

(2022) 01 GUJ CK 0090

In the Gujarat High Court

Case No : ?R/Special Civil Application No. 1254 Of 2022

Chaturbhai Babaldas Patel Through Poa Holder Arvindkumar
Chaturbhai Patel

APPELLANT

Vs

Competent Authority, National Highway Authority Of India
And Special Land Acquisition Officer

RESPONDENT

Date of Decision : 24-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 243Q(2)
National Highways Act, 1956 — Section 3A, 3D, 3G(5)
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And
Resettlement Act, 2013 — Section 26(1), 30(3)

Citation : (2022) 01 GUJ CK 0090

Hon'ble Judges : Aravind Kumar, CJ; Ashutosh J. Shastri, J

Bench : Division Bench

Advocate : Khyati A Chugh, Chindan Dave, Maulik Nanavati, Devang Vyas

Final Decision : Disposed Of

Judgement

Aravind Kumar, CJ

1. We have heard Ms. Khyati A. Chaugh, learned advocate for the petitioner, Mr. Chintan Dave, learned Assistant Government Pleader for

respondent No.1, Maulik Nanavati, learned counsel for respondent No.2 (National Highway Authority of India), and Mr. Devang Vyas, learned

Assistant Solicitor General for respondent No.3.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

â??(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or

direction and thereby be pleased to direct the respondent number 1 to amend/

modify/revise the award dated 28.06.2017 bearing no. LAQ

Vadodara-Mumbai Express Way/ Fazalpur Compensation Case No.9/2013 and re-compute the compensation qua the lands of the petitioners

by multiplying the market value as determined under Section 26(1) of the LARR, 2013 Act with a Factor-2 (two) and applying all the other

statutory benefits as provided under the LARR Act), 2013 including solatium under S.30(1), interest under Section 30(3) and be further

pleased to direct the respondents to pay the same, with interest from 28.06.2017 @ 9% for the first year and 15% per annum for subsequent

years till date of realization within 6 weeks of the judgment without deducting the Tax in accordance with Circular No.36 of 2016 by

Government of India, Ministry of Finance, Department of Revenue dated 25.10.2016;

(B) Your Lordship may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction and

thereby be pleased to direct the respondents herein to refund the Tax deducted from the total amount of compensation awarded vide order

dated 28.06.2017 bearing no. LAQ Vadodara-Mumbai Express Way/ Fazalpur Compensation Case No.9/2013;

(C) Pending admission, hearing and final disposal of the petition, your Lordships may be pleased to restrain the respondent from using,

altering, making any construction of any kind on the land of the petitioners;

(D) Any other and further releases may be deemed just and proper in the facts and circumstances of the case may please be granted.â??

3. It is the submission of learned advocate appearing for the petitioner that petitioner is jointly holding a Non-agricultural land admeasuring 6374 Ha.

RA. Sq. Mtrs., bearing Survey No.52 at Village Fazalpur, Taluka Vadodara (Rural), District Vadodara. The land in question according to learned

advocate for the petitioner is not falling within the limits of any â??transitional area, smaller urban area or larger urban areaâ?? as defined and

specified under Article 243Q (2) and is not part of any area falling within the limits of any Urban Local body or Municipality or Municipal Corporation

and as such, the land is not covered under any urban area. According to learned advocate for the petitioner, the major economic activity is agriculture

and there are no significant non-agriculture activities in the village or

surrounding area and the village limits of Vadodara Urban Development

Authority, however, no T.P. Scheme is proposed in the area and the land is still in agriculture zone. It is contended that by virtue of Notification dated

03.03.2014, issued by the Government of India in exercise of power under Section 3A of the National Highways Act, 1956 the land of the petitioner

was undertaken for acquisition for the purpose of construction of Vadodara-Mumbai Express way and by virtue of further Notification under Section

3D, published on 05.03.2015, the land vested in respondent No.3. It is contended that for the purpose of compensation, the competent authority passed

an award on 28.06.2017, bearing No. LAQ/Vadodara-Mumbai Express Way/Fazalpur Compensation Case No.9/ 2013 and the market value of the

acquired land was arrived at and though the acquired land is situated in rural area, the authority i.e. respondent No.2 applied Factor 1 and not Factor 2.

Hence, the present petition. The main grievance raised in the petition is that erroneously respondent No.2 authority applied Factor 1 instead of Factor

2.

4. At this juncture, learned counsels appearing for the respective parties submitted that the issue involved in this petition is identical to the issue

decided by the Coordinate Bench of this Court in case of Shah Rajesh Manibhai vs. National Highway Authority of India rendered in Special Civil

Application No. 5913 of 2021 dated 23.04.2021. The said order is further based upon a Division Bench judgment of this Court dated 12.09.2019

passed in a group of petitions led by Special Civil Application No. 8734 of 2019, which has since been affirmed by the Supreme Court as the Special

Leave Petition filed by the State Government has been dismissed on 07.01.2021 in Special Leave Petition (Civil) Diary No. being 18777 of 2020. It is

also submitted that the issue in the present case is identical to the case of Dilipbhai Ganpatbhai Parmar vs. Competent Authority rendered in Special

Civil Application No.12140 of 2021 dated 27.08.2021. It was, therefore, submitted that this petition may also be disposed of, following the order passed

in Special Civil Application No.5913 of 2021 dated 23.04.2021. No other submissions were made.

5. Learned counsel for respondent No.2 - NHAI, further submitted that as in the other cases if it is found that the petitioner is entitled to Factor-

being applied for determination of compensation and other benefits,

respondent No.2" Authority shall make deposit within 21 days of such determination.

6. Thus, following the decision of the Coordinate Bench rendered in Special Civil Application No.5913 of 2021 dated 23.04.2021, the present Petition is disposed of with the same directions and terms as contained in the order dated 23.04.2021 passed in Special Civil Application No.5913 of 2021.

7. However, it is clarified that if the petitioner has moved for re-determination of compensation before the Arbitrator under Section 3G (5) of the

National Highways Act, 1956, the petitioner may not insist for Factor-2 claim or in the alternative the respondents may be permitted to appraise

the Arbitrator of the said issue, so that there is no further multiplicity or complications in the proceedings.

8. The present petition, therefore, stands DISPOSED OF accordingly. There shall be no order as to costs.