

(2011) 05 GUJ CK 0068
In the Gujarat High Court

Case No : First Appeal No"s. 1363 to 1365 of 2011

Bharvad Becharbhai Jivanbhai and Another	APPELLANT
Vs	
Officer On Special Duty and Another	RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 4(1), 6

Citation : (2011) 05 GUJ CK 0068

Hon'ble Judges : Jayant Patel, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : K.M. Sheth,s 1 - 2, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—As all the appeals arise from the common judgment, they are being considered by this common order.

2. The short facts of the case are that the acquisition of the land at Village Ganeshpura, Taluka Modasa of District Sabarkantha was made for the purpose for industrial estate at the instance of Gujarat Industrial Development Corporation under the Land Acquisition Act (hereinafter referred to as the "Act" for short). The Notification u/s 4 of the Act was published on 19.12.1995 and the Notification u/s 6 of the Act was published on 21.9.1996. The award was passed by the Special Land Acquisition Officer on 19.9.1998 and he had awarded compensation of Rs. 6 per sq. mtrs. The landlords, as were not satisfied with the compensation, raised the dispute u/s 18 of the Act, demanding compensation at Rs. 300/- per sq. mtrs. The said dispute was referred to the Reference Court and the Reference Court ultimately, at the conclusion of the proceedings, awarded compensation of Rs. 69 per sq. mtrs., for the irrigated land and Rs. 51 per sq. mtrs., for the non-irrigated land. It is under these circumstances, the present appeals before this Court.

3. We have considered the judgment and reasons recorded by the Reference

Court. We have also considered the relevant evidences, which have been made available by Mr. Sheth, learned Counsel appearing for the Appellants during the course of hearing and we have also heard him.

4. The principal contention raised on behalf of the Appellants by Mr. Sheth is that there were sale instances, which were not properly considered and erroneously discarded by the Reference Court and, therefore, this Court may consider them in the appeals.

5. The contention prima facie appears to be attractive, but upon close scrutiny, it appears that the sale instance at Exh. 85 is of a later date than the date on which the Notification u/s 4 of the Act was published inasmuch as the sale deed is of April 1997. The another sale deed produced at Exh.80, of January, 1995 is for land with the construction thereon and the total area is only 36 sq. mtrs. The Reference Court has considered the said aspect and has observed that both the sale deeds were of non-agricultural plots and they were not comparable sale instances, because they are of a very small non-agricultural plot. It is true that merely because sale instances of non-agricultural land, the said sole consideration may not be to discard the evidence or it may not be concluded that they are not comparable, but one has also to consider the area involved, the composition of the property and thereafter only whether comparison can be made or not may be required to be decided. As observed earlier Exh. 85 is the sale deed for the property after the Notification u/s 4 of the Act roughly after more than one-and-a-half years. It is well settled that normally such sale instances are not to be relied upon because after the Notification u/s 4 of the Act, the development of the area is bound to increase. So far as the sale instance of January 1995 is concerned, it is of just nominal area of 36 sq. mtrs., as against the acquisition of the total land of about 9 hectares of the land i.e. 90000 sq. mtrs. If one has to assess the market value of 90000 sq. mtrs., of the land it can be by no stretch of imagination compared with a portion of 36 sq. mtrs., of the land, that too, with the construction thereon and non-agricultural land.

6. Under these circumstances, it appears to us that the Reference Court was right in discarding the evidences of sale instances, since they were not at all comparable with the land in question, because such sale instances were of nominal portion in comparison to the acquisition of about 90000 sq. mtrs., of the land.

7. The learned Counsel for the Appellants attempted to rely upon the decision of the Apex Court in the case of The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, to support his contention and he submitted that in the said case, it was a sale deed of 100 sq. mtrs., as against the acquisition of 10 acres of land and, therefore, by making suitable deduction of 40%, compensation could have been arrived at.

8. It is true that in the said decision, the acquisition was of 10 acres of the land,

but the facts of the case were that the High Court without any deduction had relied upon the price quoted in the sale deed of 100 sq. yard and had awarded compensation. Therefore, in facts of the said case, the Apex Court found it proper to reduce the compensation by 40%, but thereby it cannot be said that even if there is no comparison of the property such sale instance must be relied upon. The another pertinent aspect is that in the said decision, there was no other evidence for comparison of the price as in the present case namely the decision of this Court for fixation of the compensation in respect of the land at Village Modasa, a Taluka City, located just at the distance of 1.5 kms from the land in question. So far as the distance is concerned, it was already mentioned in the award and, therefore, no additional evidence was required as sought to be canvassed. Under these circumstances, when other evidence was available of the sale instance, was not of a comparable land since the sale instance included construction of the property thereon, the decision of the Apex Court would not be of any help to the present case.

9. It was next contended by the learned Counsel appearing for the Appellants that the reliance placed by the Reference Court upon the decision of this Court and the compensation awarded for the acquisition of land at Modasa was also erroneous and, therefore, the same may be interfered with in these appeals.

10. The reference Court has considered the said aspects at paragraph 21 of the judgment, which reads as under:

21. ...Moreover, in this case, the opponent has produced a copy of the judgment of Hon"ble Gujarat High Court, in case of Nabumiya Jivamiya Boradia v. State of Gujarat First Appeal No. 2767/99 to 2771/99 and 2773/99 to 2775/99 at Exh. 103, the said judgment is relating to the acquisition of the agriculture land of Modasa town for the public purpose of Modasa-Tintoi-Samlaji divergent road, in the said case, the notification u/s 4(1) of the Land Acquisition Act 1894 was published in Govt. Gazette on January 2, 1986, in the said judgment Hon"ble High Court has awarded compensation at the rate of Rs. 32/- per sq. mtr for irrigated land and Rs. 26/- per sq. mtr. For non-irrigated land. In the said case, the land of Modasa itself was acquired and looking to the evidence on record, Modasa is one and half K.M., away from the acquired land. So, looking to the above pronouncement, if the sale instances of the same village is not available than the award passed for the nearby village is also a good guide so, I can safely rely upon the judgment of Hon"ble High Court for the land acquired of Modasa, and as per the above pronouncement, the rise of price is also to be considered and 10% rise is to be granted per year. In case before Hon"ble High Court of Gujarat the notification u/s 4 was published on January 1986 while in case before me the notification u/s 4 of the Act was published on 23/11/95 so, rise of 10% every year is calculated 1986 to 1995 so, the notification in case before me was published after 9 year and 10 months. The rise of 10% per year is for irrigated land at the rate of Rs. 35/- per sq. mtr., for 9 year and 10 month comes to Rs. 34/- that means the value of the irrigated land is Rs. 35 + 34 = 69/- Rs., and the

value of non-irrigated land is Rs. 26 + 25 = 51/- Rs.

11. Attempt was made by the learned Counsel for the Appellants to contend that there has to be appropriate evidences for comparison of the land at Modasa with the land in question and in absence thereof, the Reference Court could not have relied upon the decision of this Court.

12. In our view, the said contention cannot be accepted for the reason that Modasa is a Taluka City as against the land in question is located at Ganeshpura, which is said to be at a distance of about one-and-a-half kms from Modasa. If the normal prudence has to apply, there will be substantial difference in the price for the land at Modasa, if to be compared with the land at Ganeshpura, which is the acquisition in the present case. In any case, the price of the land at Village Ganeshpura could not be higher than that of the price of the land at Modasa, but it may be less too. The Reference Court has not considered the aspect of deduction to be made, but has taken the basis by treating at par. Since the other side is not in appeal, we leave the matter at that stage. But in any case, it cannot be said that the compensation awarded is by erroneous assessment of the market price arrived at for the purpose of awarding compensation.

13. In view of the above, we find that the contention as sought to be canvassed cannot be accepted.

14. No other contention is raised.

15. In view of the above all appeals are meritless and, therefore, dismissed. No order as to costs.