

(2001) 11 GUJ CK 0037
In the Gujarat High Court

Case No : First Appeal No's. 1124, 1125 and 1405 to 1420/81 with Cross
Objection No's. 224 and 226 of 2001 in FA 1406 and 1420/81

Addi. Spl. Land Acq. Officer

APPELLANT

Vs

Maniben Patel

RESPONDENT

Date of Decision : 29-11-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2001) 11 GUJ CK 0037

Hon'ble Judges : Y.B. Bhatt, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : Arun D. Oza, GP, Alpesh Y. Kogje, AGP, Vasuben P. Shah and Arun H. Mehta, for the Appellant; V.S. Parikh, A.J. Pandya, Vasuben P. Shah, J.G. Shah, M.D. Pandya, R.N. Shah, J.C. Sheth, I.F. Zamindar, B.N. Doctor, Arun H. Mehta, Arun D. Oza, GP and Alpesh Y. Kogje, AGP, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—In this group of 18 appeals with 2 Cross Objections in two appeals, common questions have been involved. Therefore they are being disposed of by this common judgment upon joint request.

2. The First Appeal No.1124/81 and 1125/81 have arisen out of a common judgment dated 31st December 1980, recorded by the Reference Court in which a common judgment came to be passed in respect of Compensation Case Nos.48/79, 55/79 and 56/79. The common judgment rendered in these three compensation cases and the awards passed u/s 18 of the Land Acquisition Act, 1894 (the said Act for short) is in respect of compensation cases in which the date of notification u/s 4(1) was 17.8.1974, followed by section 6(1) notification on 15.7.1974 and the Land Acquisition Officer offered an amount of Rs.25 and Rs.35/- per square meter in respect of lands acquired by his award dated 25th February 1979.

3. For the sake of convenience and also for highlighting particulars of the cases

which were dealt with under common judgment by the Reference Court are articulated in the following tabular form:

=====									
===== Com. Survey Area in Claim of Com.									
awar-	Compensa-	Case No.	Sq.Mtr.	compensa-	ded by the	tion claimed	No.	tion	
made	LAO.	Rate in	Reference	before the	per sq.mtr.	Court -	Rate Spl	LAO per	
Sq.	Mtr.	Rate	per	Sq.	Mtr.	(Rs.)	(Rs.)	(Rs.)	
-----						48/79	151/P	3328	100/-
25/-	42/-	55/79	425/3	72	35/-	13/-	35/-	56/79	462/P
								3516	50/-
								35/-	50/-
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4. The original owners of the land, whose lands came to be acquired were dissatisfied and had not accepted the amount offered by way of compensation by the Land Acquisition Officer, and, therefore, they sought references u/s 18 of the said Act. The learned Judge, City Civil Court, Ahmedabad, upon receipt of three References, after considering the facts and circumstances and the provisions of law, enhanced the amount of market value at Rs.25/- per square meter and Rs.35/- per square meter against the amount of compensation claimed by the original owners of the land at the rate of Rs.35/- to Rs.50/-. In short, the Reference Court in the common judgment u/s 18 of the said Act raised the market value at Rs.25/- and Rs.35/- per square meter. Being aggrieved by the said quantum of market value determined by the Reference Court, the appellant-original Acquisition Authorities have come up before this Court by filing the above two First Appeals viz. FA Nos.1124/81 and 1125/81, challenging its legality and validity by invoking the provisions of section 54 of the said Act. This is the short profile of the two compensation cases in First Appeal Nos.1124/81 and 1125/81.

5. In so far as the 16 group matters are concerned, the same Reference Court passed common judgment on 17/18th December 1980 in respect of original Compensation Case Nos.2/80 to 12/80, 14/80, 16/80, 18/80, 19/80 and 20/80. These 16 Compensation Cases arose out of a common notification u/s 4(1) issued on 15.1.70 followed by section 6(1) notification on 30.3.1970, in which the Land Acquisition Officer offered by his award dated 28.6.1979 an amount of Rs.24/- to Rs.40/- depending upon the facts of each case, including the extent of land, the geographical location and other necessary and requisite facts and circumstances against the claim of Rs.40 to Rs.75/- per square meter of the original owners of the land. Both the cases referred, hereinabove, were consolidated, common evidence was led, identical issues were raised and therefore the Reference Court, in exercise of its powers u/s 18 of the said Act, passed a common judgment and awards, and enhanced the amount of market value between Rs.25/- and 42/-.

6. In order to appreciate the material particulars, the extent of the land acquired in each case, the amount of compensation claimed and awarded by the Land Acquisition Officer, etc. are highlighted for the sake of convenience and brevity in

the following tabular form:

=====														
===== Com. Survey Area in														
Claim of	Com. awar-	Compensa-	Case No.	Sq.Mtr.	compensa-	ded by the	tion							
claimed No.	tion made	LAO.	Rate in	Reference	before the	per sq.mtr.	Court	-						
Rate	Spl	LAO	per	Sq.	Mtr.	Rate	per	Sq.	Mtr.	(Rs.)	(Rs.)	(Rs.)		

2/80	144	21044	40/-	40/-	40/-	145/part	24903	40/-	32/-	40/-	170	11837	40/-	
24/-	40/-	171	13254	40/-	25/-	40/-	172/part	24502	40/-	25/-	40/-	173/part		
5626	40/-	24/-	40/-	177/part	13352	40/-	24/-	40/-	184	6981	40/-	24/-	40/-	
185	7790	40/-	24/-	40/-	186/part	9245	40/-	24/-	40/-	187/part	2412	40/-	23/-	
40/-	188/part	8442	40/-	23/-	40/-	189/part	9458	40/-	23/-	40/-	190	13456		
40/-	24/-	40/-	191	10421	40/-	27/-	40/-	219/part	3915	40/-	26/-	40/-	3/80	
183/3	5362	No specific	25/-	50/-	claim	4/80	247/2	6273	75/-	29/-	75/-	5/80		
263/part	2892	40/-	24/-	40/-	6/80	265	16289	40/-	24/-	40/-	7/80	416/1	9207	
No specific	24/-	35/-	claim	423/3	5558	-do-	24/-	35/-	8/80	416/2	3541	65/-		
27/-	65/-	9/80	417	4856	No specific	28/-	35/-	claim	10/80	453/3	3300	50/-		
27/-	35/-	11/80	456/2/part	1057	50/-	25/-	35/-	12/80	456/3	940	50/-	27/-		
40/-	14/80	463	9510	50/-	28/-	35/-	16/80	159/1	3136	No specific	25/-	50/-		
18/80	264/part	7192	40/-	40/-	40/-	19/80	295/part	4240	40/-	24/-	40/-	20/80		
453/2/part	1000	50/-	26/-	50/-	=====									
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7. The Land Acquisition Authority questioned the enhancement of market value determined by the Reference Court by filing this group of 16 matters by invoking the provisions of section 54 of the said Act.

9. A few relevant and material factual profile of facts leading to the rise of these groups of appeals and two cross objections in two appeals may be stated so as to appreciate the merits and challenge against the appeals in these groups.

[i] The lands under acquisitions in both the groups are situated within the municipal limits of City of Ahmedabad, and as such are included in the Town Planning Schemes No.28 and 29.

2[ii] As stated hereinabove, in the first group of matters the Notification u/s 4(1) of the said Act is 17.8.1971, whereas in the second group of matters the notification u/s 4(1) of the said Act came to be issued on 15.1.1970. The purpose for acquisition of both the groups of the lands, again, was common and it was for the construction of Houses by Gujarat Housing Board, at Ahmedabad.

[iii] The Reference Court has placed reliance on an award of the same Court passed on, 23rd December 1977, in Compensation Case No.55/75 which was placed before the Reference Court in second Group at Exh.9, and in the first group, at Exh.12. In so far as the said award is concerned, it was a consensual statement before the Reference Court that it is comparable award as it covered

the lands in the vicinity of the lands covered in these groups of cases. The original claimants had, therefore, not chosen to lead any other evidence before the Reference Court. This aspect is radiated from the observations and discussions in para 8 of the impugned award of the second group. We have noticed the following observations in the said para as under, which are pertinent.

"It is also made clear on behalf of the claimants as well as the respondent and the acquiring body that the description of the comparable instances of lands given in the impugned award as well as in the judgment, at exh.9, would be acceptable for the purpose of comparison with the lands involved in this group of cases during the process of determination of the market value thereof. Besides, on perusal of the award under challenge in this group of cases, it becomes clear that the respondent has relied on the award which was under challenge with respect to certain lands in the group of compensation cases decided by the judgment at exh.9. The parties have also chosen to rely on the map at exh.8 for showing the exact location of the lands in question for the purpose of comparison with comparable instances of lands involved in the judgment at exh.9."

[iv] In view of the facts and circumstances, the date of notification u/s 4(1) of the Act for the purpose of acquisition of the lands in question and the submissions made before the Court together with the consensual statements with regard to the earlier award of the same Reference Court produced, at Exh.9, in one of the group matters and, at Exh.12, in the other group matters, the Reference Court, after giving anxious thoughts and consideration, reached to the conclusion and enhanced the market value between the amount of Rs.25 and Rs.42 depending upon the extent of area, the utility and the location of the parcels of land covered under the acquisition proceedings.

10. After having taken into consideration closely the entire factual matrix, the relevant proposition of law, the submissions made before us and the context and tenor of the impugned awards, we find no justification to interfere with the awards under challenge of the Reference Court u/s 18 of the said Act by exercising powers u/s 54 of the said Act. Apart from that it is a settled proposition of law that the assessment of market value as contemplated by the provisions of section 23 of the Act is not possible to be calculated like geometry or arithmetic formula. There may be a marginal leeway or some guess work in order to see that the correct and appropriate market value is fixed for the purpose of compensation as contemplated by the provisions of section 23 of the Act in the light of the facts in general and the size, type, the utility, development and the geographical location, etc. of the land. We are, therefore, of the clear opinion that we find no substance in these two groups of appeals, and more so when it has not been shown on behalf of the appellant or spelt out from the record that the earlier award of the same Reference Court in respect of the acquisition of the land in the vicinity of the lands covered in these two groups of appeals, has not become final or has in any way disturbed or affected later. This aspect is also very material and required to be considered while examining the

merits of the appeal as well as the cross objections.

11. The Cross Objections are filed in two first appeals at the instance of the original claimants. But as observed by us hereinabove, the assessment of market value made by the Reference Court in the light of the facts and circumstances emerging from the record of the present case, coupled with the provisions of section 23 highlighting the principles to be considered for the purpose of determination of market value, we are also of the opinion that the Cross Objections are meritless and require to be dismissed along with the entire group of appeals.

12. In the result, the entire group of 18 appeals and two Cross Objections deserve to be dismissed and accordingly they are dismissed leaving the parties to bear their own costs.

13. Before parting and at this stage it was urged that as the Court has confirmed the market value and the order of the Reference Court, the original claimants are entitled to all the available permissible statutory benefits and therefore such a specific direction should also be issued. In fact it is a matter of quite simple understanding that market value is determined u/s 23, subsection (1) of the said Act. That is not the only amount of compensation. The amount of compensation includes market value and other available permissible statutory benefits. Obviously, therefore, the claimants are entitled to and the respondent authorities are obliged to pay the amount of compensation as contemplated under the Act. In other words, the claimants shall be entitled to compensation which includes all the statutory available permissible benefits in accordance with law. These observations will suffice and no further clarification is necessary in this regard.