

(2009) 10 GUJ CK 0086

In the Gujarat High Court

Case No : First Appeal No's. 4630 and 6867 of 1999

Bhanushankar Oghadbhai Mehta (Decd.) through LRs. and
Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Easements Act, 1882 — Section 15

Land Acquisition Act, 1894 — Section 11, 16, 18, 23(1), 23(1A)

Citation : (2010) 1 GLH 239 : (2010) 51 GLR 607

Hon'ble Judges : Mohit S. Shah, J;K.M. Thaker, J

Bench : Division Bench

Advocate : P.V. Hathi and B.D. Karia, Nos. 1, 7, 7.2.1 and 9 and Maulin Barot, Nos. 2, 4, 4.2.1, 4.2.2, 5, 5.2.1, 5.2.2, 6, 8, 10 and 11, for the Appellant; Nikunt Raval, A.G.P. for Defendant No. 1 and M.B. Gandhi, for Defendant No. 2, for the Respondent

Judgement

K.M. Thaker, J.—The captioned First Appeal No. 4630 of 1999 and the Cross Appeal being First Appeal No. 6867 of 1999 preferred u/s 54 of Land Acquisition Act, 1894 (hereinafter referred to as the "Act" for short) read with Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code" for short) are directed against the award dated 29-4-1999 (read with further order dated 4-5-1999 below Exh. 335) passed by the Joint District Judge, Rajkot, in Land Reference Case No. 737 of 1984 which arose from the award dated 29-6-1983 passed by the Land Acquisition Officer (L.A.O. for short).

1.1. The Reference Court has, by the impugned judgment and award dated 29-4-1999, granted additional compensation at the rate of Rs. 23-50 per sq.mtr. and has also allowed other statutory increases on such additional compensation. Aggrieved by the rate of additional compensation determined by the Reference Court, the appellant(s) have preferred the appeal on the ground that the rate for compensation and the market value determined by the Reference Court are not

only inadequate, but are also arbitrary and unreasonable.

1.2. The acquiring body, Gujarat Industrial Development Corporation (G.I.D.C. for short), is also aggrieved by the aforesaid judgment and has filed the above-mentioned Cross Appeal, mainly on the ground that the rate for additional compensation fixed by the Reference Court is excessive, arbitrary and without support of any evidence.

1.3. Since, the First Appeal No. 4630 of 1999 and the Cross Appeal being First Appeal No. 6867 of 1999 arise from the common award of the Reference Court, the same are heard and decided by this common judgment and for the sake of convenience the land owners are referred to, in this common judgment, as appellants and the acquiring body and the State Government are referred to as the opponents.

2. It was vide the letter dated 17-7-1970 that the Industry, Mines and Electricity Department of the State of Gujarat declared the desire to acquire the lands in question for the public purpose of establishing an industrial estate on the outskirts of Rajkot town. Consequently, the Special L.A.O. initiated proceedings for acquisition of land bearing Survey No. 207 and other lands. The notification u/s 4 of the Act was published in the Government Gazette on 10-9-1970 whereas the notification u/s 6 of the Act came to be issued on 9-3-1973. The land sought to be acquired by virtue of the said notification included the lands of the appellant(s) bearing Survey No. 207/1, 207/2 and 207/3. The captioned appeals are concerning said 3 parcels of lands only.

2.1. After considering the material available on record as well as the objections of the appellant(s) the L.A.O. passed an award u/s 11 of the Act on 29-6-1983 whereby he awarded Re. 1-50 per sq.mtr. towards the compensation along with the solatium at the rate of 15%. He also awarded other statutory benefits.

2.2. Being aggrieved by the said award the appellant(s) sought reference u/s 18 of the Act which was made by the Competent Authority and culminated into the Land Reference Case No. 737 of 1984. The appellant(s) demanded compensation at the rate of Rs. 60 per sq.yard. (i.e. Rs. 71/- per sq.mtr.).

2.3. During the proceedings of the aforesaid Land Reference Case the claimants examined six witnesses viz. Mr. Mehta (Exh. 116), Mr. A.D. Lakhani (Exh. 217), Mr. Haribhai Khodabhai (Exh. 221), Mr. Nathalal Bhanjibhai (Exh. 227), Mr. S.J. Ashar (Exh. 235) and a Registered valuer, Architect and Engineer Mr. H.H. Sanghvi (Exh. 207) The opponents also examined six witnesses viz. Mr. Bhagvanjibhai Nathani (Exh. 270), Mr. Babubhai Hansrajibhai (Exh. 301), Mr. Indrabhai V. Vohra (Exh. 305), Mr. V.R. Jasani (Exh. 316) and Surveyor Mr. A.D. Chauhan as well as retired Deputy Town Planner Mr. Laxmanbhai Nagarbhai (Exh. 263). The contesting parties had produced diverse documents.

2.4. After conclusion of evidence as well as the submissions of both sides, the Reference Court passed the impugned award dated 29-4-1999 by virtue of which

the Reference Court granted additional compensation at the rate of Rs. 23-50 per sq.mtr. making total compensation to the tune of Rs. 25-00 (23-50 + 1.50 as per the award of L.A.O.). The additional amount at the rate of 12% from the date of notification until date of taking of possession and solatium at the rate of 30% (after adjusting solatium at the rate of 15% already awarded by the L.A.O.) and interest at the rate of 9% for the first year from the date of possession, and thereafter, at the rate of 15%, also came to be allowed by the Reference Court. The claimants, who had claimed compensation at the rate of Rs. 71 per sq.mtr. before the Reference Court, feel dissatisfied with and aggrieved by the award of the Reference Court. As aforesaid, the opponent is also aggrieved.

3. Mr. P.V. Hathi learned Counsel with Mr. B.D. Kariya learned Advocate has appeared on behalf of the claimants and Mr. M.B. Gandhi with Ms. Trusha Gandhi, learned Advocate has appeared on behalf of the acquiring body and Mr. Nikunt Raval learned A.G.P. has appeared on behalf of the opponent No. 1-State of Gujarat. We have heard the Counsel of respective parties at length.

4. Mr. Hathi learned Counsel for the claimants submitted that the Reference Court has committed error in not determining the market price of the land in question and awarding compensation at the rate of Rs. 71 per sq.mtr. He submitted that the learned Court has ignored the sale instances placed on record by the appellants, though the same were duly proved by examining the vendor or vendee. He also submitted that various observation and conclusions of the Reference Court are contrary to the voluminous documentary evidence produced on record by the appellants including the sale instances as well as valuation report. The Counsel for the appellants further submitted that the Reference Court also committed error in refusing compensation for the well on the land bearing Survey No. 207/4 (in which allegedly the appellants had Vi share) despite the evidence that the water drilled out of the said well was used for pre-existing G.I.D.C. shade holders. The appellant's Counsel also assailed the action of deducting the amount towards Income Tax from the payment of interest component. He also made an "alternative submission that in any case the learned Court ought to have awarded the compensation at the rate not less than Rs. 58-50 per sq.mtr. since the said rate was established by virtue of valuation report (Exh. 208). He relied upon Exhs. 139, 140 and 141 pertaining to Survey Nos. 265 and 640 and claimed that the said documents were best evidence to determine market value. He also demanded interest on the amount of 12% increase and solatium and also claimed that 12% increase should be granted every year i.e. cumulatively. Mr. Hathi, while clarifying the claim in respect of 24 guntha land, submitted that what the appellants are claiming is not acquisition compensation but compensation for loss of easementary right over the said land. Mr. Hathi also submitted that learned Court erred in not awarding compensation for land admeasuring 20.25 sq.mtr. and in rejecting the request for interest on solatium and also compensation for construction. Mr. Hathi relied upon the judgment in National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, to submit that the non-consideration of the valuer's report by Reference Court is bad and the

damage suffered by the owner post-notification also should be considered. Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, he relied to submit that exemplars for small plots cannot be disregarded and that deduction of only 10% should be allowed. On Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, , he placed reliance to urge that sale-deeds can be relied on even without examining vendor/vendee. He also relied on The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, to urge that instance of small parcel of land also can be relied-on in matter pertaining to acquisition of large chunk of land. On Sunder Vs. Union of India, he relied to claim interest on solatium.

5. Per contra, Mr. Gandhi learned Advocate for the acquiring body submitted that the appellants' grievance and challenge against the award in question is wholly unjustified and unsustainable and that the appellants are not justified in claiming higher rate for compensation. He submitted that in fact the rate at which the learned Court has awarded compensation deserves to be reduced and deserves to be brought to reasonable, just and equitable level. In his submission, the rate awarded by the L.A.O. is just and adequate. Mr. Gandhi also submitted that the land admeasuring 24 gunthas was previously acquired by the Municipality for the purpose of pipeline and the landowners were paid appropriate compensation at the relevant time, and that therefore, the claim for compensation for alleged loss of easementary right is unjust and untenable and is rightly rejected by L.A.O. and also by Reference Court. Objecting to the appellants grievance about measurement, opponents Counsel submitted that the so-called dispute regarding measurement cannot be gone into by this Court.

5.1. He submitted that the Reference Court erred in not appreciating that the Court erred in granting compensation for the alleged 20 gunthas waste land and that actually such land was not included in the acquisition. He also submitted that in any case compensation at the same rate i.e. at Rs. 25/- per sq.mtr. could not have been granted in respect of alleged 20 gunthas land which even as per appellants, was waste land (kharabo). In his submission even slight reliance could not have been placed on the sale instances produced on record by the appellants for the reason that the said sale instances were of lands which were converted into non-agricultural lands and were in respect of lands situate on the opposite Bank i.e. other side of the river and they cannot be, by any yardstick, considered as comparable instances. While not accepting that the agreement between G.I.D.C. and the land owner of immediately adjoining parcel of land (i.e. appellant's brother) could have been taken as the basis, he submitted that the additional compensation, in any case, could not have been more than the said agreement between G.I.D.C. and the other land owner.

5.2. Mr. Gandhi made serious grievance about a document viz. a report produced on record by the Deputy Town Planner during his evidence (Exh. 263) and submitted that the Reference Court arbitrarily declined to Exh./accept the entire

document in evidence and in assigning Exhibit number only to the signature petition. So far as the said objection is concerned, in view of the real and substantive controversy and the view which we are taking, it is not necessary to enter into and decide the said objection or dispute of the opponent.

5.3. Mr. Gandhi relied upon the three sale-deeds produced by the acquiring body viz. Exhs. 306, 307 and 322 and submitted that in light of the said sale-deeds the impugned award is unsustainable and the aforesaid three documents not only exposed the unsustainability of the claimants' demand but also established the market price of the lands in the immediate and adjoining surrounding, at the relevant time.

5.4. He also submitted that there is no cogent and reliable material on record to justify the award for Rs. 25, that too in face of the Exhs. 306 and 307 as well as Exh. 322 and in any case the agreement which records the agreed rate of compensation of Rs. 16-10 per sq.mtr. would, in absence of any other comparable instance or other cogent and reliable evidence, constitute the best available evidence. Mr. Gandhi relied upon judgments in Meharban and others etc. etc. Vs. State of U.P. and others, to contend that though certified copies of sale-deeds as contemplated u/s 51-A were produced, none connected with the same were examined, so the instances would stand excluded, and on State of Gujarat Vs. Gobar Rupa, he relied to urge that for determining value for subsequently acquired lands, a genuine sale-deed of earlier acquired land and value determined by the L.A.O. or Court can form basis. On U.P. Avas Evam Vikas Parishad Vs. Jainul Islam and Another, he relied to claim that deduction for development charges should be allowed. State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, has been relied on by Mr. Gandhi to submit that the instances of sale of small pieces of lands cannot be considered comparable. In support of the said submission he also relied on Koyappathodi M. Ayisha Umma Vs. State of Kerala, . On Assam Railways and Trading Co. Ltd. Vs. The Collector of Lakhimpur and Another, he relied to submit that in absence of any basis agreement between parties as to price can form the basis. He urged that the Cross Appeal being First Appeal No. 6867 of 1999 be allowed and the impugned award of the Reference Court may be set aside and the First Appeal No. 4630 of 1999 may be dismissed.

6. The impugned award has to be examined in the backdrop of the aforesaid rival contentions and the material obtaining on record.

7. So far as the appellants' dispute and demand regarding compensation for alleged loss of easementary right over the 24 gunthas is concerned, the Reference Court has considered at length the said claim and contentions of the appellants at length in Paragraph No. 17 of the impugned award. The Reference Court has taken into account the deposition of the claimant Mr. Mehta (Exh. 116) wherein he has stated that land admeasuring 24 gunthas was, at the earlier point of time acquired by the Municipality for water supply (pipeline) scheme. With regard to the said acquisition, it is pertinent to note, an award was passed

in February, 1959. It is obvious that the appellants were, at the relevant time, paid compensation for the said land. Such payment of compensation, would naturally, be for all and whatever rights the appellants possessed i.e. the payment is deemed to have been made for all rights and privileges which the appellants possessed and enjoyed. At that point of time Misc. Civil Application No. 217 of 1960 u/s 18 of the Act was also filed by the appellant(s). The said application was rejected by the Reference Court. There was nothing on record to suggest that the claimant had acquired new easementary right over the said acquired lands or that such rights were separately and expressly saved by the Court. After consideration of all relevant aspects including Section 16 of the Act and Section 15 of the Easement Act, 1882 the Reference Court reached to the conclusion that appellants' said claim was unsustainable.

7.1. When the appellants were already paid compensation for the acquisition of the land in question i.e. 24 gunthas and when pursuant to such payment the land vested in the Municipality free of all rights and encumbrances after the possession was taken and when Miscellaneous Application was rejected and Court did not expressly save any right of the appellants, then in such facts and circumstances the claimant-appellants cannot again get compensation for the same land for which he was/they were already paid compensation. Further, our attention is not drawn to any material from the record which the Reference Court ignored at the time of passing impugned award. Hence, we are not convinced or even inclined to take different view. The said claim deserves to be and is hereby rejected.

8. The Reference Court, however, accepted the contention of the claimant that they were entitled, and the L.A.O. was not justified in rejecting their claim, for compensation for the alleged 20 guntha waste land. The Reference Court did not agree with the decision of the L.A.O. of declining the said claim and instead arrived at the conclusion that the claimant is entitled for payment of compensation in respect of waste land as well. In arriving at the said conclusion the Reference Court has, taken into account Exh. No. 123 being copy of Village Form No. 6 of Survey No. 207/1 to 207/4 and the learned Court has observed that the measurement shown in Exh. 123 was not challenged or disputed by the opponents.

8.1. The said Exh. 123 reveals that the entry pertaining to the Survey No. 207/1 showed measurement of 7 acres and 16 gunthas. The Reference Court also appears to have been sufficiently guided by the claimant's assertion that the waste land was not situated at one place and in one stretch but the parcels of waste land were scattered over and situated at different points and that the opponent could not prove that the entire piece of waste land was situate in one stretch at one place.

8.2. The opponents however claim that the Reference Court on the one hand, has been guided by mere oral claim of the claimant himself that the entire waste land was not situate at one place and on the other hand it has overlooked the

most relevant as well as uncontroverted evidence that the Revenue Record did not contain any entry of alleged 20 gunthas waste land and such fact was not flowing from the Revenue Record.

8.3. We have noticed that the Reference Court has recorded in Para 18 of the impugned award that appellants did not produce any evidence to explain as to why the alleged 20 gunthas waste land was not entered into the revenue record and we have also noticed that even after acknowledging in Para 17 of the award that there was no entry describing the character and/or measurement of the alleged waste land in respect of the alleged waste land, the Court failed to address the said pertinent and vital missing link in the chain and has made the award without deciding the said vital short-fall.

8.4. The opponent also emphasized that the claimants had not even examined any person from the District Land Record Office to explain the continuous absence of any entry in respect of the alleged 20 gunthas waste land.

8.5. It is pertinent that even the Reference Court has, upon considering the documentary evidence produced by the appellants at Exhs. 120 to 173, noticed and recorded in Para 18 of award that there was no entry in revenue record and there was no material also which would explain the reason why the facts and details about the alleged 20 gunthas wasteland were not recorded in the revenue record.

8.6. It is also pertinent that the L.A.O. has expressly recorded that any waste land was not included in the acquired land, and that therefore, no compensation was awarded. It is equally pertinent that the revenue record, available on record, does not show any entry to such effect and appellant has also not put on record any corroborating material to support mere oral assertion.

8.6(A) It is true that the Reference Court has believed and accepted or aversion of the appellants (i.e. oral evidence of Mr. Mehta) and it has proceeded to decide the issue on the premise, which is made of oral claim of the appellants that the alleged 20 gunthas waste land was not a single and continuous patch of land, but it was divided/distributed in various patches located at different points on the total parcel bearing Survey No. 207, and that therefore, since the acquired lands included the land bearing Survey No. 207 it would follow that those parts described as waste land also formed part of the acquired land.

8.6(B) However, after noting the infirmities e.g. the revenue record did not contain any reference of alleged waste land and any independent witness like Talati or an officer from office of D.I.L.R. was not examined as witness by the appellants and the final record of the acquisition (i.e. L.A.O.'s award) contains specific remarks that lands were not included in the acquisition and that Exh. 123 showed (after recording, but without granting the appellant's request) the measurement i.e. 1 acres and 16 gunthas, the Reference Court has concluded the point by merely observing that the acquiring body did not disprove the measurement mentioned in form No. 6, without considering that in the first

instance the claimant failed to prove his/their oral claim.

8.6(C) In our view, the relevant and cogent evidence on this count which can guide and assist in arriving at a definite conclusion, particularly in face of such conflicting assertions, is miserably insufficient and inconclusive. The conspicuous absence of specific entry regarding alleged waste land in the revenue record coupled with absence of acceptance of appellant's request to make such entry would not permit us to readily accept the appellants' oral assertion, though the oral evidence by the appellants has not been controverted or disproved by the acquiring body.

8.6(D) It is too late in time to remand the matter for sufficient evidence or to call for necessary evidence while keeping the decision on this matter pending for further time.

8.6(E) Under such circumstance, the one piece of documentary evidence which is available on record is form No. 6 and as per the entry therein the land bearing Survey No. 207/1 is admeasuring 7 acres and 16 gunthas, the land bearing Survey No. 207/2 is admeasuring 5 acres and 19 gunthas, the land bearing Survey No. 207/3 is admeasuring 7 acres and 10 gunthas (and 207/4 is admeasuring 13 acres and 6 gunthas).

8.6(F) However, the said document Exh. 123 (form No. 6) does not clarify as to whether the said 7 acres 16 guntha land includes the alleged 20 gunthas waste land or the said alleged waste land is excluded of (i.e. it is over and above) the said 7 acres and 16 guntha the total land measurement of which is mentioned in L.A.O.'s award. Further, the said entry seems to be at variance with the details/measurements mentioned in the award of L.A.O.

8.6(G) In such factual background, we at the outset consider it necessary to make it clear that in our view the rate of compensation for alleged waste land, in any case, cannot be the same as it would be for other i.e. normal and non-kharaba lands. The Reference Court has, however, allowed the compensation at the same rate of i.e. at the rate of Rs. 25/- for alleged waste land as well. We do not approve the said direction, firstly for the reason that it would amount to making payment in absence of any strong, cogent, legally tenable and convincing evidence proving existence and measurement as well as acquisition of alleged 20 gunthas waste land, if the compensation, at any rate and much less at the same (i.e. Rs. 25/-) rate which is fixed for normal and non-kharaba land (i.e. other than waste/kharaba land) and, secondly also because of the appellant's own evidence which makes it abundantly clear that prior to the acquisition the alleged waste land was not being used for any agricultural operations, and thirdly also because of the likelihood of it being erroneous payment.

8.6(H) Hence, considering the submission that upon acquisition of the alleged private kharaba/waste land, though for public purpose, it was to be put to industrial use (i.e. commercial purpose) and upon taking note of the common practice that such private kharaba land are, put to use for storing equipments

etc. we are of the view that the rate of compensation for alleged kharaba/waste land can be fixed at Rs. 5/- per sq.mtr., but in any case it cannot be the same rate which is allowed for the other normal i.e. non-kharaba lands.

8.6(I) So far as the measurement of alleged kharaba land is concerned, we are of the view that in light of the peculiar facts on hand, it would be in fitness of things to direct opponent No. 1-Special Land Acquisition Officer to verify, with the assistance of officer from D.I.L.R. and from the village record the correct position of the alleged waste land and its measurement. Whatever facts/measurement emerge and are determined by the opponent No. 1 regarding the alleged waste land, if any was acquired and formed part of the total acquired land, then so much of such kharaba/waste land (as ascertained after inquiry) shall carry the compensation rate of Rs. 5/- per sq.mtr. The Special Land Acquisition Officer shall determine this factual aspect and the measurement, in presence of and after due notice to the claimant and the acquiring body and shall complete the exercise within 3 months after receipt of this judgment.

9. So far as the market price and rate of compensation is concerned, the appellants essentially relied upon various sale instances and on report of one Mr. H.H. Singhvi, a Valuer. On the other hand, the opponents also relied upon various sale instances and on the evidence of one Mr. A.D. Chauhan, a Surveyor and Mr. Laxmanbhai Nagarbhai, Deputy Town Planner (retired).

9.1. It emerges from the award of the Reference Court that the appellants herein had produced on record before the Court about 15 sale instances being Exh. Nos. 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 148-A, 149, 150, 151, 152. The opponents, on the other hand produced 7 sale-deeds being Exhs. 324, 323, 306, 307, 322, 325 and 326 pertaining to period between June, 1967 to December, 1969. Both sides examined either vendor or vendee in respect of some (not all) of the documents. During the hearing appellants concentrated on Exh. 139, Exh. 140, Exh. 141 while opponent concentrated on Exh. 271, Exh. 306 and Exh. 307.

9.2. The appellants had also examined Mr. H.H. Singhvi (Exh. 207) with reference to his valuation report (Exh. 208). The appellants claimed that Mr. Singhvi was examined as an expert witness.

9.2(A) The said witness in his report, which he prepared in 1993 has opined that the market price in 1970 (i.e. before 23 years) for the lands in question would be Rs. 58-50.

9.2(B) Before us the appellants have placed reliance on the report and claimed that if any other higher rate as claimed by the appellants is not found acceptable by the Court then the rate should be fixed at Rs. 58-50 as per the valuation report.

9.2(C) However, the said status of the witness i.e. as an expert witness was challenged by the opponents and the Reference Court has held that "there

appears to be substance in the submission of learned Advocate Shri M.M. Shah and I accept this submission and hold that the report Exh. 208 and deposition of P.W. Harsukhlal Harjivanbhai Sanghvi is not totally and fully acceptable for determination...." The Reference Court has accordingly not considered it appropriate to rely upon the said valuation report and/or evidence of witness Mr. Singhvi.

9.2(D) Since, the credentials of the witness Mr. Singhvi (Exh. 207) and about his stature and status as "an expert" are not duly established and have not been accepted and recognised as such by the Reference Court, we will also not invite the report's contents into our thought and decision process.

9.2(E) There is another reason also for not making said report base for determining the market price viz. the vital fact that said Mr. Singhvi inspected, as per the factual statement made in his report, the site/land in question on 3-12-1992 i.e. after almost 22 years from the date of Section 4 notification, and on the basis of inspection made in December, 1992, he prepared the report in March, 1993. Mr. Singhvi has mentioned in his report (made in March, 1993) that he was asked to submit valuation report in respect of lands in question giving his opinion about the market price which would be prevailing as on 10-9-1970. The said report is result of such exercise. We, for all such reasons, do not consider it advisable to rely on the said report for determining market price.

10. Now, coming to the sale instances, the relevant details flowing from the three sale-deeds referred to by the appellants, are mentioned below:

Date	of	Area	of	land	Rate	No.	No.	the	Deed	and	Sr.	Exh.
12-12-1969		484	sq.yard/640(2)		265	Plot No. 5					1.	139
4-11-1968		199.3	sq.yard/640(2)		265	Plot No. 13						
25-11-1968		333.03	sq.yard/640(2)		265	Plot No. 27						

10.1. The appellants, while clarifying that no witness (i.e. vendor or vendee) was examined to prove the sale-deed dated 9-1-1969 also referred to the said deed which is concerning the land admeasuring 307 sq.yrd. bearing Survey No. 265 (plot No. 104) said to have been sold for Rs. 37/- per sq.mtr. Besides this, our attention is drawn to another document also i.e. Exh. 142 which is a sale-deed dated 10-3-1969 and is executed for land admeasuring about 420 sq.yards bearing S. No. 640(2) 265 Plot No. 37 for consideration at the rate of Rs. 39-75 per sq.yard.

10.2. The witness (Exh. 221) examined by the appellants to establish the sale-deed Exh. 139, stated that the land was converted into non-agricultural land for the purpose of construction of house and that when it was sold by virtue of the said sale-deed Exh. 139 at the rate of Rs. 80/- per sq.yard it was non-

agricultural land.

10.3. The other sale instance on which the appellants placed reliance is Exh. 140, the said sale-deed pertains to land bearing Survey Nos. 640(2), 265 Plot No. 13-B admeasuring 199.3 sq.yard by which the said land was sold at the rate of Rs. 55 per sq.yard in November, 1968 about 21 months before Section 4 notification. The witness Mr. Lakhani whose evidence (Exh. 217) was recorded to establish the said document stated that the said land was sold to Patel Valjibhai and that they had sold the land in year 1968 at the rate of Rs. 55/- per sq.yard and the said land was converted into non-agricultural land.

10.4. Another sale instance Exh. 141, produced by the appellants shows that the land admeasuring about 333.03 sq.yard was sold in November, 1968 i.e. about 21 months prior to the date of notification u/s 4 in present case (which came to be published in September, 1970) at the rate of Rs. 50/- per sq.yard.

10.5. As mentioned earlier Exh. 142 is a sale-deed for about 420 sq.yards (i.e. larger than Exh. 141) and is later (10-3-1969) in point of time than Exh. 141 (25-11-1968), thus proximate to Section 4 notification and Exh. 142 has been executed for consideration at the rate of Rs. 39-75 per sq.yards.

10.6. It is noticed from the above-mentioned details that the lands in questions in respect of which the aforesaid transactions were entered into, are of comparatively small parcels of land, as compared to the extent of acquired land.

11. On the other hand, the opponents produced on record, nine sale instances, however, effectively reference has been made to four sale instances during the hearing before us. The Reference Court also has referred to the said sale-deeds.

11.1. The relevant details flowing from the said four sale instances are mentioned below:

Date	of	Area	of	land	and	Rate	No.	No.	the	Deed	Sr.	Exh.	
15-4-1968	4	acres/194	paiki	Purchased in	Rs. 12,513/-	and sold in	Rs. 13,000/-	i.e. Rs. 3-21/-	per sq.mtr.	2. 306	8-12-1969	3 acres/211-paiki	Rs. 4250/- per acre
3. 307	8-12-1969	9 acres/211-213	Rs. 8500/-	(Re. 00-64	per sq.mtr.)	and subsequently	sold at	Rs. 1-05	per sq.mtr.				
4. 322	15-6-1967	18 acres and 6	Lump sum	Rs. 44,250/-	gwitha/212-213								

11.2. The land in respect of which the sale-deed Exh. 306 was executed in December, 1969 was a parcel of land admeasuring 1 acre which was sold at Rs. 4250/-, and consequently, the rate would come at Rs. 1-62 per sq.mtr. Likewise the land in respect of which Exh. 307 was executed, was a parcel of land admeasuring 9 acres for which the sale-deed was executed in March, 1967 for

Rs. 8500/- and then it was sold at the rate of Rs. 1-05 per sq.mtr. He also made reference to Exh. 322 for which the sale-deed was executed in January, 1967 by which about 18 gunthas of land came to be sold at Rs. 44,250/-.

11.3. The comparison of the sale-deeds produced by the appellants and the acquiring body shows wide gap and differences between the relevant factors, particularly the size/measurement and rates.

12. The appellants have urged that when Section 4 notification was issued, an industrial estate of G.I.D.C. (i.e. present acquiring body) was already existing and the vicinity was populated with labourers residing nearby and other industrial concerns/companies like Field Marshall, P.M. Deasel etc. were also existing. In his evidence, Mr. B.O. Mehta (Exh. 116) has also stated that industrial estate of G.I.D.C. existed since 1970 and that a Polytechnic college, S.T. Workshop, Central P.W.D. store and 80 ft. wide road going towards Bhavnagar were closely located. According to the appellants the lands in question possessed strong potential for industrial/commercial purpose when the same came to be acquired. During the hearing before us the appellants have produced on record a map showing various relevant landmarks including location of acquired lands and of lands concerned in the cited instances.

13. As against the assertion by the appellants, the opponents have relied on the description of the location of the lands in question and its surroundings as recorded by the L.A.O. in the award u/s 11 of the Act. As per the facts recorded by the L.A.O. while certain industrial concerns existed, most of the surrounding area was not a developed area and any other facility, including roads, was not available.

13.1. The opponents have also claimed and asserted that industrial concerns mentioned by the appellants were located at distance of at least 1/2 to 2 kms., and therefore, cannot be said to be in close proximity, hence any weightage should not be given in favour of the lands in question. The opponents have also stressed that even the 80 feet road, of which reference is made by appellants, is away from the lands in question and that the existing access road was a kachha and only cart-plyable road.

13.2. Mr. Gandhi, further submitted that the sale instances produced on record by the opponent acquiring body demonstrate that the sale of lands of larger parcels reaped price of Re. 0-60 per sq.mtr., Rs. 1-05 per sq.mtr., and Rs. 3-21 per sq.mtr.

14. On examination of the evidence the facts which emerge are that:

(a) The sale instances relied upon by the claimants are of smaller parcels of land, (largest being land admeasuring 484.7 sq.yard) as compared to the extent of acquired lands.

(aa) While citations by the appellants are of comparatively larger size admeasuring about 4 acres, 5 acres, 3 acres and 9 acres.

(b) At the time when notification u/s 4 came to be issued, the lands in question were agricultural lands and were not converted into non-agricultural land.

(bb) Most of instances cited by appellants pertain to lands which were converted to non-agricultural.

(c) Industrial estate with about 99 shades, in the estate of present opponent G.I.D.C. was already existing.

(cc) And the acquired lands are located adjoining/close to the existing industrial estate.

(ccc) Certain other industrial concerns were also existing though at some distance, from the acquired lands.

(d) The sale instances on which the appellants have placed reliance are of the lands situate on the opposite side of the river (i.e. not on the same side of the river where the acquired lands are situate).

(dd) The sale instances cited and relied upon by the opponents happen to be in respect of the lands situate on the same side of the river.

(e) There was considerable if not substantial, development in the surrounding areas in view of which the lands in question did possess potential value for industrial use.

15. The Reference Court, has after taking into account the size of the lands in respect of which the appellants produced the sale instances, concluded that the said sale instances cannot be considered as comparable since they were: (1) of agricultural lands, and (2) were small parcel of lands.

15.1. Ordinarily, when instances of larger tracks are not available, then instances of smaller chunks can be considered, however in present case the opponents would urge that instances of larger tracks are available. We have, for the reasons mentioned hereinafter, taken into account even the instances of smaller parcels of land.

16. In our view, what is however, required to be taken note of is the advantageous position/location of the lands in question, particularly the fact that the lands in question were closely located to the existing industrial estate of opponents-G.I.D.C. Undoubtedly, the said factor is crucial and relevant in determining the potential value and also the market price of the land in question.

17. The evidence regarding distance between the lands concerned in the sale instances relied on by the appellants is also relevant. In our view, the said aspect cannot be wholly ignored, particularly when we accept the appellant's contention that the lands in question had advantageous location as it was in geographical proximity to the existing industrial estate.

18. Thus, when the benefit of the said advantageous position is being granted in favour of the appellants, the fact that the cited sale instances on which

appellants seek to rely upon are not only at farther distance, but are on the opposite side of the river and are of comparatively very smaller size, cannot be ignored. Unfortunately, the rival version about distance is conflicting and there is no independent evidence about the distance between the two, except that the lands concerned in the sale instances cited by the applicants are on the other/opposite bank of the river.

19. In this backdrop, it is necessary to recall at this stage that with the brother of present appellant, whose lands (which were adjoining to appellant's land) also came to be acquired by the same acquisition proceedings, the G.I.D.C. entered into an agreement wherein the consideration was agreed and settled at the rate of Rs. 16-10. The Reference Court, has therefore, observed that the said rate can be safely taken as base for determining the market value of the lands in question.

19.1. It emerges from the record that the opponent acquiring body who entered into the agreement had also offered the same rate to the appellants. Thus, now the opponent cannot be heard to say that the sale instances which reflect sale prices at the rate much less than the said agreed rate should be taken into account or that the said agreed rate of Rs. 16-10 should not be taken into account or cannot be made base for determining the market price. Further, the other instances available on record demonstrate, after allowing all adjustments, that the said agreed rate does not deserve to be ignored or discounted and in our view there is no error in decision of the Reference Court in treating the said agreed rate of Rs. 16-10 as one of the guiding factors.

20. It needs to be noted that in present case, there is no evidence regarding net yield/income from agricultural activities. Thus, it is not possible to determine the market value on yield basis.

21. It is, however, true and proper in the facts of the case that since the lands in question were, at the relevant time, agricultural land necessary adjustment/deduction for conversion charges and development charges shall have to be allowed and if the sale instances cited by the appellants are to be considered then the adjustment/deduction for factoring in the other peculiar features of the such instances (viz. smallness of lands concerned in the instances and the location of the lands concerned in the said instances and their distance from acquired land) also shall have to be accommodated while determining the rate of compensation.

21.1. While keeping in focus the proximity of the lands in question to the already existing industrial estate of G.I.D.C. and while also keeping in focus the surrounding which is populated with labourers and also keeping in mind that the acquiring body itself has paid Rs. 16-10 towards consideration to the land owners of the adjoining lands (which came to be acquired in this acquisition process), we have taken into consideration the sale instances referred to by the appellants and the opponent and we have also taken into account the evidence given by the concerned vendor/vendee with regard to the respective transactions. It is also

necessary to remember that the acquired lands were, at the time of acquisition, agricultural lands and were situate on the opposite bank of the river as compared to the lands concerned in the sale instances relied on by the acquiring body. The size/smallness of the lands concerned in the instances referred to by appellants also cannot be overlooked while determining the market price. As mentioned earlier, we have also carefully looked at the map showing the location of the lands under acquisition and the concerned lands of the sale instances.

21.2. On examination of the map, we have noticed that the other/opposite side of the river appear to be more of a residential or residential-cum-semi commercial zone compared to the side of the river where the acquired lands are situate.

That possibly, is the reason that smaller parcel of land, fit for construction of residential premises, are sold on that other side of the river by virtue of the sale-deeds referred to by the appellants.

21.3. Further, the lands concerned in the sale instances relied on by the appellants are small parcels of lands. Hence, appropriate adjustment and deduction will have to be allowed while taking the said sale instances into consideration as the base for determining the market value.

21.4. So far as the sale instances relied on by the opponents are concerned those sale instances which reflect the sale price even less than what the L.A.O. awarded, in our view, deserve to be ignored, particularly in view of Section 25 of the Act. The other sale instances of the opponents lose their relevance in view of the rate agreed by the opponent which it had offered to the appellant also.

22. Apart from the Exhs. 139, 140 and 141 other sale instances referred to by the appellants show that six transactions, on average, had been entered into at the rate ranging between Rs. 27/- to Rs. 40 per sq.yard. The average sale price for transaction entered into in 1969-1970 and last part of 1968 appear to be between Rs. 34 and 37. We have, while examining the details of Exhs. 139, 140 and 141 also considered the relevant details of Exh. 142 which was executed on 10-3-1969.

23. So far as Exh. 140 is concerned, it is concerning a chunk of land which, when sold was non-agricultural and plotted piece of land, and above all, it was a very small piece (only about 199 sq.yard) of land as compared to the acquired land. Thus, we are of the opinion that the said document does not lend good, acceptable and reliable support for the purpose on hand.

24. Now, so far as Exh. 139 is concerned not only the other features like smallness, distance, non-agricultural nature etc. are attached to Exh. 139 also but apparently the price appear to be unusually high or artificially inflated or the transaction seem to be actuated for some special reason which generated higher price. Besides this, the small plot was sold for construction of house. The said price, in our opinion, does not appear as compared to Exh. 142 and Exh. 152 and

even Exh. 141, believable and proper for the purpose on hand. Therefore, as against Exh. 139, Exhs. 141, 142 and 152 come to our notice and we are inclined to consider the said documents for determining the market value of the lands in question. The Exh. 141 is said to have been executed on 25-11-1968 (i.e. almost 21 months before the relevant date) for consideration at the rate of Rs. 50/- per sq.yards for land admeasuring 333.3 sq.yards. On the other hand, Exh. 142 and Exh. 152 are said to have been executed on 10-3-1969 and 9-1-1969 respectively (i.e. after Exh. 141). The Exh. 142 is said to have been executed at the rate of Rs. 39-75 per sq.yards for land admeasuring 420 sq.yards, meaning thereby, it is a larger parcel of land as compared to Exh. 141 and its execution is also latter in point of time than Exh. 141. Hence, the gap in terms of time between Exh. 142 and Section 4 notification comes to 18 months (while the gap between Exh. 141 and Section 4 Notification is of about 21 months). Besides this, Exh. 142 is relatively larger piece than Exh. 141 and when we examine these two documents in light of Exh. 152, it comes out that Exh. 152 (which is dated 9-1-1969) also is later in point of time than Exh. 141 (which is dated 25-11-1968) and yet the rate for transaction concerned in Exh. 152 also is lesser than Exh. 141 inasmuch as it is only Rs. 37/- per sq.yards, and accordingly, it is closer to the rate of Exh. 142 and also demonstrates that the rate mentioned in Exh. 141 also was, for unexplained reason, higher than Exh. 142 and Exh. 152 though said Exh. 141 was prior/earlier in point of time. Hence, as compared to Exh. 141, the Exh. 142 appears more proximate and contemporaneous than Exh. 141, and therefore, preferable and acceptable. We would prefer Exh. 142 not only over Exh. 141 (for the aforesaid reasons) but also over Exh. 152 (though rate of Exh. 152 is less) because Exh. 142 is for relatively larger area and is subsequent to even Exh. 152. Hence, we are inclined to take into account Exh. 142 for determining the market price of land in question. Now, said Exh. 142 is dated 10-3-1969 while the Section 4 Notification was published on 10-9-1970. Resultantly, there is gap of about 18 months. Consequently, 15% increase for taking care of difference in point of time (i.e. 18 months) by following the recognised base of 10% increase for 1 year period is required to be granted. When such increase is granted over the rate of Exh. 142 i.e. Rs. 39-75, the market price, on relevant date, would come to around Rs. 45/-, however, appropriate deductions/adjustments from such market price have to be allowed to take care of various connected and relevant factors e.g. development charges, conversion charges, etc.

25. Mr. Hathi, learned Counsel for the claimants has vehemently argued that deduction towards development charges should not be allowed at the rate more than 10%. He relied on the judgment in case between Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, in support of his contention.

26. Though, the argument appears to be attractive, in the facts of the present case, we are however, required to make proper adjustment/deduction not only towards development charges but also towards conversion charges (since lands

in question were agricultural land at the relevant time) but also for taking care of the fact that the said Exh. 142 pertains to small parcel of land i.e. only about 420 sq.yard, besides being document relating to the land situate on the opposite Bank of the river and in a zone/area where transaction for residential purpose would fetch more price. The factors which, in the case of said instance, have to be factored into, over and above i.e. in addition to the development charges and conversion charges for determining the percentage of adjustment/deduction appropriate to be allowed, are the smallness of the plot concerned in the transaction, its location, the distance between acquired land and the land concerned in the sale-deed, and the nature of land (i.e. agricultural land). In our view, therefore, it would be equitable, in the facts of the present case, to make 35% deduction more so when we have allowed increase at the rate of 10% per year i.e. 15% for 18 months. Consequently, the market value would come to around of Rs. 29-00 per sq.mtr. We, accordingly, fix the market price at Rs. 29-00 per sq.mtr.

27. The appellants have also assailed the award on the ground that in calculating the payable amounts and while making the payment the competent authority has effected T.D.S. also in respect of interest component on the enhanced compensation. The deductions have been effected without taking into account the legal position settled by the Hon''ble Apex Court in Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, wherein the Apex Court has held as under:

Interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act, 1894, awarded by the Court on a reference u/s 18 of the Act or on further appeal has to be taken to have accrued not on the date of the Court granting enhanced compensation but as having accrued year after year from the date of delivery of possession of the land till the date of such order, and such interest cannot be assessed to Income Tax in one lump sum in the year in which the order is made.

and/or in the matter between K.S. Krishna Rao Vs. Commissioner of Income Tax, Andhra Pradesh, the Apex Court held as under:

Interest paid on compensation awarded for compulsorily acquisition of land u/s 28 of the Land Acquisition Act, 1894, is of the nature of income and not capital.

Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab, followed.

Where compensation awarded under the Land Acquisition Act is enhanced by the order of the Court on a reference u/s 18 of that Act or on further appeals, interest on enhanced compensation cannot be taxed all in a lump sum as having accrued on the date on which the Court passes the order for enhanced compensation: the interest has to be spread over on an annual basis right from the date of delivery of possession till the date of the order of the Court on a time basis.

(Emphasis supplied)

28. We, therefore, following the said judgments, accept the grievance of the appellants with regard to the T.D.S. effect given in respect of the interest component and we direct the competent authority to recalculate the payable amounts as per the direction regarding interest component by the Hon''ble Apex Court in the above-referred judgments i.e. by treating payment of interest amount on enhanced compensation as spread over the total number of years for which it is paid and not as income of the single year in which it is ordered/paid.

29. So far as the conclusion of the Reference Court with regard to appellants'' claim for compensation for the alleged construction is concerned, we are in agreement with the conclusion of the Reference Court that no additional compensation towards construction in addition to the amount awarded by the L.A.O. can be allowed towards the construction, the well or the rooms etc. and we are not inclined to take any different view. The appellants have not been able to demonstrate any material error in the Reference Court''s decision or to dislodge the findings of the Reference Court and has not been able to bring to our notice any cogent evidence besides the material taken into account by Reference Court to justify its claim which is not considered by the Reference Court. So far as the appellants claim for compensation for well is concerned, the Reference Court has, relying upon the judgment of the Apex Court O. Janardhan Reddy and others Vs. Spl. Dy. Collector, L.A. Unit-IV, LMD, Karimnagar, A.P. and others, held that the appellants are not entitled for separate and distinct compensation for the well. Even otherwise, the appellant has not made out any case for compensation of well which is said to be in another Survey number viz-207/4. We are not convinced to take any different view, from that of the Reference Court as regards compensation for well and/or construction thus we confirm the said direction.

30. The Reference Court has already awarded additional amount at the rate of 12% per annum on such enhanced market price. The Reference Court has also granted solatium at the rate of 30% on the enhanced market price determined by the Court. Of course, deduction/adjustment of solatium already awarded and deposited/paid at the rate of 15% is also passed. We confirm the said directions and said part of the award. Thus, claimant shall be entitled to 30% (after deduction/adjustment of 15% solatium paid/deposited) solatium on enhanced market price i.e. Rs. 27-50 and will get 12% increase on said enhanced price i.e. Rs. 27-50 as per Reference Court''s direction.

31. It has been observed by the Reference Court in the award that the date of the award of L.A.O. and the date of taking possession are the same. There is no dispute between the parties, on this count. Thus, for the purpose of calculating and paying additional amount, the date of publication of Section 4 notification and the date of L.A.O.''s award and the date of possession would be taken as per the direction in the award of the Reference Court. The payment shall be made only by A/c. payee cheque and only after due verification.

32. Enhanced compensation u/s 23(2) has been granted by the Reference Court considering the fact that the Reference Case before the Court was pending on the date when the amendment of Section 23(2) came in force.

With regard to the apportionment the Reference Court, in Para 40 of the award, has observed that there is no inter se dispute between the appellants with regard to their respective shares. Before the Reference Court the land under acquisition has been, as per the Revenue Record, running in the name of Mr. B.O. Mehta. The Reference Court, has therefore, directed that all the appellants would be entitled to get compensation distributed amongst themselves as per the law of succession applicable to them. Before us also any dispute with regard to apportionment has not been raised, hence we do not see any reason to disturb the direction given by the Reference Court on this count.

33. The appellants have claimed that the additional price at the rate of 12%, payable u/s 23(1A) of the Act should be paid at enhanced rate i.e. at cumulative rate. In our view, the said demand and the contention are not tenable and justified. The plain reading of Section 23(1A) of the Act does not provide for payment of additional price @ 12% p.a. at cumulative rate. If the legislature intended that additional price should be paid for each year i.e. at cumulative rate, it would have said so in clear terms and on plain reading of provision it becomes clear that 12% increase is to be paid at the time when the market price is determined, at the rate higher than the award of L.A.O., by the Court u/s 23(1) of the Act, and is payable on the total market price determined by the Court and not at cumulative rate for entire period, as demanded by the claimant. Hence, the said claim is not tenable and it is hereby rejected.

34. Upon consideration of the material on record and in light of the above direction we partly allow the First Appeal No. 4630 of 1999 by modifying the impugned award of the Reference Court to the extent of enhancing market price from Rs. 25/- per sq.mtr. to Rs. 29/- per sq.mtr., and thereby, the rate of "additional compensation" to Rs. 27-50 (i.e. Rs. 27-50 + Rs. 1-50 = Rs. 29/-) from Rs. 23-50 awarded by the Reference Court. Hence, we set aside and modify the impugned judgment and award to the extent of holding that the appellants will be entitled for additional compensation at the rate of Rs. 27-50. The other direction with regard to the additional payment at the rate of 12% and solatium @ 30%, after adjusting 15% already paid, is not interfered with and shall remain the same as directed by the Reference Court in the impugned judgment, however, the appellants will be entitled for payment of interest in accordance with Section 28 of the Act i.e. at the rate of 9% for 12 months from the date of taking over possession and then i.e. after expiry of first 12 months from the date of possession, to the date of payment/deposit at the rate of 15% respectively. Such interest will be payable only on the aforesaid "additional compensation".

35. It is clarified that the payment of the amount payable towards the interest may be made after making adjustment of income tax in accordance with above-referred judgment of the Apex Court. The respondent shall deposit the amount in

accordance with the above directions, with the Reference Court within period of three months from the receipt of certified copy of the judgment/decreed.

36. In view of the aforesaid directions and since First Appeal No. 4630 of 1999 is partly allowed the First Appeal No. 6867 of 1999 fails and the same is hereby dismissed.