

**(1960) 07 GUJ CK 0023**  
**In the Gujarat High Court**  
**Case No : First Appeal No. 771 of 1960**

Ambala Mansukharm Joshi

APPELLANT

Vs

Special Land Acquisition Officer and Another

RESPONDENT

**Date of Decision :** 08-07-1960

**Acts Referred:**

Evidence (Amendment) Act, 1894 — Section 114  
Evidence Act, 1872 — Section 18  
Land Acquisition Act, 1894 — Section 23

**Citation :** (1960) 07 GUJ CK 0023

**Hon'ble Judges :** N.G. Shelat, J; Albar S. Safela, J

**Bench :** Division Bench

**Advocate :** I.M. Nanavatai, A.H. Mehta and V.M. Chokshi, for the Appellant; J.M. Thkore, General and H.M. Cholshi, Govn. Pleader, for the Respondent

## **Judgement**

Sarela, J.

(1) This appeal by one of the claimants relates to compensation in respect of two plots of lands acquisition Act (Act 1 of 1894) (hereinafter referred to as the Act). The award by the Land acquisition Officer for one of those plots namely ;final plot No. 9 was at the rate of Rs. 11 pre S. Q. On a reference to the District Court by the claimant by the who is the appellant here the Court raised the rate of compensation to Rs. 12 and Rs. 9/- respectively in respect of final plots Nos. 9 and 42 against that order this appeal is filed, it being the contention of the appellant that the compensation so awarded by the District Court was inadequate and requires to be enhanced.

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(9) Now the best method of determination of the true market price of a plot of land is to base it on instances of sale of the same land next best time. The comparable in time and c and it is on this method that Mr. Nanavati for the appellant concedes that instances relating to final plots Nos. 23 and 38 are not comparable in time for they are 3 to 4 years removed from the date of the

notification. The notification are of October and November of 1952 and the sale instances of these two plots aware of June 1948 and December 1949. In the course of his argument Mr. Nanavati did not therefore rely on those two sale instances but relied in the sale instance of final plot No. 24 which it will be noticed was first sold in 16-7-1949 at Rs. 27 per s.q. and then sold by the said purchases to another on 9-2-1953 at Rs. 28.33 per s.q. Mr. Nanavati has relied on the latter sale which is approximate in time to the date of the notification. He argued that the instance of final [lot No. 24 is a comparable instance also in quality.

(10) Now, before considering whether the instances of final plot No. 24 is comparable in quality it is necessary to clear the ground on the question whether as an instance of the sale it is a reliable instances. The details of that sale have been mentioned. The sale took place on 9-2-1953. The plot has an area of 600 s.q. There was, as earlier noticed, a pervious sale of this very plot on 16th July 1949 at Rs. 27/- per s.q. Two witness Mohanmlal Nathala (Exh. 41) has been witness Bhailalbai Tribbovandas (Exh. 36) to prove the sale of 9-2-1953. There is no suggestion in their cross-examination that the respective sales about which they deposed were not sales of willing vendors purchasers. No doubt cross-examination has been directed to show that the purchasers needed these plots for the purpose of their business of timber Mohanlal admits this but denies that he paid anything more than market price. Bhilalbahai states that the he purchased the plot for the purpose of erecting a bungalow. Nodoubt he does not appear to have made any inquiries with the public registry or with the City Survey Offices but the absence of these inquiries is explained by the fact that only four years before he purchased this plot there had been a sale transaction of that plot and that would give him sufficient induction of the market of the market value. The learned advocate General, who appears on behalf of the land Acquisition Officer, fairly concedes that having regard to these previous transactions in respect of the sale of this plot there is no inherent infirmity in the sale instance of this plot dated 9-2-1953, in the sale instance of final plot No. 24 is a reliable instance.

(12) Is the instance of final plot No. 24 comparable instance in respect of quality, is the next question. On this question the factors to be considered with reference to final plots Nos. 9 and 42 are the situation, the size and the development of the respective plots. The learned Advocate General submitted that on all these points the differences between final plots No. 24 on the hand final plots Nos. 9 and 42 on the other are so vast as to make it difficult to accept the sale instance of final plot No. 24 a comparable instance. In the alternative he argued that even if by marking some allowances a comparison could reasonably be made there were no materials on the record of this Court to enable the Court to determine the extent of the allowances that would reasonable be made to enable this Court to institute a fair comparison. It is necessary, therefore, to notice the extent of the differences in situation, development and the sizes of final plot No. 24 if the in hand and final plots Nos. 9 and 42 on the other and to consider whether any

material are available on the basis of which the allowances could be made in respect of these differences. So far as the situation is concerned, we earlier noticed that final plots Nos. 9 and 42. It is nearer the 100 ft, road, it has better access to that road and it is a small plot situated in a locality which is better from the point of view of business than final plots Nos. 9 and 42. In respect of development also final plot No. 24 is much superior to final plots Nos. 9 and 42 for the reasons earlier given, namely, that the former is situated in a timber zone devoted to timber business and there has been plotting which makes it easier for shops to be built in that area. It was argued by Mr. Mehta that the reservation of area for the purpose of timber business instead of enhancing the value of the plots diminishes its value because it is in the nature of a restriction. We are not able to agree with him. The premises used for a business situated in a locality where merchants congregate to do their work would command much further away. The purchaser for timber would prefer to go to a place where timber shops congregate than to run from one place another for the selection of the timber he wants. Not only would it save him much time and labour but the availability of the commodity at one locality would enable him to know the comparative qualities and Businessmen would also find that customers are attracted to that place, as they find it very convenient. Therefore, if the merchants congregate in a particular area to do a particular business, that area is likely to get a good price for shop for that business. Therefore that area in which final plot No. 24 is situated is a developed area for the purpose of business as compared to the area in which final plots Nos. 69 and 42 are situated. In fact, there is no evidence to show that any business either of timber or otherwise was carried on in final plots No. 9 and 42. There are, therefore, these two differences - the difference in situation and the difference in development do bear on the question whether final plot No. 24 is a comparable instance with final plots Nos. 9 and 42. At the same time the differences are not so vast that the difference cannot be eliminated. After all the distance between final plots Nos. 9 and 42 and final plot No. 24 is not very great. The approach to final plot No. 9 from the 100 ft, road is not in any way obstructed but lies over a road which is decreed as 50 ft, in breadth. To the south-west of the final plot No. 9 is final plot No. 17/1 where is a timber depot. Therefore, final plots Nos. 9 and 42 are situated in an area which has reasonable potentiality of development in not a distant future. Under these circumstances the differences in situation and development can be eliminated by a reasonable allowance. What that allowance should be is a point we shall consider later.

(13) The greater difference however appears to be the difference in size. The final plot No. 24 is, as we have earlier stated, 600 sq yds. As against that final plot no. 9 is 8,550 sq yds. That is, about 16 times and final plot no. 42 is 4,598 sq yds., that is about 7 times. Now the size is an important consideration. As pointed out by Parks in his Principles and Practice of Valuations. Third Edition at page 94:-

"The size of a plot of land will have a very important bearing on the value you can not value a large area of land on the same basis as a small plot."

For shopkeepers there are inherent advantages in a comparatively small size. Each portion of a small plot can be used to the best advantage. Depth and darkness which affect full use of space are absent. The investment and the recurring expense are smaller. In *Shamalbhai Lallubhai v. Additional Special Land Acquisition Officer and Collector, Ahmedabad* First Appeal NO. 423 of 1960 decided by this Court on 13-11-1961 (Guj.), to which our attention was invited by Mr. Nanavati in respect of another point, *Miabhai, J.*, as he then was, speaking on behalf of the Court observed:-

"Moreover some allowance must be made for the fact that a purchaser of a large plot of land is not likely to offer a price at the same rate as a purchaser of a plot 1/70th of its size. The number of competitors for such a large plot is bound to be less. The investment which would be required to be made by such a purchaser would be of a very large amount and the risks which he would undertake due allowances for these risks to making an offer for the price. Moreover, when there is a large number of competitors and the plot which is to be purchased is of a small area, an increase of a rupee or so per square yard does not mean a big figure for the purchases of a small plot and he may not consider such an increase a burden; whereas the purchaser of a very large plot of land 70 times the size of a small plots bound to calculate a difference of every single Anna in the fluctuations of price. In addition to this, it is also well-known that if small plots are sold, there is a danger specially in a stagnant market of some of the plots remaining unsold altogether and there would be a total dead lock and the average price which the owner of a plot would get would thereby be lessened. Having regard to all these considerations all the experts on land valuations are agreed that suitable deductions must be made on account of the largeness of the size of a given plot when its price is to be determined with reference to a small plot. The greater the disparity between the size of the plot under acquisition and that of the plot under instance the larger the deduction will have to be made."

Mr. Nanavati concedes that the comparable sizes of the two plots which are being considered would make a difference. But his submission is that in this case it should not make a difference because, according to him, the whole of final plot No. 42 can be split up and each piece of it can be sold at equal value and in this connection after inviting our attention to the evidence of the claimant to which we shall refer presently he has relied on the decision of the Supreme Court in *Uttar Pradesh Government Vs. H.S. Gupta*, .

(14) In the Supreme Court case just mentioned the property that was being acquired was one Estate situated outside the city of Lucknow. The saleable area was 4,09,952 s.ft. The District Judge allowed Respondents. 1-2-0 per sq. Ft on the footing that small plots of another estate not far from the acquired land and known as the Mahanagar scheme had fetched a price of about Respondents. 1-2-0 per sq. Ft. In appeal the High Court reduced the rate to Re. 0-14-0 mainly on the ground that a deduction in the rate of land of the Mahanagar scheme should be made on account of the size of the Dilkusha Estate which was being

acquired not in plots but as a whole. The principle that if the land had to be sold in one block consisting of a large area. The rate per square foot likely to be fetched would be smaller than if an equal extent of land was parcelled out into smaller bits and sold to different purchasers was not disputed before the Supreme Court. But it was argued that on the facts of that particular case that principle was not applicable and the Supreme Court upheld that argument. Their Lordships stated :-

"That the scheme adumbrated in Exhibit 52 (meaning a plotting scheme in respect of Dilkhusa Estate ) is a feasible and workable one, designed and set forth some years anterior to the time when the compulsory acquisition was decided upon, cannot be disputed and as the learned judges of the High Court in concurrence with the district judge have held that there can be no difficulty in finding purchasers. For all the plots in accordance with the layout in Exh. 52, we do not find any justification for any deduction in the value per square foot. The conditions which appertain, to the Dilkhusa estate resembles to a considerable extent those obtained with regard to Mahanagar Scheme and it will not be inappropriate to base a conclusion on a comparison of the factual details of Mahanagar Scheme"

Therefore, the facts there established were that the conditions in respect of the land in the Mahanagar and dilkhusha estate were the same. It would appear that much before the acquisition, Dilkhusa Estate had a scheme for plotting. It would also appear that all the plots for which the scheme was made were in demand. Their Lordships later on say:

"We see from the evidence that there is no doubt whatever that there are willing, if not anxious. Purchasers for all the plots delineated in Exh. 52"

It was under those circumstances that their Lordships came to the conclusion that there was no need to make an allowance in respect of size. The question is whether the same principle applies to the facts of this case.

(15) The appellant in his deposition (Exh. 32) stated with reference to plot N. 9 that it could have been divided into sub-plots without leaving a single yard for roads as there are three roads already and the land is triangular in shape. No such statement has been made by him in respect of final plot No. 42. In a sketch which was produced on behalf of the appellant but not proved an attempt was made to show that both the final plots Nos. 9 and 42 could be so divided without losing a single square yard for roads. We shall refer to that sketch presently as the counsel on both the sides have agreed to its being referred to. This statement of the appellant is the only evidence to show that such a big plot as final plot NO. 9 consisting of 9,550 sq yard for roads or otherwise. On the face of it the statement does not carry conviction. It has not been suggested, and there is no evidence, that any scheme for plotting was made and the scheme made was not only a feasible one but was such as not to lose a single square yard of area. There is no evidence beyond this bare statement of the appellant that the

sub-plots which he has in his mind under a hypothetical scheme of his own would have each of them approximately the same frontages and have the same usefulness for business soaps to command approximately the same price for each.

There is no evidence that there were willing purchasers much less anxious purchasers, for all or any of these intended sub-plots. There is nothing to show that having regard to demand, as to which there is no evidence, a plotting would have been possible. Our attention was invited to the hypothetical plan for plotting which the appellant had in mind it was, as we stated, produced but not proved in the lower Court. As both the sides have no objection to our looking to it. We have done so. A copy of it is at page 90A of the paper-book before us. The plan as set out therein shows final plot No. 9 divided into 9 sub-plots and final plot No. 42 into 4 sub-plots. Nine of these thirteen sub-plots are each over 1,000 sq yds. Some of them are more than 1,300 sq yds. The remaining four sub-plots are of an average of 900 sq yds. It will be noticed, therefore, that the appellant had to resort to large plots in order to show that no area would be lost in plotting of the purpose of roads and that each plot will have a frontage on the road. It will be noticed that each of these sub-plots has considerable depth. As abroad proposition it may be stated that the greater the depth the lesser the value of the sub-plot as a whole because the whole area of the sub-plot cannot be put into its best advantage for the purpose of business. This scheme which is hypothetical and in respect of which no evidence has been led and hardly be relied on. Therefore, the only evidence that is led in support of the submission that the principle of block rate should not be applied but of a plot rate should be applied, is the word of the claimant-appellant and that word is inconsistent with the probabilities and cannot carry conviction. There is neither convincing evidence of a probable plotting without loss of area nor any evidence of willing or anxious purchasers.

(16) The question then is whether the instance of sale of such a small plot as final plot No. 24 can be treated as comparable after due allowances made in respect of the size. Now the approach of Mr. Nanavai to this question is that the Court should split up the area of final plots Nos. 9 and 42 into small plots make such allowances as may be thought proper and then fix the price on the basis of the plot sale of final lot No. 24. The learned Advocate General argues and we think rightly that this is not the correct approach. The correct approach, he argues, is to determine the block rate from the plot rate of final Plot No. 24. He submits that an evaluation has to be made on the basis of the materials available in the evidence and after having made all reasonable allowances, on the evidence, a block rate has to be reached and that rate should be applied to final plots Nos. 9 and 42. In this connection the learned Advocate General has invited into attention to the decision of the Bombay High Court in *The Collector Vs. Ramchandra Harischandra*, where the relevant portion of the headnote is as under:

"The real test, which the market value can be arrived at is to gather from other sales what the whole land would have been likely to realise in the market about the time of acquisition. It is altogether wrong to assume that every square yard of land has a potential value, the present value of which is more than nominal."

The suggestion to value the land by splitting it up into separate portions each having its own value was deprecated. It may be that in certain cases the method of belting under which the land is divided for purposes of valuation into a front belt and a rear belt is more feasible but that method is also for the block as a whole. As held by Macleod, J. In the matter of Government of Bombay and Karim Tar Mahomed ILR(1909) Bom 325.

" Where no evidence has been adduced of sales in the neighborhood of such a large block of land as the one under reference, the evidence before the Court of sales of small pieces of land in the neighborhood enables the Court to give an opinion regarding the values of different portions of the block, and the value of the whole must be deduced from these."

Therefore, the approach should be to reach a block rate and that can be done, if the instance is of a plot rate, by making due allowances, i.e., it is necessary to find out what allowance should be made in respect of size and to reduce the rate of the land sale instance which is relied on as a comparable instance to the extent of that allowance. It is that rate which would be applicable to the large plot so far as the difference in size is concerned.

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(20) The last submission made on behalf of the appellant is founded on an alleged offer made by the land Acquisition officer in respect of final Nos. 37, 39 and 40. It appears that these final plots were also under acquisition but before an award could be made u/s 11, the plots were withdrawn from acquisition under Government orders. However, before they were so withdrawn the Land Acquisition Officer appears to have prepared his report for the approval of the Government and in what was made before the withdrawal of acquisition in respect of these three plots he valued final No. 39 at Rs. 30 per square yard. Mr. Nanavati relies on this statement in the award. His argument is that this statement has the same footing as an award and that the value of final plot No. 9 should be deduced from the offer made in respect of final plots Nos. 37, 39 and 40. His next submission is that even if this statement does not stand on the same footing as an award of the Court, it should be treated as an admission of the Land Acquisition Officer which is binding on him. The first argument maybe disposed of in brief. No award was ever made by the Land Acquisition Officer u/s 11 in respect of final plots Nos. 37, 39 and 40 because before he could make an award under that section these three plots were withdrawn from acquisition and he was not called upon to make an award. It is, therefore, difficult to see how the statement made in the award in respect of these three plots could be placed on the same footing as an award itself u/s 11. But assuming that this statement

has the same importance as an award u/s 11 even so it cannot be treated on the same footing as a sale instance. In this connection the learned Advocate General c pour attention to the decision of the Bombay High Court in special Land Acquisition Officer, Special Land Acquisition Officer, Bombay Vs. Lakhamsi Ghelabhai, . The argument advance before the Court was should considered for the purpose of comparable instance not only the instance of actual sale but instances of award made to the Court u/s 18 and also awards made by the Land Acquisition Officer earlier u/s 11. Both the arguments were rejected by the Court for different reasons. As regards the award of Land Acquisition Officer the Court said:

" The Land Acquisition Officer occupies no better position than that of an agent of Government for the purpose of making an offer. That offer may be accepted or rejected by a claimant, who, if dissatisfied with it may ask for a Reference. It is the Court who was to determine the question of valuation on evidence alone. The award thus being a mere offer, it is difficult to see how it can become evidence in another case in which different parties and different properties are concerned. Besides, an offer is t best opinion evidence, which cannot become admissible, unless the person making the offer as evidence gives evidence about it. Allowing an award as evidence, besides, is inconsistent with its is very nature for it is noting which final. It is at best an offer which is not binding either on the claimant or Government and is subject to its being aside by a Court."

Therefore, an award by the Land Acquisition officer cannot be treated on the same footing as a sale instance. But Mr. Mehta invites us in respect of the other part an award by a Court decision, namely, that an award by a Court f law cannot also be so treated, a different view has been taken by the Supreme Court Our attention was cc in this connection to the decision of the Supreme Court in Khaja Faizudin v. State of Huderbad, Civil Appeal No. 176 of 1962 dated 10-4-1963 (SC). The area there under acquisition was situated at village Budvel near Himayat Sagar. The Land Acquisition Officer awarded a certain amount compensation. On Reference made to the Chief Judge, small cause Court Hyderabad. The learned increased the rate of compensation. He awarded Rs. 125 per area for the rocky area and Rs. 700 per acre for the rest. He based his award mainly on there other awards relating to comparable lands and of approximately the same time. Those three awards has been made by the Chief Judge, Small causes Court , in other three cases and three the rate awarded in respect of comparable land was the rate which was awarded in the case before the Supreme Court. From the decision of the Chief Judge, small causes Court, there was an appeal other High Court changed the rate. It awarded Rs. 150 per acre for the rocky area and Rs. 350 per acre for the rest. In the Supreme Court the argument was that the High Court was in error in not taking into consideration the instance of three awards made by the Chief Judge, small Causes Court, in order three cases where the land acquired was of comparable date and quality. Their Lordships upheld that submission.

" Price paid for a land possessing advantages similar to those of the land acquired in and about the time of notification will also supply the data for assessment of compensation. If a sale deed of a land comparable in time and quality with the land acquired can be of evidentiary value equality clearly the awards of a lands will also be of valuable assistance in assessing the market value or by the award the Court fixes the market value of such a land having regard to the same principles which should guide a Court in fixing the value of the land acquitted. If at all, such an award would be better evidence as it could have the merit of an objective ascertainment of the market value on the basis of relevant evidence."

Therefore, this decision permits the Court of take into consideration awards made by a Court of law made a Court of law of comparable time and comparable land on the same footing as sale instances of comparable lands. It is argued on behalf of the appellant that the same principle should apply to an award made by the Land Acquisition officer u/s 11 and the further argument is that even though no award is actually made. The argument has no substance. The basis of the Supreme Court decision was that an award by based on objective ascertainment of market value on the light of the principles which should guide the Court in fixing the Court, it may be noticed, has u/s 26 the same force as a decree. It is a decision between the parties which is binding on them. There is noting binding on the claimant in respect of an award made by the Land Acquisition Officer u/s 11 much less is there anything binding on either side in respect of the observations made by the Land Acquisition Officer in a proposed award which does not ripen even to an offer u/s 11. The argument that those c made by the Land Acquisition officer in respect of final plots Nos. 37, 38 and 41 should be considered on the same footing as a sale instance cannot therefore be accepted. For the reason which we have just indicted the further argument that these observations amount to a binding admission of the Land Acquisition office, cannot also be accepted. It is then necessary to considered the submission of the learned Advocate General that even otherwise there is no comparable data to enable the Court to compare final plots Nos. 37, 38 and 40 with either final plot No. 9 or final plot No. 42.

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(21) Appeal partially allowed.