TANAH OH TANAH : SIRI KE 50

ANTARA KEPENTINGAN INDIVIDU DAN KEPENTINGAN AWAM DALAM PENGAMBILAN TANAH

(BAHAGIAN KESEBELAS)

18 ADAKAH *PUBLIC PURPOSE* ITU PERLU BERKEKALAN.

Berdasarkan pemerhatian penulis, tanah yang diambilbalik mengikut seksyen 3(1)(a) untuk *public purpose*, berakhir dengan pelbagai keadaan iaitu:

18.1 *Public Purposenya* Terlaksana Dengan Segera Seperti Yang Dirancang dan Berkekalan

Tanah yang diambilbalik itu dibangunkan segera setelah proses pengambilannya selesai. Penggunaan tanah tersebut adalah seperti tujuan asal atau mengikut warta. Masyarakat benar-benar mengecap faedah daripada kegunaan tanah tersebut. *Public purpose*nya berkekalan. Contohnya sekolah, hospital, balai polis, masjid dan sebagainya dibina atas tanah yang diambil untuk tujuan tersebut. Merujuk kepada Laporan Ketua Audit Negara mengenai aktiviti Jabatan/ Agensi Kerajaan Negeri Johor Tahun 2006, dipetik contoh gambar projek yang telah siap dibangunkan dan digunakan mengikut perancangan asal. Dalam kes ini, pembinaan jalan dibina atas tanah yang diambil bagi tujuan tersebut. Jalan ini dapat dimanfaat oleh semua orang dan ia bertahan dalam tempoh yang lama.

Foto 1

Tanah Telah Dibangunkan Mengikut Tujuan Asal Pengambilan

Sumber: Fail Foto Jabatan Audit Negara

Tarikh: 23 November 2006

Lokasi: Muar By Pass (PBT 16/2000)

18.2 *Public Purposenya* Terlaksana Dengan Segera Tetapi *Purpose*nya Berubah

Dalam menguruskan projek pembangunan, terdapat ketidakpastian dan ketidaktentuan. Terdapat kes dimana berlaku pertukaran projek. Lain yang dirancang, lain yang jadi. Tanah diambil untuk sesuatu tujuan, tetapi setelah selesai proses pengambilan, projek lain yang dibina. Maka berlakulah

penggunaan tanah tidak mengikut warta dan tidak seperti tujuan asal yang diluluskan oleh PBN. Dalam situasi seperti ini, unsur *public purpose*nya masih wujud, kekal dan masyarakat masih boleh mengecapi faedah daripada pengambilan tersebut. *Public purpose*nya berkekalan walaupun penggunaan tanah tidak mengikut warta atau tidak seperti yang diluluskan oleh PBN. Mengikut Laporan Ketua Audit Negara Tahun 2006, pada akhir bulan November 2002, Kerajaan Negeri Johor telah membuat pengambilan tanah Lot 1474, Mukim Tangkak dengan keluasan tanah 0.703 hektar untuk tujuan balai raya, padang permainan dan bengkel industri ringan. Bayaran pampasan berjumlah RM119,527 telah dijelaskan. Lawatan Audit mendapati tapak tersebut telah dibina taman bimbingan kanak-kanak dan gerai makan yang mana ianya dibangunkan tidak mengikut tujuan asal pengambilannya. Foto 2 dan Foto 3 menunjukkan pembangunan yang tidak mengikut tujuan asal pengambilannya.

Foto 2

Pembangunan Tidak Mengikut Tujuan Asal Pengambilan Tanah. Tujuan Asal Untuk Balai Raya, Padang Permainan dan Bengkel Industri Ringan, Tetapi digunakan Sebagai Tapak Taman Bimbingan Kanak-Kanak.

Sumber: Fail Foto Jabatan Audit Negara

Tarikh: 5 Disember 2006

Lokasi: Lot 1474 Mukim Tangkak

Foto 3

Pembangunan Tidak Mengikut Tujuan Asal Pengambilan Tanah. Tujuan Asal Untuk Balai Raya, Padang Permainan dan Bengkel Industri Ringan, Tetapi digunakan Sebagai Tapak Gerai Makan

Sumber: Fail Foto Jabatan Audit Negara

Tarikh: 5 Disember 2006

Lokasi: Lot 1474 Mukim Tangkak

Persoalannya, adakah boleh tanah yang diambil untuk sesuatu *public purpose*, kemudian digunakan bagi tujuan *public purpose* lain. Dengan kata lain, *not inconsistent with the statutory purpose. Whether the diversion of public purpose is lawful, and not be challenged in Court; whether change of public purpose is lawful, and not be challenged in Court.*

Inilah delima yang dihadapi dalam pengambilan tanah untuk Tapak Institut Teknologi Kebangsaan di Gombak. Dalam kes ini, PBN Selangor telah meluluskan pengambilan tanah di satu kawasan di Gombak untuk tujuan Tapak Institut Teknologi Kebangsaan di Gombak. Cadangan pengambilan tanah ini diwartakan dalam Warta Kerajaan Negeri Selangor mengikut seksyen 8 APT 1960 pada 1 Februari 1973, No. Warta 32. Pada Disember 1973, ketika prosiding pengambilan sedang dalam proses, Perdana Menteri YAB Dato' Hussein Onn (Tun) membuat pengumuman melalui radio bahawa Universiti Teknologi akan dibina di Johor Bahru. Pada 16 April 1974, Yang di-Pertuan Agong dalam titahnya semasa pembukaan Sesi Parlimen bahawa Universiti Teknologi akan dibina di Johor Bahru. Pentadbir Tanah Kuala Lumpur yang menguruskan pengambilan tanah tersebut telah menulis surat kepada Setiusaha Kerajaan Negeri Selangor mengenai perkara ini. Pentadbir Tanah Kuala Lumpur diberitahu, pengambilan tanah boleh diteruskan sehingga selesai seperti kehendak asal Kerajaan Persekutuan. Tanah yang diambil itu boleh digunakan bagi tujuan Kerajaan Persekutuan yang lain – *for the Federal Government's purpose.* Kemudiannya, Kerajaan Persekutuan memutuskan tanah tersebut akan digunakan sebagai tapak sekolah menengah vokasional dan teknik, *would serve as feeders to the Universiti Teknologi.*

Isu undang-undang timbul bila salah seorang daripada tuan tanah iaitu Kam Seng Reality Sdn. Bhd. melalui peguamnya menulis surat kepada Pentadbir Tanah Kuala Lumpur pada 29 Mei 1974 dengan

memetik titah Yang di-Pertuan Agong semasa sesi Parlimen dan menyatakan pihaknya akan memfailkan kes ke mahkamah untuk mendapat perintah bahawa prosiding pengambilan tersebut *bad in law as it believed that the land being acquired would not be used for the purpose in Form D (Gazette).*

Setiausaha, Bahagian Pembangunan, Kementerian Pelajaran selaku agensi pemohon telah merujuk kepada Jabatan Peguam Negara memohon pandangan dan nasihat. En. Shiv Charan Singh dari Jabatan Peguam Negara dalam surat bertarikh 17 Jun 1976 menyatakan bahawa tiada ada sebarang keraguan tujuan asal pengambilan untuk Institut Teknologi adalah *public purpose, and that the purpose for which the lands are to be used, that is, vocational schools and a polytechnic, is also a public purpose.*

Untuk menjelaskan lagi, beliau menyatakan ”*in connection with the question as to whether property acquired for one purpose can be used for another purpose, Basu's Commentaries on the Constitution state at page 221 (vol. 2, 5th Edition):*

> *”Since it has been held in India that it is not necessary to state in the statute itself yhe specific purpose for which the land is being acquired, land may be acquired for any public purpose generally, and in such case use for some the problems arising from the diversion of the land to use for some other purpose would not obviously arise.”*

Sehubungan dengan itu, *change of purpose was a bona fide change of purpose, and the new purpose is not merely a public purpose but one which is related to the original purpose, that the institutions intended to be established will provide education of a technical nature and will serve as feeders for the institution originally intened to be established*.

Justeru itu, dalam kes pengambilan tanah untuk Tapak Institut Teknologi Kebangsaan di Gombak, Pentadbir Tanah Kuala Lumpur tidak perlu membatalkan pengambilan dan mewartakan semula dengan tujuan baru, malah boleh meneruskan prosiding pengambilan sehingga selesai dengan pengeluaran dan endorsen Borang K.

Lain pula ceritanya dalam pengambilan tanah untuk Rancangan Perumahan, Tanam Awam dan Pusara Negara di Bukit Kiara, Damansara. Pihak Dewan Bandaya Kuala Lumpur (DBKL) mengambil langkah berhati–hati dan jalan selamat dengan membatalkan pengambilan lama dan membuat pengambilan baru. Dalam kes ini, pada 13 Oktober 1973, DBKL telah mengemukakan permohonan pengambilan tanah yang melibatkan 44 lot dengan keluasan 1,534 ekar mengikut seksyen 3 (a) APT 1960 di Bukit Kiara, Damansara untuk Rancangan Perumahan, Tanam Awam dan Pusara Negara *(Housing Scheme, Public Park and National Burial Ground)*. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur telah meluluskan cadangan ini pada 30 November 1974 dan diwartakan dalam Warta Kerajaan

Persekutuan mengikut seksyen 8 APT 1960 pada 30 Januari 1975, No. Warta 474. Dalam pada itu, timbul cadangan akan keperluan padang golf. Untuk itu, lot 2154, 2155 dan 2155 yang tersenarai dalam pengambilan awal dibatalkan pengambilan mengikut seksyen 35 APT 1960 memandangkan tiga lot ini belum selesai lagi proses pengambilan. Penarikan balik tiga lot ini telah diisytiharkan dalam Warta Kerajaan Persekutuan No. 3324 pada 26 Mac 1992 dan diikuti dengan penwartaan semula di bawah seksyen 8 APT 1960 melalui Warta No. 3980 bertarikh 7 Mei 1992 untuk kegunaan padang golf. Pengambilan ini dibuat melalui Sijil Perakuan Segera mengikut kuatkuasa seksyen 19 Akta kerana ia diperlukan segera.

Tindakan ini diambil adalah bertujuan untuk menghilangkan kebimbangan dan untuk mengelak daripada dicabar oleh tuan tanah atas alasan *diversion of public purpose and not be challenged in Court.*

Sebagai langkah jangka panjang dan untuk mengelak daripada isu seperti ini menghantui Pentadbir Tanah dan Kerajaan, pihak Jabatan Peguam Negara mencadangkan supaya APT 1960 dipinda agar lebih jelas dan pertukaran *public purpose* tidak membatalkan pengambilan*. I would also suggest that to avoid technical legal difficulties of the nature (as high-lightedin this case) which could be experienced by the Government when there if a bona fide change of public purpose, it should appear that the Act should be amended retrospectively to make it clear that such change will not*

invalidate the acquisition. This will avoid necessary litigation and enable the Government to pursue its development objective more pragmatically without to constraint of legal technicalities. (Sumber: PN (ADV) 5633 bertarikh 17 Jun 1976).

Sehingga tahun 1976, pihak Jabatan Peguam Negara mendapati, belum ada lagi di Malaysia isu *diversion of public purpose and change of public purpose* di bawa ke mahkamah, walaupun pernah berlakunya penggunaan tanah tidak mengikut warta atau *diversion of public purpose* seperti pengambilan tanah di Jalan Duta, Kuala Lumpur, tetapi tuan tanah tidak memfailkan kes ke mahkamah. Dengan merujuk kepada kes di India, terdapat beberapa kes yang seumpama – *diversion of public purpose and change of public purpose .* Antaranya ialah dalam kes:

18.2.1Luchmeswar Singh v. Chairman of the Darbhanga Municipality (I.L.R. Calcutta 99 at 101).

> *In this case, land was acqiured by municipality for the express purpose of a bathing ghat but was afterwards used for a market. It was held by the High Court that this was not objectionable and that the municipality was justified in using the land for the new purpose if the authority had power to use land for such purpose, and the Privy Council did not invalidate the High Court's decision on this point.*

18.2.2 *Supreme Court of India in Gulam Mustafa & Ors vs The State Of Maharashtra & Ors on 18 September, 1975 (Equivalent Citations: 1977 AIR 448, 1977 SCR (1) 875)*

In this case, at least 28 acres of land belonging to the Gulam Mustafa and others were compulsorily acquired under the Hyderabad Land Acquisition Act for running a country fair or market (mondha). Declaration was made in 1960 and stated is 'government purpose'. After the acquisition, the municipality parcelled out the excess land and sold it for a housing colony. Some owners challenging the validity of the acquisition. It was contended that: (i) the acquisition was not for a public purpose and that it was mala fide; (ii) acquisition is ultra a vires and colourable exercise of power because after the acquisition, the municipality parcelled out the excess land and sold it for a housing colony.

His counsel contends that: (i) there in no public purpose mentioned in the notification because what is stated is 'government purpose'; and (ii) that 'mondha' is not a word known to law and has not been defined anywhere and so such a purpose cannot be taken cognizance of by the law.

The High Court dismissed the petitions. Gulam Mustafa & Ors appeals to the Supreme Court of India. Supreme Court dismissed the appeals on that ground: (i) providing a village market is an obvious public purpose and a municipal facility; the purpose has been set down as for a 'mondha' or 'country fair' which is obviously a public purpose; and that the purpose of providing a market for the townsfolk falls within the powers of a municipality. There is no terminological deviation; and (ii) a mondha is a country fair or village market. Market is defined in section 2(20) af the Hyderabad District Municipalities Act.

Failing here, counsel finally stressed that in any case no market for a small municipal town requires 28 acres of land, especially because the Master Plan prepared for the Municipality had allotted only 15 acres for this purpose. lt is not for the Court to investigate into the area necessary for running a market. Moreover there is no mala fides emerging from this circumstance. What has to be established is mala fide exercise of power by the State Government-the acquiring authority-although the beneficiary of the acquisition is eventually the Municipality. There is no scintilla of evidence suggestive of malus animus in Government. At this state Shri Deshpande complained that actually the Municipal Committee had sold away

the excess land marking them out into separate plots for a housing colony, apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. <u>There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the declaration.</u>

18.2.3 Mangal Oram v State of Orissa AIR 1977 Supreme Court 1456.

As mentioned *by Indian Supreme Court in Gulam Mustafa v The State of Maharashtra AIR 1977 where Krishna Lyer J held at 449 that: "<u>there is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the declaration"</u>. This statement was endorsed in another decision of the same court – Mangal Oram v State of Orissa AIR 1977 Supreme Court 1456.*

In this case, Government of Orissa, by notification according to section 4, Land Acquisition Act, 1948 (Orissa Act XVIII of 1948) dated 22nd February, 1954

and 9th February 1955, 82 square miles of land was acquired for the "development of industries, namely establishment of steel plant and allied and ancillary industries". Mangal Oram & Ors. who were owners of some of the acquired lands, filed writ petitions before The Orissa High Court, challenging the validity of the acquisition. Mangal Oram & Ors. contended (a) the State Government was not competent to acquire the land in question under the Act for the establishment of a steel plant as it cannot be said to be for the purpose of the development of industry; (b) the acquired land could only be used for the steel plant and ancillary industries and not for a civil township; (c) the transfer of 3.21 acres of land by the Railway authorities long after 14 years of the acquisition to the Notified Area Committee for construction of taxi-stand, busroad etc. in and around the Railway Station is bad.

The Orissa High Court dismissed both the petitions. Mangal Oram & Ors appeal to the Supreme Court of India. In appeal to Supreme Court, the appellants contended that the acquisition of the land for the establishment of a steel plant cannot be said to be for the purpose of the development of the industry. Mr. Gobind Das on behalf of the appellants has contended that the State Government was not competent to acquire the land in question under the Act for the

establishment of a steel plant. It is then argued by Mr. Gobind Das that part of the lands which were acquired for the purpose of-steel plant and ancillary industries are being used as a civil township. It is contended that the acquired land could only be used for the steel plant and ancillary industries and not for a civil township.

Supreme Court dismissed the appeals on that ground: (i) the contention that the acquired land could only be used for the steel plant and ancillary industries and not for the civil township is devoid of force. A township is a necessary adjunct and concomitant of a big steel plant. The establishment of a steel plant necessarily postulates the construction of residential quarters for the workmen to be employed in the' plant. In addition to that, lands would be needed for shopping areas, for schools for the children of the employees, for play-grounds, for hospitals and for residential quarters of persons opening their shops catering to the needs of the employees of the steel plant. Lands would likewise be need for post offices, banks, clubs, parks, cinemas, roads, police stations as also for cremation and burial of the dead. Land would also be needed for a variety of other purposes and civic amenities. A township is a necessary adjunct and concomitant of a big steel plant. The fact, therefore, that part of the land which was acquired has been

used for civil township would not affect the validity of the acquisition of the land; and (ii) <u>there is no principle of law by which a valid, compulsory acquisition stands void because long later the requiring authority diverts it to a public purpose other than the one stated in the declaration.</u> In the instant case, the transfer of 3.21 acres of the land by the Railways is to the Notified Area Committee who is the appropriate body to construct and maintain the link roads, bus and taxi stands and shop surrounding the Railway Station. The land is not being used for a purpose extraneous from that for which the land was initially acquired.

18.2.4 Indian Supreme Court, State of Maharashtra v Mahadeo Deoman Rai [1990] 2 SCR 533

Another decision of the Indian Supreme Court, State of Maharashtra v Mahadeo Deoman Rai [1990] 2 SCR 533 for the statement at 538 that:

> *"A particular scheme may serve the public purpose at a given point of time but due to change of circumstances it may become essential to modify or substitute it by another scheme. The requirements of the community do not remain static; they indeed, go on varying with the evolving process of social life.*

Accordingly, there must be creative response from the public authority, and the public scheme must be varied to meet the changing needs of the public".

In this case, in 1955 Mahadeo Deoman Rai Alias Kalal and Ors. purchased the land described as plots No. 29 and 30 in the town of Nasik from Patwardhan; and in 1957 obtained permission to construct a building thereon. Mahadeo Deoman Rai Alias Kalal was permitted by the Municipal Council to construct a building on the plots No. 29 and 30. However, no construction was made and in March, 1962, a notification under section 4 of the Land Acquisition Act was issued for purpose of establishing a Tonga Stand. Mahadeo Deoman Rai Alias Kalal made a fresh application for permission to make construction. He was told not to do so on the ground that the land was reserved for road widening under a Town Planning Scheme which was being implemented. He however started construction work and when prevented from so doing, filed a writ application in the Bombay High Court which was later withdrawn. Subsequently he filed a suit in the civil court inter alia claiming damages. Soon thereafter a resolution was passed by the Municipal Council on February 13, 1967 whereby a decision was taken to accord permission as asked for. The suit was thereafter withdrawn.

The aforesaid development came to the notice of the State Government (State of Maharashtra), and the Municipal Council was asked to explain the circumstances, and a high power Committee was appointed to examine the entire matter. The aforesaid resolution was thereafter rescinded by Municipal Council, and Mahadeo Deoman Rai Alias Kalal dated July 18, 1968, filed a fresh application for permission to construct, which was kept in abeyance by the Council on the ground that the matter was under consideration by the Committee. The Municipal Council by its order dated the 21st of November, 1972 rejected the application on the basis of the plots No. 29 and 30 were required for road widening; be needed for the proper circulation of traffic; and that plots are urgently needed for providing parking space for vehicles. The Town Planning Scheme was being modified (replan) accordingly. This order was challenged. He thereupon filed a writ petition before the Bombay High Court. Mr. V.M. Tarkunde, the learned counsel for Mahadeo Deoman Rai Alias Kalal has contended that the land is not required either for widening the road or for any other public purpose, and the authorities have been acting mala fide. The High Court allowed the writ application on the basis of constructive res judicata (a matter thast has been

adjudicated by a competent court and therefore may not be pursued further by the same parties.)

State of Maharashtra appeal to the Supreme Court of India, and allowing the appeal. A particular scheme may serve the public purpose at a given point of time but due to change of circumstances it may become essential to modify or substitute it by another scheme. The requirements of the community do not remain static; they indeed, go on varying with the evolving process of social life. Accordingly, there must be creative response from the public authority, and the public scheme most be varied to meet the changing needs of the public. At the best for the respondent (Mahadeo Deoman Rai Alias Kalal), it can be assumed that in 1967 when the resolution in his favour was passed, the acquisition of the land was not so urgently essential so as to call for his dispossession. But for that reason it cannot be held that the plots became immune from being utilised for any other public purpose for ever. The State or a body like the Municipal Council entrusted with a public duty to look after the requirements of the community has to assess the situation from time to time and take necessary decision periodically.

For the reasons mentioned above, the impugned judgment of the High Court is set aside and the writ

petition of the respondent filed in the High Court is dismissed.

In Banwasi Seva Ashram v. State of U.P., AIR 1983 SC 373, it has also been held that land acquired for one purpose may be used for other authorised purpose. In Guru Das v. Secretary of State, 18 CLJ 244 held that it may be so used for another legal purpose so long as no nuisance is created.

Penggunaan tanah tidak seperti tujuan asal pengambilan yang terbesar dan menjadi kontroversi yang penulis temui ialah pengambilan tanah untuk Projek Pembinaan Empangan Sardar Sarovar (*Sardar Sarovar Dam Project*), Narmada District, Gujarat, India. Perdana Menteri India yang pertama, Pandit Jawaharul Nehru dalam ucapannya ketika melawat Kevadia yang terletak kira-kira 90 km dari Vadodara, Gujarat pada 15 Januari 1961, mengumumkan secara rasmi pembinaan projek tersebut. *With the inauguration over, the Government of Gujarat acquired 1,777 acres of land from 397 families of the six villages of Kevadia, Waghodia, Kothi, Limri, Gora and Nevagam. The villagers were Tadri tribais. Their lands and houses were acquired fo rthe project colony as early as 1961-1963.*

ACQUISITION OF LAND AND FAMILIES AFFECTED - 1961

VILLAGE	***LAND ACQUIRED (ACRES)***	***FAMILIES***

Kevadia - Kothi	*755*	*122*
Waghodia	*280*	*50*
Gora	*259*	*113*
Navagam	*218*	*49*
Limri	*265*	*63*
TOTAL	***1777***	***397***

Source : Equations Equitable Tourism Options, March , 2008.

A large portion of the land of six villages was transformed into the Kevada Project Colony of the Sardar Sarovar Narmada Nigam Limited (SSNNL). Not all the lands acquired were marked for public purpose or project related construction and also many were left out of the list of project affected. Writer activist Arundharti Roy observed in her 1999 essay "The Greater Common Good" that significant portion of the land acquired remains unused but the government refuses to return it. She say "eleven acres acquired from Deviben, who is a widow now, have been given over to the Swani Narayan Trust (a big religios sect.)". Six hectares of land within the Kevadia Village was handed over to the Mumbai based BSEL Infrastructure Realty Ltd for constructing Narmala Nihar, a luxury hotel, right on the main road connecting Kevadia to Vadodara.

Over the years, of the 1,777 acres of the land acquired for the project colony and related works, 1,400 acres remained unused (Indian Express Ahmedabad, New Line – August 26, 2004.) This huge amount of unused land acquired for public purpose is

perhaps the genesis of the tourism project in Kevadia. The SSNNL, is the proud owner of 1,400 acres of adivasi land proposing a tourism (or eco-tourism as their website calls it) project in an attempt to present the dam site in its pristine and natural glory, with nature parks, planned gardens, woodlots, nature trails, an eco-museum and a panoramic view of the hills which will captivate the tourist and hold him in awe of the benefits provided by the project. According to the website of SSNNL, eco-tourism is conceptually purposeful travel to natural areas with an emphasis on understanding the culture and natural history of the environment, taking care not to alter the integrity of the ecosystem, while providing economic opportunities that make the conservation of nature resources beneficial to the inhabitants of the host region. The SSNNL website further states that it is also interested in development of eco friendly tourist facilities with private sector participation, with a view to create an attractive tourist destination and also to create awareness about the project. The various components as per the development plan are hotels and cotteges, up-gradationof existing structures for accommodation, camping sites development, providing recreational areas comprising of water park, leisure park, botanical garden, ecological park etc. Lake development, ecological trails, golf course, visitors center, yoga center and convention center. According to Mr.P.K. Laheri, the Chairman of SSNNL, the project was aimed at an integrated development of Kevadia and its surrounding areas and is developed as a people's project. A project that will be viable, safe, comfortable, educative.

After visiting the project area, the tourists would go back with lots of information and pleasant memories. The economic viability of the project rest on the Sardar Sarovar Project Dam site in Kevadia being visited by at least 2 million tourist every year.

Handing over the land acquired in Kevadia to the Mumbai based BSEL Infrastructure Realty Ltd, a private developer for constructing Narmala Nihar, a luxury hotel, on June 18, 2006 marks a serious departure in the history of the Sardar Sarovar Project. The land was acquired to construct dam by the government. But this land now stands diverted for the construction of a hotel which is by no stretch of imagination public purpose. In fact, is tourism "public purpose" at all?. The Gujarat Government has, till date, diverted a part of the vacant, unused (for the Sardar Sarovar Project) land to different agencies such as Swami Narayan Trust (about 10 acres of Kevadia village land), Shulpaneshwar Temple Trust (about 10 acresof Gora village land) and Department of Forests (about 40 acres of Navagam village land).

Several question arise. How could the Gujarat Government handed over to private developers on lands that were acquired for public purpose?; and corporate tourism becomes "public purpose" !!!!!.

In 1999-2000, the people approached the Grievance Redressal Authority in Ahmedabad and got a stay order against the government diverting their lands acquired but not used for the project. To them, this is illegal transfer. The tourism project is not

public purpose and violation of the clause on public purpose. However, since then nothing has happened. The Narmada Bacho Andolan had submitted the relevant document to the Supreme Court and the Government of Gujarat had denied this in court. (Sumber*: How The Tourist Destination of Tomorrow Continues to Dispossess The Adivasis of Narmada Today. An Investigative Report on The Tourism Project in Kevadia, Narmada District, Gujarat. (2008), Bangalore.)*

Beberapa kenyataan di atas boleh digunapakai dalam menjawab persoalan, adakah boleh tanah yang diambil untuk sesuatu *public purpose*, kemudian digunakan bagi tujuan *public purpose* lain. Jawapannya boleh. Lagipun, *public purpose* tidak dinyatakan di Perkara 13(2) Perlembagaan Persekutuan, Ia hanya menyebut *adequate compansation*, berbanding dengan situasi di India di mana *public purpose* ditekankan dalam Perlembagaan dan dalam Akta Pengambilan Tanah 1894.

(Penulisan ini adalah pendapat peribadi penulis sendiri dan tidak mewakili mana-mana pihak)

(BERSAMBUNG DI BAHAGIAN KEDUA BELAS)

Suhaimi bin Hj. Mamat
Setiausaha Bahagian
Bahagian Sumber Air, Saliran dan Hidrologi
Kementerian Sumber Asli dan Alam Sekitar
Aras 13, Wisma Sumber Asli
No. 25, Persiaran Perdana,
Presint 4, 62574 Putrajaya, Malaysia
Tel : 03-88861147
Fax : 03-88893455
Email : suhaimi@nre.gov.my