange hand it over to the Collector, that the difference between Jantri price and the price of the land exchanged as above, shall be calculated; the Gauchar land may be allotted as a restricted tenure. Furthermore, fixed percentage of the Jantri price of the land shall have to be paid to the State Government to go in the Gauchar Development Revolving Fund for the purpose of development of Gauchar. If the price of the Gauchar land is found to be higher than price of private land exchanged, the difference shall be paid by the industrial house.

6.1.3 Now as seen above, out of the total land granted to the respondent No.1 company, 13,746 Sq. Meters. is the protection of Gauchar land. It was sought to be highlighted by the respondents that in terms of the total holding of land by the company, 237-47-78 Hectares parcel of Gauchar land granted is in minuscule part. It was also stated and not disputed that in the total price paid by the company, part of the amount Rs.60,58,478/- constituted 30% of the total price of Gauchar land of 13,746 Sq. Meters. arrived at to be Rs.2,01,94,928/- and the same was in compliance of the condition of grant of land out of Gauchar land for industrial purpose as per aforesaid policy. This was over and above Rs.17,18,73,760/-

being the value of the rest of the land which was Government waste land.

6.1.4 The State Government in his affidavit-in- reply has confirmed that the company has fulfilled the policy conditions for grant of Gauchar land by stating, "out of the total land allotted to the respondent company, 13,746 square meters of land is gauchar land therefore, it is ensured that the

allotment of such land is in terms of the Government Resolution dated 27.01.1999, by which gauchar land can be allotted for industrial purpose. According to the said policy, a beneficiary company has to fulfill the following criteria :

- a. The company has to pay 100% market value of the gauchar land, which is sought to be allotted for use.
- b. The company has to purchase land of equal measurement and submit the same to the Government, which will in turn be assigned as a Gauchar land.
- c. The company has to pay gauchar development charges to the Government equivalent to 30% of the market value of such gauchar land.
- d. In the present case, the company has paid Rs.17,18,73,760 as being 100% market value of the government land and gauchar land allotted to the company.
- e. The company has submitted revenue survey numbers 3/1/1/1 paiki and 316 to the Government admeasuring 13,746 sq.mtr. being equal area of the gauchar land allotted to the company.
- f. The company has paid an amount of Rs. 60,58,478/- being 30% of the market value of the gauchar land."

6.1.5 The State Government referred to Resolution dated 27th January, 1999 placing the same on record, setting out policy for allotment of Gauchar land for industrial purpose, as well as a subsequent Resolution dated 11th February, 2015 reflecting Gauchar policy, HC-NIC Page 19 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT pointing out that the conditions of policy were fulfilled by the company.

".....According to the above mentioned policy dated 27.01.1999 if gauchar land is to be allotted for industrial purpose, the allottee shall have to pay 100% market value of the said parcel of land and 30% of the market value towards gauchar development which has been done in the present case as mentioned above and therefore, having followed all the requisite criteria as mentioned above, based on the approval of the cabinet the State Government passed a resolution dated 11.02.2015 sanctioning the allotment of the land to the respondent company and pursuant to the State Government passing the said resolution, the Collector passed an order dated 15.05.2015 of allotting the land to the respondent company."

6.1.6 The land given by the company in exchange to the Government in lieu of Gauchar land is as per the following details.

Sl. No.	Village	Survey No.	Area Allotted (in	Land given to Government in L
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		hectares)	of Gauchar Land (hectares)
1	Parodia	423,424, 426, 427 0-39-77	Privately purchased land bearing Survey No. 316 admeasuring 0-39-77
5	Nana Mandha	3/1/1/P1 00-97-69	Government waste land bearing Survey No. 3/1/1/P1 admeasuring 00-97
Total		1-37-46	1-37-46

6.2 Furthermore, as stated on behalf of respondent No.1 company, at the time of

construction of coal conveyor corridor, they changed the technical design of the conveyor lay out from "along the ground conveyor" to "overhead conveyor"

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especially in the areas where the conveyor

through Gauchar land. This was also on account of the fact that the respondent No.1 places only footings for the coal conveyor corridor on the said Gauchar land and the land used for cattle grazing remains unaffected by virtue of the coal conveyor corridor travelling overhead and not on and along the ground.

6.3 Adverting to examine second limb of the contentions that the allotment of the Government waste land was devoid of any yardstick and was not backed by any policy in black and white, it appears that as far as the valuation of the land is concerned, the Revenue Department of the State Government, has passed Resolution dated 26th April, 2011 under which the guidelines for valuation of the government land are prescribed. When a land is to be allotted for industrial purpose, the policy being Industrial Policy of 2003 evolved and adopted by the State Government. The contention of the other side could be countenanced that there was such policy in vogue. This Court in Writ Petition (PIL) No.02 of 2012 had an occasion to take note of the same.

6.4 Coming to some relevant details of the aforesaid valuation policy as well as industrial policy, as far as valuation of the land is concerned, that the land would be valued by a multi-tier valuation system. District Level Valuation Committee headed by the Chief Town Planner as well as State Level Valuation Committee are the valuation authorities who would finalise the valuation by HC-NIC Page 21 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT following the prescribed procedure.

6.5 The Industrial Policy of 2003 of the State Government referred to and relied on by this Court in the aforesaid Writ Petition (PIL) No.02 of 2012. The object of the said policy is to achieve global competitiveness for the industries of Gujarat and to create conducive environment for investors. The said policy also deals with issues pertaining to allotment of land, allotment of government/private land, valuation procedure. In the said writ petition, which was also a public interest litigation, the petitioner challenged allotment of land to a private company for development of I.T. Park at Koba, Gandhinagar. One of the contentions raised by the public interest petitioners that allotment was without backed by any policy. The Division Bench referred to the Industrial Policy of 2003 in detail and concluded that convincingly there was a Industrial Policy, 2003 framed by the State Government, and consequently rejected as devoid of merit the submission of the petitioners that allotment of the land in favour of respondent No.4 in that case for the purpose of setting up of I.T. Park was without any such policy. In the present case also, submission could not be acceded to that there is an absence of policy parameters or that there is no policy framed by the State Government for allotment of land for industrial purpose.

6.6 As far as valuation of price of the land allotted to respondent No.1 is concerned, as the reply HC-NIC Page 22 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT affidavit from the government mentions, District Level Valuation Committee met on 30th May, 2014 wherein the valuation of lands situated at three different villages in question were considered. Thereafter on 06th September, 2014 valuation by the District Valuation Committee came to be revised by the Chief Town Planner and the valuation was increased in respect of the lands at Village Mota Mandha and Parodiya. The following details in the tabular form gives the details of initial valuation of the lands done by the District Level Committee and increased by the Chief Town Planner, Sr. Village Land Valuation by Increased No. admeasuring District Level valuation by (Sq. Meters) Valuation Chief Town Committee Planner (Rs. Per Sq. (Rs. Per Sq.

			Mtrs.)
1	Nana Mandha	53,750	1,652/-
2	Mota Mandha	33,242	1,138/-
3	Parodiya	37,453	860/-
6.7	The State Level Valuation Committee on 12th		

September, 2014 held a meeting and increased valuation of the Chief Town Planner was approved and the amounts payable by the company for the lands granted to it came to be arrived at as per the following details.

Sr. No.	Village	Land admeasuring (Sq. Meters)	Valuation in Rs. Per Sq. Mtrs.	Total Valuation
1	Nana Mandha	53,750	1,652/-	(53,750 Sq. Mts. X Rs.1,652) Rs.08,87,95,000/-
2	Mota Mandha	33,242	1,350/-	(33,242 Sq. Mts. X Rs.1,350) Rs.04,48,767/-
3	Parodiya	37,453	1,020/-	(37,453 Sq. Mts. X Rs.1,020) Rs.03,82,02,060/-
			Total	17,18,73,760/-

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7. Coming to the contention that process

auction was not followed, it is true that Section 65 of the Bombay Land Revenue Code, though it is a normal rule that the government property should be disposed of by auction, such is not invariable or invariable rule.

7.1 The litmus test for justifying the allotment of property or distribution of largesse by the State Authorities is the fairness in action, transparency in process, non-arbitrariness and rationality which are all element of attributes of Article 14. If these tests are met with, it cannot be said that no exception is permissible in as a method to be adopted. Once the essential elements of fairness are found to be present, departure from process of auction may be permitted in a given case. It is the type of land, size of land, topography and the purpose for which the land is granted, are some of the considerations which may justify departure from rule of auction.

7.2 In Biliyaada Gram Panchayat Vs State of Gujarat being Writ Petition (PIL) No.140 of

wherein one of us (Jayant Patel, J) was a party, the contention was considered that the land was not allotted by way of public auction. The Court did not accept the contention and observed that the land remained as waste land of the government and it was never marked as Gauchar thereafter. The Division Bench quoted with approval the observations made by learned Single Judge in Patel Parshottamdas Chaturbhai Vs Harijan Shakarbhai Lakhabhai [1978 GLR 341], in that case after considering Section 62 of the Bombay Land Revenue Code, the Court stated, "Now, there is nothing in Section 62 of the Code or any other provisions of the Code which requires that the grant of Govt, waste land can be made only as provided by Section 62. Section 62 is only one of the modes in which a grant can be made. It does not exhaust the powers of Government to make grant otherwise than under Section 62. Besides, Section 62 merely provides that the Collector may require payment of price for unalienated land or to sell the same by auction and to annex such conditions to the grant as he may deem fit. It is, therefore, not obligatory that the land should be sold by auction. It can be granted provided it does not infringe any provision of law and does not violate any statutory provisions. Therefore even if it were to be assumed for the sake of argument that Section 62 is the only provision under which a grant can be made, the grant in favour of respondent no. 1 cannot be invalidated merely because instead of selling it by auction, it has been granted to respondent No. 1 in pursuance of the policy decision contained in the Government Resolution dated March 1,1960."

(Para 5) 7.3 In the present case, land allotted is a strip of land which will be used for a conveyor belt extending from project site to the Jetty at the sea coast for transportation of coal. Looking to the shape HC-NIC Page 25 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT of the land which is granted, the same could hardly be of any utility to anybody else except to the respondent No.1 company, for which it was a necessity to construct conveyor belt. It could also not be gainsaid that the project of thermal power generation set up by the company had a public interest element, more particularly when out of total 1,200 MW power generation; it supplies 1,000 MW power to Gujarat Urja Vikas Nigam Limited.

8. It is not out of list to mention that respondent No.1 has stated in his reply that the petitioners in guise of public interest banner, have been promoting their personal agenda and that the present petition is an arm twisting tactic at somebody's behest. It is stated that other writ petitions and civil suits are also filed to hamper the work and functioning of the project. It appears that Special Civil Application Nos. 7384 of 2015 and 10612 of 2015 were filed and are pending in respect of the very subject matter and it is the say of the respondent that no sooner a letter of allotment of the land in question was produced in the proceedings of Special Civil Applications, did than the present public interest petition came to be filed, which is curious in itself. Looking to the stage of the project, nature of grievance couching it as public interest and the attendant circumstances including the

manner of use of the land as well as the arrangement required to be made to transport of coal by from the project to the jetty by employing tankers and the need of the transportation corridor etc. are the aspect HC-NIC Page 26 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT which did not doubt, certainly it places the bona fide of element of public interest in the challenge sought to be raised.

9. Looking at some of the decisions relied on by the petitioner in Jagpal Singh (supra), the facts were that there was an encroachment on Gram Panchayat Land and the State Government regularized the same in favour of unauthorized occupants, which was held to be illegal and it was laid down that long duration of occupation or huge expenditure in making construction thereon or political connections are no justification for regularizing such illegal occupation. In Institute of law, Chandigarh (supra), the Supreme Court held that the High Court was right in canceling the hasty allotment of plot to appellate institution without following any objective criteria and without considering the effect of over population and that too at throw-away price. These decisions do not apply to the facts of the case. Also does not apply decision in City Industrial Development Corporation (supra), where under the New Bombay Disposal of Land Regulations, 1975, there was a provision for allotment of land by public auction or tender or considering individual application under Section 4. The Supreme Court considered as to what could be the permissible safeguards to be followed when individual application of allotment was to be considered. In Akhil Bharatiya Upbhokta Congress (supra), the Apex Court emphasized that the policy for allotment of land, grant of quotas, permits, licences etc. should be transparent and well defined and that by making them known to the HC-NIC Page 27 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT public by publication in official gazette, the same should be implemented in non-discriminatory manner. The decision in Saroj Screens P. Ltd. (supra) was with regard to lease of publicly owned land and dealt with the question of renewal of lease by authority in terms of renewal clause in the lease deed and the court considered the applicability of public law principles in that regard. Therefore, all the decisions relied on by learned counsel for the petitioner stand true on their own facts, even as the principle they laid down is trite principle that when government grants a largesse or distributes public property, the policy must be fair, non discriminatory and the grant or allotment must stand touchstone of Article 14.

10. The power project of respondent No.1 company is designed to generate 1,200 MW power, out of which, substantial part, that is 1,000 MW is being supplied to Gujarat Urja Vikas Nigam Limited which is an instrumentality of the State, therefore, it cannot be gainsaid that there is a public interest element which the power project of the respondent company caters to. The environment clearance is granted to the project by the Ministry of Environment and Forests on 17th July, 2009 under the provisions of the Environment Impact Assessment Notification, 2006, subject to the implementation of the terms and conditions mentioned in the clearance letter which was made available for perusal of the Court. While granting environment clearance, the Central Government take note of land requirement, sea water to be used in the project, HC-NIC Page 28 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT total amount of investment, etc. Pertinently, one of the aspects mentioned was also that transportation of coal from jetty to plant site would be through closed conveyor. There was a substance in the submission that coal conveyor corridor was essential and in a way integral part of the whole project of the power plant which is

already commissioned. Looking to the total land utilised by the company for the project, substantial chunk was purchased by it privately, part of it was acquired by the State Government upon request by the company and what is granted under the impugned order is comparatively a portion of total requirement. As far as Gauchar portion is concerned, the same also forms small part of the total.

10.1 Allotment of land under the impugned order to respondent No.1 company, considering all the above aspects could not be said to be arbitrary. It conforms the policy formulation of the State Government in respect of allotment of Gauchar land for industrial purpose. Policy Resolution dated 27th January, 1999 read with 01st April, 2015 dealing with policy of Gauchar land allotment, guidelines of Industrial Policy of 2003 are made applicable. The valuation of the property for the purpose of determination of price to be paid by the company was done under the Resolution dated 26th April, 2011 which provided for a mechanism and criteria for valuation of government land. All these policies are extant and are followed by the State Government while allotting the land. These policy Resolutions are not questioned and not under challenge. As already noted, the price which the HC-NIC Page 29 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT company is made to pay for the land is at Rs.01,381/- per Sq. Meter which is far higher than the jantri price which is stated to be Rs.525/- per Sq. Meter. Looking to the land which is a long strip of 7.5 km. granted to the company for special purpose of conveyor corridor, non-holding of auction, when other attendant aspects are considered, did not amount to any arbitrariness or unfairness in the action of allotment. Nor it can be said that the same is in any way detrimental to the public interest. The allotment of land can be said to be meeting with the requirements of fairness and reasonableness.

11. For the foregoing reasons, this Court does not find any substance in the petition. The same is hereby dismissed.

(JAYANT PATEL, ACJ.) (N.V.ANJARIA, J.) FURTHER ORDER IN SCA NO.13902 OF 2015 Special Civil Application No.13902 of 2015 is a cognate petition in which the petitioners raised the same principal issue and prayed for a direction against the respondents not to allot Gauchar land of various villages to respondent company or any other commercial undertaking and cancel such orders, if passed. The said prayer would stand covered by the decision in Writ Petition (PIL) No.136 of 2015 hereinabove.

However, learned counsel appearing for the petitioner Ms.Vijyalakshmi further submits that in addition to the principal issue, the allegation is made by the petitioners that the respondent company has encroached over the land belonging to the petitioners. The said aspect is denied by the respondent company. However in our view, we need not dwell upon the aspect of encroachment, if any, more particularly when the petitioners have remedy for this purpose by approaching before the revenue authorities under the provisions of the Bombay Land Revenue Code, 1879 as well as to raise grievance for removal of encroachment before the appropriate forum. Hence, the said petition shall also stand disposed of accordingly.

FURTHER ORDER IN CIVIL APPLICATIONS Consequently, both the Civil Applications being Civil Application No.10192 of 2015 and Civil Application No.10152 of 2015 do not survive in view of disposal of main Writ Petition (PIL) No.136 of 2015 and Special Civil Application No.13902 of 2015.

At this stage, Mr.N.D. Nanavaty, learned senior counsel prayed that interim relief of status quo which has been granted earlier and which has remained in operation till today, be continued so as to enable his client to approach the higher forum.

The request is strongly objected to by learned senior counsel Mr.Mihir Joshi with Mr.Keyur Gandhi for the respondent company by submitting that HC-NIC Page 31 of 32 Created On Tue Oct 27 00:26:33 IST 2015 C/WPPIL/136/2015 JUDGMENT the project of conveyor belt is paralysed and the respondent company has been suffering huge losses every day.

Considering the facts and circumstances when we have found that no element of public interest has suffered on account of the allotment of the land, the said request is declined.

(JAYANT PATEL, ACJ.) (N.V.ANJARIA, J.) Anup HC-NIC Page 32 of 32 Created On Tue Oct 27 00:26:33 IST 2015