

(2011) 11 GUJ CK 0080
In the Gujarat High Court

Case No : First Appeal No. 3560 of 2007 to First Appeal No. 3566 of 2007

Additional Special Land Acq. Officer and 1	APPELLANT
Vs	
Rajliben Magan Badhar (Since Deceased) and 10	RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 23(2), 28

Citation : (2011) 11 GUJ CK 0080

Hon'ble Judges : R.M. Chhaya, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : Moxa Thakkar, Asstt. GPs - 2, for the Appellant; Nilesh A. Pandya with Mr. UM Shastri for Defendant(s) : 3, 5, 8 -9, 11, for the Respondent

Final Decision : Allowed

Judgement

Honorable Mr. Justice Jayant Patel

1. As all these appeals are arising from common judgment and award, they are being considered simultaneously.

2. Present appeals are directed against common judgment and award passed by the Reference Court in Land Reference Case No. 245 of 2004 and 246 to 250 of 2004 whereby the Reference Court has awarded additional compensation at Rs. 191.00 per square meter and also granted statutory benefits of solatium u/s 23(2) of the Act and increase in the market value u/s 23(1A) of the Act and interest u/s 28 of the Act.

3. Short facts are that the lands at village Bathwada, Taluka Devgadh Baria, for the Project of Over Bridge on National Highway, were to be acquired under the Land Acquisition Act (hereinafter referred to as "the Act"). Notification u/s 4 of the Act was published on 7.9.2000. Notification u/s 6 of the Act was published on 4.1.2001. Thereafter, award was passed u/s 11 of the Act on 7.11.2001 and the Special Land Acquisition Officer awarded compensation at Rs. 9.00 per square meter. As the claimants were not satisfied with the award, they raised dispute u/

s 18 of the Act demanding compensation at Rs. 800.00 per square meter. Disputes were referred to the Reference Court for adjudication. At the conclusion of the references, the Reference Court has passed aforesaid judgment and award. Under the circumstances, the present appeals before this Court.

4. We have heard Ms. Moksha Thakkar, learned Asstt. GP for appellants and Mr. Nilesh A. Pandya, learned Advocate with Mr. U.M. Shastri, learned Advocate for the original claimants, in all the matters. We have considered the Record and Proceedings. We have also considered reasons recorded by the Reference Court in the impugned judgment.

5. Bare perusal of the impugned judgment of the Reference Court shows that the reasons are recorded from paragraph 15 onwards wherein the Reference Court has mainly relied upon the decision of Reference Court for acquisition of lands at village Pusri, Taluka Dahod in Land Acquisition Reference No. 225 of 2004 where by Rs.175.00 per square meter was awarded as additional compensation in case where notification u/s 4 of the Act was published on 15.9.1999. Important aspect which has been totally lost sight of by the Reference Court was that there could not be comparison at all of the land which was the subject matter of LRC No. 225 of 2004. Perusal of the award in LRCNO. 225 of 2004 Exh. 35 show that the land in the said case was adjacent to Dahod City. We also find that even in that award in Land Acquisition Reference No. 225 of 2004, the Reference Court has erroneously not taken into consideration the aspect of difference in the price of land within the municipal limits of Dahod City and the land in the nearby area of the other villages, which was Pusri in the said case, though boundary of the said villages maybe touching to Dahod City. As per the view taken by us in First Appeal No. 3142 of 2011 to 3157 of 2011 decided on 05.10.2011, there will be minimum difference of 30 per cent in the market value of the land inside municipal area and outside municipal area located in the village even if the boundary of such village is touching to the Municipal Limits. We may not observe on the legality and validity of the award passed in Land Acquisition Reference No. 225 of 2004 since the same is not the subject matter of present appeals. Suffice it to state that the reliance placed by the Reference Court upon the award of Land Acquisition Reference No. 225 of 2004 wasn't called for without proper application of mind on the part of the Reference Court. Even if the Reference Court was to consider the said award, it ought to have taken into consideration the aspect of difference in the market value of the land within the Municipal Limit and out side the Municipal Limits located at the village though boundary may be touching to each other.

6. Apart from the above aspects, it has come in the cross examination of the witness Parsingbhai Punabhai Patel Exh. 10 that the distance between the village in question and the District Town, which was Dahod, was 45 kms. Under the circumstances, we find that it was ex-facie an error on the part of the Reference Court to rely upon the award passed for fixing compensation in respect of a land located at the distance of 45 kms that too in the periphery was of District Town.

7. We would have recorded further reasons, however, the learned advocate appearing for the original claimants declared under the instructions that the respondents - original claimants have no objection if the matters are remanded to the Reference Court but he submitted that opportunity to lead additional evidence foreshowing market value of the land prevailing on the date of notification u/s 4 of the Act may be granted by the Reference Court. Learned Asstt. G.P. Submitted that if the matter is remanded to the Reference Court, appellants should also have opportunity to lead evidence same be permissible under the law.

8. We find that since the evidence for market value of the land, even if it is considered as it is, was not sufficient to assess the market value of the land, therefore, if the additional opportunity is given to the parties to lead the evidence, same would meet ends of justice.

9. In view of the aforesaid observations and discussion, the impugned judgment and award passed by the Reference Court cannot be sustained and deserves to be quashed and set aside. Hence, same is quashed and set aside with a direction to the Reference Court that the concerned LRC No. 245 of 2004 and 246 of 2004 to 250 of 2004 shall stand restored to the files of Reference Court. It is further directed that the Reference Court shall give opportunity of hearing and decide the References afresh in accordance with law. It is also directed that until fresh judgment and award is passed by the Reference Court, the amount of compensation, if any, deposited with the Reference Court shall not be permitted to be withdrawn and the investment already made shall continue until fresh award is passed or any order passed by the Higher Forum, whichever is earlier.

10. Considering the facts and circumstances, as the matters are arising from old References, an attempt shall be made by the Reference Court to decide the same as early as possible, preferably within the period of one year from the date of receipt of the order of this Court. R&P is returned to the Reference Court. Appeals are partly allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.