

(2011) 09 GUJ CK 0072
In the Gujarat High Court

Case No : First Appeal No. 1020 of 2007 To First Appeal No. 1030 of 2007

Ambalal Chhotabhai

APPELLANT

Vs

Special Laq Officer and 1

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

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

Citation : (2011) 09 GUJ CK 0072

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

Bench : Division Bench

Advocate : GM Amins 1, for the Appellant; Moxa Thakkar, AGP. for Defendant(s)
1-2, Rule Served for Defendant(s) 2, for the Respondent

Judgement

Honourable Mr. Justice Jayant Patel

1. As all the Appeals arise from the common judgment and award of the Reference Court, they are being considered by this common judgment.

2. The relevant facts are that for the project of Branch Canal of Sardar Sarovar, Unit No. 10, Ahmedabad, land at village Rampur, Taluka Dholka 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 9.10.1991. Notification u/s 6 of the Act was published on 6.10.1992. Award was passed u/s 11 of the Act on 31.12.1993 and the Land Acquisition Officer awarded compensation at Rs. 2.40 per sq. mtr. As the claimants were not satisfied with the compensation, they raised disputes u/s 18 of the Act and demanded compensation at Rs. 100/- per sq. mtr. The disputes were referred to the Reference Court for adjudication in Land Reference Acquisition Cases No. 445 of 1995 to 455 of 1995. The Reference Court at the conclusion of the Reference awarded additional compensation at Rs. 19.65 per sq.mtr. and also awarded increase in the the market value u/s 23(1A), solatium u/s 23(2) and interest u/s 28 of the Act. Under the circumstances, the present appeals before this Court.

3. Perusal of the judgment of the Reference Court shows that Reference Court has relied upon the factum of earlier acquisition of land at Dholka which is located at 4.00 Km. distance from village Rampura and thereafter it has relied upon the decision of the Reference Court at Exhibit 36 dated 25.1.2000 in Land Acquisition Case No. 587 of 1995 for acquisition of land at Dholka, wherein Notification u/s 4 of the Act was published on 19.9.1991. In the said case, compensation awarded was at Rs. 4.50 per sq. mtr. and Reference Court had awarded additional compensation at Rs. 95.50 per sq. mtr. totaling to Rs. 100/- per sq. mtr. as market value of the land at Dholka. The Reference Court having considered the said aspect and thereafter having found the difference in the location of the land at Dholka with village Rampura and the finding recorded by the Reference Court was that there is no much difference but thereafter the Reference Court recorded that looking to the location of the acquired land, the fertility shows market value at Rs. 22/- per sq. mtr. and thereafter as the amount of compensation was paid at Rs. 2.40 per sq. mtr. additional amount of compensation at Rs. 19.60 has been awarded.

4. The Learned Counsel appearing for both the sides during the course of hearing brought to our notice that by another Notification, the other land at village Rampura came to be acquired under the Land Acquisition Act by the different Notification u/s 4 of the Act dated 24.9.1991. In the said case also the Land Acquisition Officer had awarded compensation at Rs. 2.40 per sq. mtr. and the demand was made by the claimants for Rs. 100/- per sq. mtr. and those disputes were referred to the Reference Court for adjudication being Land Acquisition Cases No. 479 of 1995 to 499 of 1995 and the Reference Court had assessed the market value of the land at Rs. 22/- per sq. mtr. and the additional compensation was accordingly awarded. It has been submitted that against the said decision, the matter was carried in appeal by the original claimants being First Appeals No. 4509 to 4517 of 2009 and those appeals came to be heard by the learned Single Judge of this Court and as per the decision of this Court dated 22.2.2011, this Court found that the appropriate market value of the land can be assessed at Rs. 70/- per sq. mtr. and additional compensation at Rs. 48/- per sq.mtr. has been awarded and accordingly the appeals were allowed to that extent.

5. We may record that there is no time gap in the Notification u/s 4 of the Act in the matters for acquisition of land at village Rampura which came to be considered by this Court in First Appeal No. 4509 of 2009 and allied matters. In the said matters this Court further recorded the reasons at paragraph Nos. 10 to 17 as under:

[10] I have considered the Record & Proceedings in light of the submissions advanced by the rival side and I have also perused the impugned judgment and award rendered by the Reference Court. Considering the impugned judgment and award, there is no dispute that the Reference Court took into consideration earlier award rendered by the same Reference Court in Land Acquisition Case No. 587 of 1995 pertaining to the lands of Dholka. The Reference Court took into

consideration that so far as the lands acquired of Village: Dholka are concerned, the market value of those lands was fixed at the rate of Rs. 100/- per Square Meter. However, the Reference Court came to the conclusion that Dholka happens to be Taluka Headquarter and having more facilities available in Dholka than the facilities available in Village: Rampura. The Reference Court further observed that there is no much gap between the dates of Notification issued u/s 4 of the Act. So far as Rampura lands are concerned, the Notification u/s 4 of the Act came to be published on 24.09.1991 whereas for Dholka lands, the Notification u/s 4 of the Act came to be published on 19.09.1991. However, the Reference Court, after considering the above aspects of the matter, came to the conclusion that the market value of the lands in question should be at the rate of Rs. 22 per Square Meter. The Land Acquisition Officer has awarded the compensation at the rate of Rs. 2.40 paise per Square Meter and, therefore, the Reference Court granted additional amount of compensation at the rate of Rs. 19.60 paise per Square Meter.

[11] The bare perusal of the impugned judgment and award of the Reference Court suggests that the Reference Court took into consideration the distinguishing features between Village: Dholka and Village: Rampura and so far as those distinguishing features are concerned, there cannot be any dispute. However, after enumerating the distinguishing features in the impugned judgment and award, no cogent and sufficient reasons are assigned as to how the Reference Court came to the conclusion that the appropriate market value of the land under acquisition of Village: Rampura should be determined at the rate of Rs. 22 per Square Meter.

[12] As stated above, during the course of arguments, Mr. Amin, Learned Counsel for the Appellants has relied upon a decision of this Court dated 14.09.2009 rendered in the case of Rambhai v. Special Land Acquisition Officer and Ors. in First Appeal No. 714 of 2007. Considering the aforesaid decision of this Court, it transpires that certain lands situated in the outskirts of Village: Trasad, Taluka: Dholka came to be acquired for the identical project namely Narmada Canal purpose. The Notification u/s 4 of the Act came to be published on 07.08.1991. The Reference Court in the said case, fixed the market price of the acquired lands of Village: Trasad at Rs. 21 per Square Meter. The judgment and award rendered by the Reference Court came to be challenged by one of the claimants in the said case before this Court by preferring First Appeal No. 714 of 2007. This Court took into consideration the earlier judgment and award passed in Dholka matter wherein the market value of the lands acquired came to be fixed at the rate of Rs. 100 per Square Meter (the decision dated 30.11.2000 rendered in First Appeal Nos. 1439 of 2002 and 1454 of 2000). In this decision, this Court took into consideration that there are distinguishing features so far as the lands situated in the outskirts of Village: Trasad are concerned. It further reveals that the distance between Village: Dholka and Village: Trasad was stated to be 2 Kilo Meters. This Court also took into consideration certain decisions rendered by the Hon'ble Apex Court providing guidelines for determining just

and fair compensation in land acquisition matters. Ultimately, in paragraph No. 20 of the said decision, this Court has observed as under:

20. In view of that observation made by Division Bench of this Court while confirming award passed in respect of village Dholka and considering development charges to be deducted 25% or 33%, if that has to be applied while keeping in mind as observation made by Apex Court reported in AIR 2004 SC 1185, according to my opinion, from Rs. 100/- if it is reduced to 25% or 33%, then instead of Rs. 19.40ps considering amount awarded by Reference Court and awarded by Spl. Land Acquisition Officer total comes to Rs. 21/-, is to be enhanced upto Rs. 70 instead of Rs. 100 being a market price or total compensation per sqmt, which consider to be reasonable amount fixed as market price of land in question acquired for village Trasad.

[13] Thus, this Court determined the compensation regarding the lands situated in the outskirts of Village: Trasad at the rate of Rs. 70 per Square Meter.

[14] Ms. Sachi Mathur, learned AGP for the Respondent No. 1 - State has submitted that the decision rendered by this Court in First Appeal No. 714 of 2007 cannot be made based for the purpose of ascertaining the market value of the lands under acquisition in the instant appeals for the simple reason that as emerged from the evidence on record of Village: Trasad case, the distance between Village: Dholka and Village: Trasad is only 2 Kilo Meters whereas the distance between Village: Dholka and Village: Rampura is 4 Kilo Meters and, therefore, no parity can be given with the lands situated in the outskirts of Village: Trasad.

[15] In the background of the aforesaid submissions, if the relevant aspects emerge in the instant appeals as well as the relevant aspects revealed while perusing the decision of this Court in First Appeal No. 714 of 2007 are considered, it becomes clear that in the instant appeals of Village: Rampura, the Notification u/s 4 of the Act came to be published on 24.09.1991 whereas for the acquisition of lands situated in the outskirts of Village: Trasad, the Notification u/s 4 of the Act came to be published on 07.08.1991. Under such circumstances, there cannot be said to be much gap between the relevant dates of the Notifications. Moreover, neither Village: Rampura nor Village: Trasad is Taluka Headquarter like Village: Dholka. In the decision rendered by this Court in First Appeal No. 714 of 2007, while ascertaining just and fair market value of the lands under acquisition of Village: Trasad, this Court took into consideration many factors like fertility and potentiality of the lands, infrastructural development in Village: Trasad etc. Thus, while fixing just and fair market value of the lands, this Court did not solely take into consideration the distance between Village: Dholka and Village: Trasad. The proximity of distance is one of the factors, but not the sole factor.

[16] Learned Counsel for the Appellants drew my attention to the map, Ex. 49 produced by the State in the instant appeals and it is submitted that there is a

common boundary between Village: Dholka and Village: Rampura. When such is a situation, it can safely be said that mere distance between Village: Dholka and Village: Trasad and between Village: Dholka and Village: Rampura may not play any vital role, while fixing the market value of the lands under acquisition in the instant appeals.

[17] In the aforesaid view of the matter, I am of the opinion that it would be in the interest of justice if the just and fair market value of the lands under acquired in the instant appeals is fixed at the rate of Rs. 70/- per Square Meter. The Reference Court awarded Rs. 22/- per Square Meter and, therefore, the said amount shall have to be deducted. In the result, the additional amount of compensation which the claimants are entitled to claim, shall have to be calculated at the rate of Rs. 48 per Square Meter. Therefore, the present appeals deserve to be partly allowed accordingly.

6. The reasoning recorded in the aforesaid matters goes to show that this Court considered the aspects of location of the land. It also considered the earlier decision of the Division Bench of this Court as well as of the learned Single Judge for acquisition of the land at village Trasad. We find that when for acquisition of the land at the very village Rampura the market value was fixed at Rs. 70/- per sq. mtr. and same can be considered for the purpose of the present matters.

7. If the aspect of reasoning recorded by the Reference Court is examined, it appears that the finding has been recorded by the Reference Court for giving comparison to the location of the land at village Dholka and at village Rampura but thereafter without specifying any reason for reduction of the value, the Reference Court has assessed the market value at Rs. 22/- per sq. mtr. Therefore the said assessment without there being any reasons cannot be sustained. As the learned Single Judge of this Court in the above referred First Appeal has recorded the reasons for assessment of the market value of land at village Ramura at Rs. 70/- per sq. mtr., we need not repeat the said aspect. The additional circumstance which came for consideration in the present matters is that even if it is considered that Dholka being a taluka town will have more development in comparison to Rampura then the value is not to be treated at par of both the lands. In normal circumstances, even if the boundary of village Rampura is touching to Dholka which is a taluka town, there will be difference of about 30% in the valuation of the land inasmuch as the land of adjacent village which is located nearby taluka town will in any case less by 30%. Applying the said formula, the market value of the land would also come to Rs. 70/- per sq. mtr.

8. In view of the aforesaid discussion, we find that the same view as was taken by this Court in First Appeal No. 4509 of 2009 and allied matters deserves to be taken in the present case.

9. As the Reference Court has awarded the compensation at Rs. 22/- per sq. mtr. the resultant effect would be that the original claimants shall be entitled to additional compensation at Rs. 48/- per sq. mtr.

10. The other benefits as awarded by the Reference Court are by way of statutory consequence, hence it is observed that the original claimants shall also be entitled to statutory benefits under Sections 23(1A), 23(2) and 28 on the aforesaid additional amount of compensation.

11. In view of the aforesaid discussion, it is held that the claimants will be entitled to compensation at Rs. 70/- per sq. mtr. for the land in question and the amount which has been paid by the Special Land Acquisition Officer and the amount, if any, paid pursuant to the judgment and award of the Reference Court shall be adjusted and the additional amount of compensation shall be paid to the original claimants.

12. Additionally, the claimants shall also be entitled to the increase in the market value u/s 23(1A), solatium u/s 23(2) and the interest u/s 28 of the Act on the aforesaid amount of compensation. The judgment and award passed by the Reference Court shall stand modified to the aforesaid extent.

13. The appeals are partly allowed. Considering the facts and circumstances, there shall be no order as to costs. If the amount of compensation has not been paid, the additional amount of compensation, if any, required to be deposited shall be deposited with the Reference Court within a period of eight weeks from the receipt of the order of this Court.