

(1966) 02 GUJ CK 0009
In the Gujarat High Court

Case No : Civil Revn Application No's. 168 and 220 to 238 of 1965

Chandulal Pitamberadas

APPELLANT

Vs

Special Lands Acquisition Officer, Eastern Railways,
Ahmedabad

RESPONDENT

Date of Decision : 28-02-1966

Acts Referred:

Bombay Court Fees Act, 1959 — Section 7(1)
Land Acquisition Act, 1894 — Section 23

Citation : AIR 1967 Guj 182 : (1966) 7 GLR 889

Hon'ble Judges : N.K. Vakil, J

Bench : Single Bench

Advocate : I.M. Nanavati, for the Appellant; A.D. Deasai, Asst. Govt. Pleader, for the Respondent

Judgement

(1) These civil Revision Application are filed against the decision of the Taxing officer of this Court holding that in the appeals filed against the judgment and decree of the Civil Court on a reference u/s 18 of the Land Acquisition Act, the applicant -appellants shall pay Court -fees not only the additional amount claimed at the excess market rate but also on the amount of 15 per cent. Solatium to be awarded on the said market rate. Sub-section (1) of section 7 of the Bombay Court-fees Act, 1959, is the relevant provision of law with reference to which the question raised has to be answered.

"7. (1) The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant".

This provision of Law requires the appellant to pay Court-fees on the difference between the amount awarded by the first Court and the amount claimed by the appellant in the appeal. It is clear that the answer to the contention raised

depends on what is the amplitude and connotation of the words "amount awarded" and "the amount claimed by the appellant". On behalf of the applicants it is submitted that the order of the Taxing Officer is erroneous on the grounds that (1) the solatium is a statutory right conferred by the Land Acquisition Act and the Court has to grant the solatium on the amount of compensation allowed irrespective of the fact as to whether the same is claimed or not, (2) the petitioner may or may not claim solatium and if the petitioner does not specifically claim solatium, then the petitioner cannot be required to pay Court-fees on the solatium on the ground that, in any case, solatium at the rate of 15 per cent will be granted to the petitioner on the amount of compensation allowed by the Court and (3) that how much solatium will be given by the Court is uncertain and, therefore, no Court fees can be paid on the amount of solatium. It was further urged that the words "amount awarded" should be interpreted to ordinarily mean the amount of compensation awarded under sub-section (1) of section 23 of the Land Acquisition Act. These words cannot be interpreted to also include the amount of 15 per cent of solatium to be added to the market value under Sub-section (2) of the said section, nor would it include the amount of interest or costs awarded. In this revision application, the question raised is only in respect of the additional amount of 15 per cent on the market value to be awarded and not with regard either to interest or costs. As regards these last two items the question now stands settled that no Court-fee is to be paid on either of them. I will have occasion to refer to the relevant decisions on this subject a little later as reliance is placed thereon by the applicants. I shall, however, first examine the question regarding solatium on its own merits.

(2) It will be expedient to reproduce section 23 of the Land Acquisition Act verbatim.

" 23. Matters to be considered in determining compensation-

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration - first the market value of the land at the date of the publication of the notification under sec 4, sub-s (1):

secondly the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof:

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land:

fourthly the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings:

fifthly, if, in consequence of the acquisition of the land by the Collector the

person interested in compelled to change his residence or place or business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition". The heading of section 23 states what matters shall be taken into account in determining compensation and then the section stands divided into two sub-sections 91) and (2). Therefore, in determining compensation matters contained in both the sub-sections have to be taken into consideration. Sub-section 2 provides for giving of solatium of 15 per cent on the market value that as determined under sub-section (1). But more important fact to be noted is the use of the expression "shall in every case award a sum of fifteen per centum on such market value" in sub-section (2). These words read in conjunction with the other expression used in sub-section (1) "In determining the amount of compensation to be awarded for the land acquired under this Act, clearly indicates the legislative intent that the sum of 15 per cent, over the market value is also to be a part of the amount to be awarded as compensation for the land that is acquired under the act. No discretion, is left to the deciding authority as regards the quantum of the solatium to be awarded nor any discretion is vested to give it or not to give it and the sum of 15 per cent, over the above the market value determined under sub-section (1) has to be given. One cannot, therefore, avoid arriving at the conclusion that the solatium is a part of the amount of compensation to be awarded for the land acquired.

(3) Before I proceed to consider the contention raised that the expression "amount claimed" should not be interpreted to include the amount of 15 per cent, of solatium to be given, it is important to note that both the expressions in question, i.e. "the amount awarded" and "the amount claimed" are related to the expression "compensation" which is also to be found in section 7(1) of the Court - fees act, and therefore the said two expressions have to be read in context with that expression "compensation". Having regard to the context in which these two expressions in question are used, it leaves no manner of doubt that the amount awarded is the amount of compensation ordered to be given by the Court against which judgment, the appeal is directed and compensation that is claimed in the appeal. The Court-fee is, therefore, to be computed on the difference between the amount of compensation awarded and the amount of compensation claimed in the appeal.

(4) Now, I shall deal with the next question whether the amount of 15 per cent, solatium is to be taken into consideration or not while determining the connotation of the expression "amount claimed" which, as pointed out, is the amount of compensation claimed in the appeal. The main ground on which the

contention is based may with advantage he recalled . It is that this amount of 15 per cent to be added to the market value determined under sub-section (1) of section 23, is a legal obligation, and therefore it not necessary for the appellant even to claim that added amount. It is urged that this amount of solatium, therefore cannot justifiably e held to fall within the connotation of the expression "amount claimed". It is argued that in the fight of this reasoning, whether the amount of solatium is specifically claimed in the memo of appeal or not, in neither case it can be said to be the amount claimed. The accepted rule of interpretation is that the Court should always lean, if possible, towards the interpretation which is more favourable to the subject with regard to fiscal statutes keeping in mind this principle of law and giving my anxious thought to be arguments, advanced and the decisions cite, I am not able to accept the submission made on behalf of the applicants for reason stated here under.

(5) It cannot be gainsaid that if the appellate Court were to award any increased amount on the basis of the market value as contemplated by sub-section (1) of section 23 of the land Acquisition Act, the statutory provision of sub-section (2) of that very section makes it obligatory on the appellate Curt to also award the added amount of 15 per cent of such increase amount on the basis of the market value. It is also true that the appellant need not specifically refer to this claim of solatium in the memorandum of appeal and yet, it the amount on the basis of the market value is increased, the appellate Court while making its order will be under a statutory obligation to include the proportionate increase in the amount of solatium. In my view this very position of law which is also relied upon by the applicants, defeats their submission that they are not bound to pay court-fee on the proportionate increase in the amount of solatium. Having regard to the fact that laws makes the amount of solatium also a part of the compensation to be awarded. When the appellant makes a claim for an increase amount of compensation, the solatium automatically becomes a part of his claim, unless he were to state in the memorandum of appeal that he did not claim any amount of solatium that he may become entitled to on the increase of the amount that may be awarded on the basis of the market value u/s 23(1) of the Land Acquisition Acct. But, so long as the claim of solatium is not specifically stated to have been given up, it would remain a part of his claim before the appellate court. In the event of his success becomes entitled not only to be increased compensation amount on the basis of the market value but also the solatium amount of 15 per cent to be calculated on that increased mount of market value. Section 7(1) of the Court - fees Act provides for the payment of court -fees on the memorandum of appeal "against an order relating to compensation for the acquisition of land". It further, provides that court-fees payable shall be computed on the difference between the amount of compensation awarded by the first Court and the amount of compensation claimed by the appellant. When the present applicants, therefore in the memorandum of appeal challenge the amount of compensation awarded and make out a claim that they should have been awarded a larger amount of compensation, they are bound to pay the court-fee on the difference

between the amount of compensation awarded which, as pointed out, includes the amount of solatium and the increased amount of compensation they claim which again, as pointed out, would include the amount of solatium,

(6) I am supported in this view of mine by the decision of the Madras High Court in *Brahmandam v Secretary of State* AIR 1930. Mad 45. In the said case identical contentions were raised and were negatived. It was held therein that the amount of compensation to be awarded includes not only the market value but also the 15 per cent of such market value. It further decided that where a person being dissatisfied with the amount of compensation awarded to him u/s 18, Land Acquisition Act, wants to appeal insisting in case of his success that not only the excess market value but also 15 per cent of the same should be decreed in his favour, he must pay court fees not only on the excess market value but also on 15 per cent thereon. A similar view was taken by the Travancore-Cochin High Court in *Mytheen Kunju Abdullrahiman Kunju v State* AIR 1955 Trav Co. 110 wherein the learned Judge have observed that in the case of compulsory acquisition the party gets a statutory right to claim solatium at a fixed rate on the amount granted as compensation. So when any enhancement is claimed there goes with it a claim for solatium as well and so the party claiming enhancement must Pay Court fees on that count as well as on 15 per cent. Same principle it is the decision in *M. Dodla Malliah and Others Vs. The State of Andhra Pradesh and Land Acquisition Officer, Warangal*, , wherein the above stated Madras decision has been followed.

(7) Mr. Nanavati, the learned Advocate for the applicants seemed to rely upon *Muhammad Sajjad Ali Khan and Others Vs. Secy. of State*, , to urge that the awarding of the amount as solatium is a statutory duty and therefore it need not be claimed. It as further urged that as a necessary consequence it follows that it would not be considered as an amount claimed by the appellant. The Allahabad Court in the said case only decided that the award of 15 per cent on the market value on compulsory acquisition is a statutory amount of compensation in addition to be market value and the Court has no power to deprive a claimant of that amount on that ground that he has not previously claimed it specifically. With respect I do agree with that decision But this decision is no authority on the point in dispute before me. On the contrary this decision would only led support to the view that the amount of solatium under the statutory provision becomes part of the amount of compensation, awarded and, therefore, when enhancement is claimed in the amount awarded, it necessarily becomes part of the enhanced claim made. Unless therefore it is given up specifically by the partly, which a part can always do, it would be a part of the amount claimed within the meaning of section 7(1) of the Court - fees Act.

(8) Lastly Mr. Nanavati tried to rely upon a Division Bench decision of this High Court in *Patel Anandilal Harilal Vs. The Additional Special Land Acquisition Officer, Ahmedabad*, and urged that on the analogy of the reasoning adopted therein in respect of the amounts of the interest and cost, the amount of 15 per cent.

Solatium to be given, must also be excluded from computation of court-fees. This submission in my view carries no force in the said case, this court held that the claim for interest on the additional compensation claimed in the memorandum of appeal would stand or fall with the decision of the main claim and being merely an adjunct of the main claim, no court-fee would be payable on it. With respect, I agree with this view taken, but that to my mind, is of no help to the applicants in respect of the submission that they have made before me. On the contrary, the reasoning and other findings in the said judgment to my mind definitely support the view that I have taken in respect of the connotation of the expressions "the amount awarded" and "the amount claimed". Referring to S. 7(1) of the Court-fees Act, the learned Judges have observed as follows:

"Now what is the true connotation of the expressions "amount awarded" and "amount claimed" within the meaning of this section? Do they mean the aggregate amount directed to be paid by the Collector to the appellant under the award inclusive of interest and costs and the aggregate amount claimed by the appellant in the memorandum of appeal inclusive of interest and costs or do they refer only to the amount of compensation awarded to the appellant and the amount of compensation claimed by the appellant in the memorandum of appeal? Now in the context in which these words occur and particularly the context of the words "an order relating to compensation", It is clear that these words refer to the amount of compensation awarded and the amount of compensation claimed by the appellant. The section speaks of a memorandum of appeal against an order relating to compensation and provides for the amount of court-fees payable on a memorandum of appeal in so far as it is directed against the order relating to compensation. If the memorandum of appeal challenges the amount of compensation awarded to the appellant section 7(1) applies and the court fee payable on the memorandum of appeal must be computed according to the difference between the amount of compensation awarded to the appellant and the amount of compensation claimed by the appellant in the memorandum of appeal. Then further, on the learned Judges have again observed:

"Having regard to this position in law which could not be seriously disputed, Mr. J.R. Nanavati, learned Assistant Government Pleader appearing on behalf of the State, contended that interest also formed part of compensation and the expression "amount awarded" and "amount claimed" in section 7(1), therefore included interest awarded and interest claimed by the petitioner. But, this contention is, in our opinion, entirely without force". Their Lordships then examined the scheme of the Act and held that the interest claimed on the amount of compensation does not form part of compensation and that interest is treated as distinct from compensation for the purposes of the Act and interest cannot, therefore be regarded as forming part of the compensation and the expressions "amount awarded" and "amount claimed" cannot, on a true construction include the amount of interest awarded, and the amount of interest claimed by the appellant in the memorandum of appeal. Then again there is the following observations:

"It must follow as a necessary consequence that where the memorandum of appeal is directed against an order relating to compensation, the court-fee must be computed only on the difference between the amount of compensation awarded to the appellant and the amount of compensation claimed by the appellant".

Interest and costs, were therefore, held to be not forming part of compensation awarded or claimed and, therefore the provisions of section 7(1) were held not to apply. As pointed out herein, the amount of solatium of 15 per cent over the amount of the market value awarded or claimed, on the contrary, is a part of the compensation and, therefore, this authority, to my mind would support the conclusion that I have reached.

(9) the contention that how much solatium will be given by the Court is a matter uncertain and, therefore, no court-fees candidate b calculated on the amount, has no substance. The amount of solatium is always to be in proportion to the higher amount claimed in the appeal on the ground of the market value u/s 23(1). Therefore, there should be no difficulty whatever in ascertaining this amount of solatium that would form part of the amount of solatium that would form part of the amount claimed None of the contentions, therefore raised on behalf of the applicants can be accepted.

(10) I uphold the decision of the Taxing Officer. The applicants shall pay further respective amounts of court-fees as determined by the Taxing Officer. The Civil Revision Application are rejected with costs. Rules discharged. At this stage, Mr. Nanavati on behalf of the applicants, requests that some time may be granted to the applicants for payment of the excess court-fees. I grant four week's time to pay the requisite court-fee.

(11) Petitions dismissed.