

(2002) 09 GUJ CK 0079

In the Gujarat High Court

Case No : First Appeal No"s. 1252 to 1267 of 1988

Bhagubhai Damodarbai

APPELLANT

Vs

Special Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2002) 09 GUJ CK 0079

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : A.J. Patel, for P.T. Patel, for the Appellant; A.D. Oza, Government Pleader for Respondent No. 1 and Bhatt, for R.P. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—The present First Appeals are filed being aggrieved by the judgement and award dated 15th January, 1988 passed in Land Reference Case Nos. 1 to 10 of 1985, 21 to 25 of 1985, 26 of 86, 28 to 36 of 1986, 40 of 1986, 325 of 1987 and 326 of 1987 by the learned Assistant Judge, Surat, whereby all the Land Reference Cases are partly allowed with proportionate costs. It is declared that the claimants are not entitled to get additional compensation, but are entitled to get only solatium at the rate of 30% instead of 15% towards the whole compensation and also entitled to get interest at the rate of 9% from the first year from the date of taking over the possession of the acquired land and subsequently at the rate of 15% till realisation. The learned Judge was also pleased to declare that, as declared by the Honourable Apex Court in the case of Lady Tanumati, no Court fees is to be paid by the claimants. The original judgement was ordered to be kept in Land Reference Case No.5 of 1985 and a copy thereof in all Land Reference Cases.

2. Facts giving rise to the present appeals, in nutshell are that a preliminary notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') were published in the Gujarat Government Gazette Part-IB on

15th July, 1982, and 5th March, 1981 for Village Gothan, and on 3rd July, 1982 and 9th July, 1981 for Village Bharthan. Subsequently, notifications u/s 6 of the said Act were published in the Gujarat Government Gazette Part-IB on 18th September, 1982 and 29th May, 1982 for Village-Gothan and on 18th September, 1982 and 3rd July, 1982 for Village-Bharthan. The purpose for acquiring the lands was to construct a new railway line for Hazira Fertilizer Complex of Krishak Bharati Co.op. Society Ltd., at Village Bharthan, Tal.Olpad, District: Surat. The possession of the land of Villages Bharthan and Gothan was taken on 17/08/1982, 05/09/1982, 07/09/1982, 08/09/1982, 10/09/1982, 30/07/1982 and 14/10/1982 and the awards were declared on 26th April, 1984, 5th May, 1984 and 18th November, 1984 by the Land Acquisition Officer, Surat. The appellants, being aggrieved of the awards passed by the Land Acquisition Officer, Surat, filed various Land Reference Cases, which were decided by the learned Assistant Judge by the aforesaid judgement and award, against which the present First Appeals are filed.

3. To facilitate the Court, Mr.A.J.Patel, learned Advocate appearing for the appellants, produced a statement in tabular form setting out the details like Appeal No., Land Reference Case No., Date of Notification u/s 4, Survey No., area of the land under acquisition in each individual case, Compensation claimed before the Land Acquisition Officer, Compensation awarded by the Land Acquisition Officer, Compensation claimed in the Court below, Compensation awarded by the Court below and Compensation claimed in each Appeal. He also produced a statement setting out the details of the sale deeds with necessary details of each of the sale instance like the document produced at Exhibit No., nature of transaction, date of the document, name of the vendor, name of the vendee, survey no., area of the land, land to which the document pertains, amount of sale consideration and rate per square metre. Both these tabular statements are taken on record.

4. The learned Advocate appearing for the appellants, assailed the judgement and award of the learned Judge contending that the learned Judge has committed an error in not taking into consideration the most relevant and material evidence of the sale instances of the lands, adjoining to the lands under acquisition. He submitted that looking to the location, frontage, proximity and potentiality of the acquired lands, the amount of compensation claimed by the claimants is required to be awarded. He submitted that taking into consideration the development in the surrounding of the lands under acquisition, the learned Judge ought to have held that the same was very much beneficial to the present and future potential values of the land under acquisition. He submitted that sale instances were produced at Exhibits 70 to 79 and the same ought to have been taken into consideration by the learned Judge. He submitted that the learned Judge has committed a grave error by not taking into consideration the said sale instances without there being any justifiable reason for the same. He also submitted that the learned Judge has erred in making certain observations and drawing conclusions which were not warranted by the facts of the case as these

observations and conclusions were based on probabilities only. He submitted that the irrefutable documentary evidence of sale instance is on the record of the case and the same could not have been overlooked by the learned Judge for any reason.

5. The learned Advocate appearing for the appellants submitted that the claimants have restricted their claim to Rs.15=00 per sq.mtr. in all these appeals, irrespective of the fact that in some cases, where the land in question was 'Non-Agricultural' (N.A.) land and the Land Acquisition Officer has awarded a sum of Rs.6.50 per sq.mtr. while in rest of the cases, the Land Acquisition Officer has awarded Rs.3=00 per sq.mtr. He submitted that the claim before the Land Acquisition Officer was @ Rs.20=00 per sq.mtr. in all the cases. After the award of the Land Acquisition Officer, at the rate of Rs.3=00 per sq.mtr. in some cases, the details of which is set out in the tabular statement, the amount of difference is Rs.17=00 per sq.mtr. The claimants have restricted their claim as aforesaid. He submitted that the facts of each case are set out in detail by the learned Judge in paragraphs 1 to 9, which are undisputed. He submitted that the ground which is required to be considered in these First Appeals is that when a most relevant and material evidence in the form of sale instances of a very close period to the date of acquisition, is available, whether the same could have been discarded by the learned Judge on any ground, much less on the ground set out by the learned Judge for doing the same. He submitted that the compensation on the basis of the 'yield from the land' is concerned, the same is not pressed in view of the fact that the claimants are able to produce the sale instances of 31st March, 1982, and 30th June, 1982, (Notification u/s 4 is dated 5th March, 1981, 3rd July, 1981 and 15th July, 1982).

6. The learned Advocate appearing for the appellants relied upon a decision of this Court in the matter between Collector of Panchmahals Vs. Desai Keshavlal Panalal, , to contend that the best method of determination of the market value of the land under acquisition, is the instances of sale of same or similar lands in locality must also be near in point of time to the date of notification published u/s 4 and proof of such instances is the material evidence.

7. The learned Advocate for the appellants next relied upon a judgement of the Honourable High Court of Bombay in the matter between The Assistant Development Officer Vs. Tayaballi Alibhoy Bohori, . He submitted that the Court was pleased to hold that when it is a question of determination of the market value, post notification sales should not be ignored altogether, and that in land acquisition matters, the Court should take a broad view based on the evidence and favourable to owner in estimating the value.

8. The next decision relied upon by Mr.A.J.Patel, learned Advocate for the appellants, is in the matter between Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat, . He submitted that for determination of the market value of the land acquired, the sale of the adjacent land is relevant. The agreement of sale which is 5 months later than notification u/s 4, and when

there is no evidence to the effect that there was sharp or speculative rise in price after acquisition, though the acquisition is for construction of industrial estate, the same cannot be ignored. He submitted that in the case before the Honourable Apex Court, there was a sale deed over a year prior to the notification of acquisition in a distress sale by a Government auction. In that circumstance, it is observed that the price appearing in the sale does not furnish reliable guidance. The Honourable Apex Court in the said case had held that sale deed cannot be relied upon when to prove the instances of sale, neither the vendor nor the purchaser nor any person conversant with the sale was examined. He submitted that in the case on hand, a person, who is the purchaser of the land, is examined and, therefore, the learned Judge ought to have relied upon the sale instances and should have taken the sale price as basis for awarding reasonable compensation.

9. The learned Advocate for the appellants alternatively submitted that in the event of claimants not being able to prove the sale instances, which is not the case in the case on hand, the learned Judge ought to have taken into consideration the aspects of location, frontage, situation, proximity and potentiality of the acquired lands, and should have awarded reasonable compensation, as held by the Honourable Apex Court in the matter of Chintaman and another Vs. State of Maharashtra and another, He relied upon the following observations of the Honourable Apex Court made in paragraph 3 which are as under :

"... .. But the fact that the lands are very near to the city and possessed of a potential value is not in dispute. Under these circumstances, we think that the appropriate course would be that the market value of the lands in respect of which Rs.5,000=00 was awarded by the Collector shall be determined Rs.8,000=00 per acre and the lands for which Rs.3,000=00 was awarded, would be valued Rs.6,000=00 per acre. Similarly, in the case of second notification, the market value would be determined @ Rs.4,000=00 per acre."

10. The learned Advocate for the appellants, relying upon a judgement of the Honourable Apex Court in the matter of Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, , contended that as was laid down by the Honourable Apex Court, the Court, while considering the amount of compensation for the lands acquired, should be alive to the aspect like Aurangabad being of tourist importance and industrially developed city, and, therefore, potentially, the value of the lands is to be kept in mind, the learned Assistant Judge should have kept similar aspect about the lands under acquisition.

11. The learned advocate for the appellants cited a decision of the Honourable Apex Court in the matter between Thakarsibhai Devjibhai & Ors. Vs. Executive Engineer, Gujarat & Anr., reported in 2001 (2) G.L.H. 583, to contend that the question of largeness of the area under acquisition is to be determined with reference to each land owner. The learned Advocate submitted that the

Honourable Apex Court has observed that the acquisition may be that of large piece of land, but then, while considering the question of compensation, one has to scan the acquisition of each land owner. In the present case also, the acquisition in each land reference is ranging from 560 sq.mtrs. to 5840 sq.mtrs. On scrutiny of the tabular statement submitted by Mr.Patel, it can be noticed that out of 16 cases of land acquisition, only in six cases, the area is above 2,000 sq.mtrs., which will mean that in 10 cases, the area under acquisition is less than 2,000 sq.mtrs. In some cases, the area under acquisition is only 560 sq.mtrs. This assumes importance because the sale instances, which are cited, are of 2,500 sq.mtrs. in four instances each, and 3,372 sq.mtrs. in six instances each.

12. The learned Advocate for the appellants submitted that the learned Judge, while appreciating the deposition of Shri Rasiklal Pranshanker Raval, Exhibit 68, has committed an error. He, by inviting the attention of the Court to paragraph 29 of the judgement, wherein, the evidence of Shri Rasiklal Pranshanker Raval, is discussed, submitted that the learned Judge has tried to brush aside this important witness by observing that,

"... .. Hence, as they wanted to purchase the lands, they have purchased the land. He clearly admits that as they were in need of the lands, at the highest rate, they have purchased the said lands and purchased the said land as per the price demanded by the seller. He clearly admits that he has not inquired regarding the market value of the neighbouring lands. But as he wanted to purchase the land, without inquiring, they have purchased the said land as per the amount demanded by the vendor. It is in his evidence that after purchasing the said land, he has not tried to make it N.A. land as it is coming in the industrial zone. It is in his evidence that only for the agricultural purpose, they have purchased the said land. He admits that they did not give the details regarding the payment for the said lands, which goes to show that as he wanted to purchase the said land, without inquiring about the market value of the lands, or without inquiring the particulars of the neighbouring lands, as per the higher rate, demanded by the seller, they have purchased the said lands. So, the sale instance of the said land cannot amount to a real market value. "

He submitted that the learned Judge has erred in appreciating the evidence of the said witness. He invited the attention of the Court to the aforesaid deposition in detail. He submitted that there is a lengthy cross examination of the said witness. All type of suggestions are put to this witness to contend that the sale was not a genuine sale. The witness is asked as to why has he got 10 documents executed. The deponent says that he does not have any specific reason for which different sale deeds were executed, but, then, merely because a purchaser gets different sale deeds executed, nothing adverse can be inferred. The deponent has stated that he did try to pursue the vendor to sell the land at the rate of Rs.30,000=00 per `vigha", but as he did not agree to that, he purchased the land at the rate of Rs.36,000=00 per `vigha". There is cross examination of the witness to suggest that he did not have the amount to pay as sale consideration,

but then, the witness has deposed that he had sold his agricultural land and that amount was kept in a Bank for last few years and out of that, he purchased the land in question. A suggestion was made to the effect that the amount of consideration was deposited by the vendor himself and from that the witness had paid the sale consideration, to which the deponent not only denied, but, pointed out that the land was purchased out of the sale proceeds of his own agricultural land.

13. On perusal of the evidence of Shri Rasiklal Pranshanker Raval, there is no reason for which his evidence can be discarded. Once the evidence of the vendee (the purchaser) is found acceptable, the sale instances, as held by various authorities, are most relevant and material evidence to determine the market value of the lands under acquisition and accordingly, compensation is required to be awarded.

14. Mr.M.R.Bhatt, learned Advocate appearing for the acquiring body viz. Krishak Bharti Co.operative Society Limited, respondent no.2 herein, tried to support the judgement of the learned Judge. He contended that the learned Judge was right in only partly allowing the Land Reference Cases and not awarding any additional amount of compensation. He assailed the evidence of Shri Rasiklal Pranshanker Raval, the purchaser in the sale instances, which are produced with a prayer to rely upon for determination of just amount of compensation for the land under acquisition. He read the evidence, Exhibit 68, in toto. He emphasised each sentence of the cross examination of the said witness, but, that was all in vain because on close scrutiny of the said evidence, it is crystal clear that the witness has not deposed anything, which will lead the Court to discard his evidence. The learned Judge has used a term, "unwilling seller" and an observation is made that "He purchased the land because he wanted to purchase the land". Both these do not convey any clear idea, in fact, the learned Judge is not able to convey anything by them. There is no term like "unwilling seller". The learned Judge has used this term in reference to a statement made by the witness that the seller had told him that he will not sell the land for a sale consideration less than Rs.36,000=00 per `vigha". On the contrary, this shows that the vendor was very much sure of the value of his lands and not only that. there is a buyer who has purchased the said parcel of land. At the time of argument, it was enquired from the learned Advocate appearing for respondent no.2. that if he has any information to the effect that these sale transactions are reversed at any subsequent point of time, then what is contended may be found acceptable by the Court. The contention is that this was not a genuine sale and the same was executed only with a view to get a higher amount of compensation, which was subsequently reversed by the parties. The learned Advocate submitted that he does not have any such information. He also had to agree that after having asked the deponent that in the year 1982, his monthly salary was only Rs.2,000=00; that his family did not have any other source of income; and, that he did not have any other savings, the whole case was toppled down the moment the witness deposed that before 3 to 4 years, they had sold their

agricultural lands and that amount was lying in a bank account and out of that sale proceeds, they had purchased the present lands.

15. The learned Advocate for respondent no.2 relied upon a judgement of the Honourable Apex Court in the matter between The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omana Tumari and others etc., , to contend that an expert's report produced by the claimant giving the market value of the acquired lands can be acted upon only if material, on the basis of which it is based, is produced in the Court and its authenticity is proved. The said decision has no application to the facts of the present case inasmuch as in the present case, sale instances are very much on the record of the case of none other than the vendee himself is examined in the case. There is no question of Court relying upon a report of any expert.

16. The learned Advocate for respondent no.2, next relied upon a judgement of the Honourable Apex Court in the matter between State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, , to contend that the sale instance relating to small parcels of lands cannot be said to be comparable sale instances. and market price of the acquired land cannot be based on it. The said authority has no application to the facts of the present case. As discussed herein above, the area of the lands under acquisition ranges from 560 sq.mtrs. to 5840 sq.mtrs., and the sale instances are in two sets, one of 2500 sq.mtrs. and the other one of 3372 sq.mtrs. 17. The learned Advocate appearing for respondent no.2 placed heavy reliance on a decision of the Honourable Apex Court in the matter between Karan Singh & Ors. vs. Union of India, reported in AIR 1977 SC 3889. He contended that when sale instances are subsequent to the date of notification u/s 4, it is for the claimant to show by reliable evidence that there was no upward rise in price of the land in between the date of notification and date of sale instances. He submitted that in the present case, notifications u/s 4 are dated 5th March, 1981, 3rd July, 1981 and 15th July, 1982, while the sale instances are that of 31st March, 1982 and 30th June, 1982. He submitted that it is obligatory on the part of the appellants-original claimants (land owners), to satisfy the Court that between 5th March, 1981 and 31st March, 1982 there was no upward rise in price of the land during this period. He submitted that this burden is not discharged by the claimants herein and, therefore, the sale instances were rightly not relied upon by the learned Judge and the First Appeals may not be allowed. There is substance in the submissions made by Mr.Bhatt.

17. In the present case, the sale instances are of a year later than the date of notification u/s 4 of the said Act. As per the decision of the Honourable Apex Court, the claimants ought to have pleaded and proved that there was no upward rise in price of the land. There is no evidence by either party either alleging upward rise or denying the same. In such circumstances, it will be in the interest of justice if the said contention is taken care of by properly reducing the sale price of the sale instances in question. The sale instances dated 31st March, 1982, which are for the land admeasuring 2500 sq.mtrs., having sale

consideration of Rs.31,499=00, works out to the price of Rs.12.60 per sq.mtr. By not applying a very exact mathematical calculation, the earliest notification u/s 4 is dated 5th March, 1981. Thus, there is a time gap of one year. Under the settled legal position by various authorities of the Honourable Apex Court, there has to be a reduction of 10% to reach the market value, on the date of issuance of the notification u/s 4. If that is so, from Rs.12.60 per sq.mtr., Rs.1.26 is to be deducted and again without making the calculation in rupees and paise, Rs.11=00 can be taken as the market value of the land in question per square metre.

18. Mr.A.D.Oza, learned Government Pleader appearing for respondent no.1, submitted that the real contest is between the claimants and the acquiring body, who will have to bear the burden. He submitted that it is for the later to support the judgement of the learned Judge with more vehemence than the Government. He submitted that it will be in the fitness of things if the decision of the Honourable Apex Court in the matter of Karan Singh vs. Union of India (Supra) is kept in mind while deciding the appeals.

19. Taking into consideration the totality of the case and taking into consideration the fact that the sale instances are near in point of time and are also of the land adjacent to the lands acquired, which can be noticed even from the Survey No. and Block No. of the land under acquisition and of the land under the sale instances, interest of justice will be served if the amount of compensation is enhanced to Rs.11=00 per sq.mtr. in place of Rs.6.50 and Rs.3=00 per sq.mtr.

20. In the result, the First Appeals are allowed. The amount of compensation is raised to Rs.11=00 per sq. mtr. in all the cases. That means in the cases where Rs.6.80 per sq.mtr. is awarded, additional Rs.4.20 per sq.mtr. will be awarded, and in the cases where Rs.3=00 is awarded, additional Rs.8=00 will be awarded.

In view of the judgement of the Honourable Apex Court in the matter of Sunder vs. Union of India, reported in 2001 (3) GLH 446, the claimants will be entitled to all statutory benefits like "solatium" and the interest on the whole of the amount. It is further clarified that the claimants will be entitled to receive interest on the "solatium" amount also at the rate of 12% from the date of notification. No order as to costs.