

(1968) 07 GUJ CK 0006
In the Gujarat High Court
Case No : A.F.O.D. No. 30 of 1964

Collector, Baroda and Another

APPELLANT

Vs

Haridas Maganlal Parikh and Others

RESPONDENT

Date of Decision : 26-07-1968

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4
Transfer of Property Act, 1882 — Section 54

Citation : AIR 1970 Guj 91 : (1969) GLR 412

Hon'ble Judges : N.G. Shelat, J;B.R. Sompura, J

Bench : Division Bench

Advocate : G.N. Desai, Govt. Pleader, for the Appellant; S.B. Majumdar, for the Respondent

Judgement

1. The land bearing S. No. 70 admeasuring 3 vighas 1 vasa (1 acre 32 gunthas) situated in the limits of the village of Jetalpur in Baroda Taluka belonging to the respondents came to be acquired by the Government for the purpose of construction of houses for the members of the staff of the Electricity Board, at Baroda, in pursuance of a notification issued on 11-4-60 under s. 4 of the Land Acquisition Act, hereinafter to be referred to as "the Act". Jetalpur village adjoins the Alkapuri area of Baroda City. The owners of that land claimed Rs. 98,010 by way of compensation u/s 23 of the Act before the Special Land Acquisition Officer, who awarded in all Rs. 9,995-80 nP, inclusive of solatium at the rate of 15 per cent on the amounts of compensation. It was valued at the rate of Rs. 4800 per one acre of land. Feeling dissatisfied with that award, a reference was made under Section 18 of the Act by the Land Acquisition Officer at their instance in the Court of the District Judge at Baroda. The claim made therein was at the rate of 10 annas per one square foot of land i.e., at the rate of Rs. 27,225 per one acre of land. That claim together with other claims made by them came to be allowed by the Joint Civil Judge (S.D.) Baroda who heard the reference. The opponents were thereby directed to pay Rs. 48,655-20 np. And the costs of the reference to the claimants with interest of 4 per cent on the above amount

from the date of possession to that of payment. Feeling dissatisfied with that order passed on 25th February 1963 by Mr. N. J. Patel, Joint Civil Judge (Senior Division), Baroda, the opponents have come in appeal before this Court.

2. The map Ex. 44 shows the situation of S. No 70 as also other survey numbers situated in the Race Course Circle and round about the same. This S.No. 70 is situated in the Race Course Circle and that Race Course Circle is outside the municipal limits of Baroda, though no doubt it adjoins the municipal limits. In other words, the circular Race Course Road is the end of the municipal limits of Baroda. It further appears that a road coming from the Baroda Railway Station joins the Race Course Road at a point opposite to S. Nos. 70 and 74. S. No. 74 belongs to Government and the passage for S. No. 70 appears to be passing through that land for going on to the road to the east. It appears further clear from the evidence on record that at the time of the acquisition of the land, there was existing various societies such as Alkapuri Co-operative Housing Society, Milan Co-operative Housing Society, Gautamnagar Housing Society and Sarabhai Co-operative Housing Society round about and in the vicinity of that area. At a distance of about 100 feet from the land under acquisition there was the State Transport Workshop, Sarabhai Chemical Works, as the evidence discloses, is at a distance of about a furlong or so from the land under acquisition. There were some other factories though no doubt at some distance from the acquired land in that area. The land under acquisition was an agricultural land and it was not converted for non-agricultural use so far. While the area within the municipal limits had much developed this part of the area where the land under acquisition is situated though not developed so much, it can be said to be having a building potentiality for the reason that it was situated in a fairly good and developed area.

2-A. The claimants based the claim for compensation for the land under acquisition on two grounds. The first was on the basis of the said land agreed to be purchased by some persons on behalf of Vijayanagar Co-operative Housing Society for a sum of Rupees 51,001 under an agreement of sale at Ex. 41 dated 2nd January 1960. According to the claimants, that was the best piece of evidence - it being in respect of the same land and by about the same time when the notification u/s 4 came to be issued for the acquisition of that land. They also relied upon certain instances of sale having taken place in respect of lands or plots in the nearby localities by about the same time so as to show that the land under acquisition was worth at any rate 10 annas per square foot of land. The trial Court accepted the price for which that land was agreed to be sold to Vijayanagar Co-operative Housing Society in the month of January 1960 and awarded compensation on that basis. That has been, however, challenged by the learned Govt. Pleader. According to him, the situation of the land under acquisition can be said to be not such as to entitle the claimants to claim compensation at the rate they have asked for. According to him, this land was an agricultural land and was not even converted for the non-agricultural use by obtaining necessary permission from the Collector as required under the

provisions of the Land Revenue Code. He further contended that it was not within the municipal limits and cannot be said to be a land in a developed area, for, the real development had taken place within the municipal limits of Baroda and not so much beyond those limits viz, in the village where the land under acquisition is situated. He also pointed out that the land was almost blocked on all sides and for going on to the road in the east, there is merely a foot-track passing through S. No. 74 as would appear from the map Ex. 40 in the case. It cannot, therefore, be said to be just abutting on the road on that side. On that basis, an attempt was made to refer to various other instances of sale of lands in the nearby locality and have the same compared with the land under acquisition for ascertaining the market value of land. With regard to the agreement of sale as per Ex. 41 in respect of this land and two other lands S. Nos. 41/1 and 41/2 belonging to the claimants themselves, it was urged that it can hardly be said to be a real instance of sale so as to serve a good and correct guide for ascertaining the market value of the land. According to him, it is difficult to call it a genuine transaction between a willing vendor and a willing vendee and even if it was found to be a bona fide transaction between two willing persons, having regard to certain terms set out therein, it cannot be said that the price mentioned therein correctly reflects the market price of the land under acquisition by about that time.

3. Now before we consider the arguments advanced by the learned advocates appearing for the parties, we would refer to a decision in the case of *Ambalal Mansukhram Joshi v. Addl. Special Land Acquisition Officer* AIR 1968 Guj 5 where it was observed that the best method of determination of the true market price of a plot of land is to base it on instances of sale of the same land or a portion of it at about the same time. The next best method is to look for other instances comparable in time and quality. Almost the same view has been expressed by this Court in the case of *Land Acquisition Officer, Surat v. Dalichand Virchand Shroff*, reported in ILR (1966) Guj 1006. Therein it is observed as under:-

"Ordinarily a sale instance of the very land which is acquired would afford the best guidance for assessing the value of the acquired land, if the sale has taken place within a reasonable time from the date of the notification u/s 4 of the Act and there is no evidence of any rise or fall in the prices during the interval. When the evidence for ascertaining the market value of the acquired property consists of the price paid or realised in respect of a part of the same land then it must be first established that it was a bona fide transaction and secondly that the transaction had taken place within a reasonable time before the notification u/s 4 of the Act."

In other words, it follows that of the comparable instances both in point of time as also its quality which would help the Court in ascertaining the market value of the land u/s 23(1) of the Act, the sale instance, if any, of that very land or a portion of that land which is acquired would afford the best guidance and all that is then required is, that it should have taken place by about the same time or

within a reasonable time before the notification is issued u/s 4 of the Act. The agreement of sale Ex. 41, as already stated hereabove, is in respect of lands including S. No. 70 i.e., the land under acquisition. It is dated 2-1-60. The market price was to be determined as on 11-4-60 i.e., within so short a period as of about 3 months or so. Thus, if such an instance as per Ex. 41 is found to be a bona fide transaction intended to lead to a sale of that property, it would certainly serve as the best piece of evidence to the exclusion of any other piece of evidence in the circumstances of the case. Another point which requires to be mentioned is that while determining the market value of the land, as observed in ILR (1966) Guj 1006 referred to above, the potential value of the land has to be taken into consideration, but where the market value is to be determined on the basis of the sale instances of properties in the nearby locality, the potential value of the land should not be separately assessed because the prices evidenced by the sale instances cover the potential value. The test is a test of sale in market and that would necessarily require a willing seller and a prudent purchaser. We may as well refer to the observations made by the Supreme Court in the case of Raghubans Narain Singh v. Uttar Pradesh Govt. AIR 1967 SC 465 to which our attention was invited by Mr. Majmudar, the learned advocate for the respondents, that market value on the basis of which compensation is payable under S. 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner excluding any advantages due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired." It was on that basis that the Supreme court rules out the contention raised on behalf of the appellant that the High Court's judgment suffered from an infirmity in that it failed to take into account the potential value of the land as a building site in view of the evidence as to the town's recent development. In other words, when the market value of the land has to be ascertained on the basis of some such instances of sale, either in respect of the acquired property or any portion thereof, or in respect of properties in the near by vicinity, all those considerations having been covered thereunder, they need not require to be assessed separately. If, therefore, the determination of the price of the land under acquisition has to be on any such instances of sale, the other considerations which were raised by either side before us, viz., about the land being better situated and that again in a developed locality, or about the same suffering from certain disadvantages as pointed out by the learned Govt. Pleader viz., about the area not so far developed or about the same being an agricultural land till that date, lose their importance.

4. With these broad principles before us, we have to consider the agreement of sale as per Ex. 41 dated 2-1-60. A faint attempt was made to suggest that the transaction cannot be easily said to be a genuine or a bona fide one. He pointed out that though the entire property was sold for such a large amount, the earnest money paid by the purchasers was far too small viz., Rs. 2000 only and

that the evidence about the claimants having received that amount was even shaky. It was, besides, said that it was not in fact a sale as such under a registered sale-deed which can validly pass title to the property comprised thereunder. Then it was alternatively urged that even if such an agreement of sale were taken into account for ascertaining the market value of the land under acquisition, some of the terms set out therein were such by reason of which it would not be possible to call such a transaction an instance of sale which should serve a good and conclusive guide for fixing the market value of the land under acquisition. Those two circumstances were that while vendors bound themselves to part with the land on receipt of the consideration set out therein, there was no corresponding liability on the vendees to purchase the same. As stated therein, it was optional for them to purchase if they so desires and that the only penalty that they had to pay was the forfeiture of the amount of earnest money of Rs. 2000/- paid to the vendors. The vendors were, thus, not in a position to enforce the contract against them. The other factor on which the learned Govt. Pleader placed considerable stress was that a period of nine months was fixed for vacating the land on payment of the amount and that again a further period of six months would have to be extended, if necessary. Thus, the transaction according to him, was covering a price not actually as it stood on the date of the transaction viz. In January 1960 but it covered the longer period of about 15 months and that, therefore, the market price cannot be ascertained on the basis of any such agreement of sale as it stood on 2-1-1960.

5. We have, therefore, first to find out as to whether such an agreement of sale can be treated as a relevant and good piece of evidence justifying the Court to take into account for the ascertainment of the market value of the land comprised thereunder and later on acquired by the Government. An agreement of sale no doubt is not a sale itself. It does not in fact create interest in the property as contemplated u/s 54 of the Transfer of Property Act. On that account alone, it cannot be eliminated from being considered as a relevant and good piece of evidence if it is established that it was a bona fide transaction between a willing purchaser and a willing vendor. In fact in this respect Mr. Majmudar invited a reference to a decision of the Supreme Court in AIR 1967 S.C. 465 (Supra), where even an offer made by a person for the purchase of any property and though not accepted, was treated to be a relevant piece of evidence, and if that evidence is accepted as reliable, it can well serve as a good piece of evidence for determining the market value on that basis. In that case, the claimant led the evidence of one Zaidi a Deputy Collector who had just retired and who prior to his retirement had written two letters to the claimant dated Oct. 14, 1945 and Nov. 20, 1945 expressing his desire to purchase the land in question with a view to build a residential house for himself so that he could live therein after his retirement. In those letters he had offered Rs. 18,000/-, but that offer was not accepted by the claimant (appellant) as he demanded Rupees 24,000/- as price of the land. This part of the evidence was accepted by the learned Dist. Judge and, in his view the offer conveyed by Zaidi was genuine and

bona fide and that on that basis he valued the land at Rs. 18,000/-. The matter was taken to the High Court at Allahabad which took a different view and in respect of that part of the evidence it was observed that it cannot afford a true test about the value of the property. The other instances of sale of the nearby locality were then considered and the final order was passed. The appellant claimant preferred an appeal to the Supreme Court against that decision and there while dealing with that part of the evidence about an offer made by witness Zaidi for the purchase of that property sought to be relied upon, their Lordships of the Supreme Court observed thus:

"The evidence of witness Zaidi being the evidence of an offer made by him cannot of course be equated in importance with the evidence of property specimen sales of properties in the neighbourhood. Obviously an offer does not come within the category of sales and purchases but nonetheless if a person who had made an offer himself gives evidence such evidence is relevant in that it is evidence that in his opinion that land was of a certain value. But the evidence that the owner refused an offer so made amounts to this only that in his opinion his land was worth more than the figure of value named or that the offer was for some other reason such that he was not willing to accept." Going further, it was observed that "it has also been held that an agreement to sell is a relevant matter and can be used in relation to fixing the value of the acquired land (cf. *Governor General in Council v. Ghaisuddin* (1929) 30 Pun LR 212) (sic.)" Then the Supreme Court considered the effect of the evidence relating to witness Zaidi's offer it being in the nature of an offer not similar to an offer made by an irresponsible broker as commented in the case of *Government of Bombay Vs. Merwanji Muncherji Cama*, . That part of the evidence was accepted by the Supreme Court and it upheld the view of the District Judge as against that of the High Court in that case. The valuation made by the District Court on that evidence, as observed by the Supreme Court, rested on a better footing in the circumstances of the case an ought to have been accepted by the High Court. This decision, therefore, not only recognises any such evidence of an offer for purchasing any property under acquisition prior to the date of notification issued for the same by the Government, but that even such evidence can serve as a good piece of evidence which can be acted upon in the circumstances of the case. It also appears that an agreement to sell in respect of any such property would be a relevant matter and can be used in relation to fixing the market value of the land. Such an agreement to sell stands on a stronger and better footing than what a onesided offer can help in determining the price of the land under acquisition. The agreement of sale is a bilateral contract enforceable in law. The vendor agrees to sell the property and the purchaser agrees the purchase the same as per the conditions set out in the agreement. There is an agreement of price in respect of the property comprised thereunder. What remains to be done is to have a deed passed in respect of the said property as per the terms or conditions set out in that agreement. In our view, therefore, such an agreement of sale, apart from the same being perfectly a relevant piece of evidence, can

also be a basis for fixing the market value of the land under acquisition provided of course it is found to be a bona fide transaction between a willing or a prudent purchaser and a willing vendor.

6. Of the claimants, one of the claimants has been examined at Ex. 39 and he has referred to the transaction entered into. The purchasers were the chief organizers of the proposed Vijaynagar Co-operative Housing Society. Of these three persons one Sudhakar J. Mehta has been examined at Ex. 53 in the case. If we turn to the evidence of Sudhakar Mehta, it appears that he was serving as the General Manager in the Sarabhai Chemicals since last 13 years or so. As we said above. Sarabhai Chemicals has been at a distance of about a furlog or so from the land under acquisition. In fact all the Sarabhai Group factories have been situated in that locality and there are some Housing Colonies nearby. He has then said that he, one Vithalbhai Shah and Ratilal Raval had proposed to have a housing society. They had selected the lands bearing survey Nos. 70, 41/1 & 41/2 belonging to the claimants for the purpose of putting houses for the members of that society. Those lands were selected by them because they were near the place where they were working. He has then stated that Rs. 2000 were paid by way of earnest money and the agreement of sale as per Ex. 41 was executed by them. His evidence also shows that as soon as they came to learn about those lands having been notified for acquisition for the Gujarat Electricity Board, they moved in the matter by saying that they had already purchased the same for the construction of houses for persons working in that area and that they should not acquire the same. Since nothing came out, they were then required to cancel the agreement on 19-6-60 and obtained back the amount of Rs. 2000 paid by them by way of earnest money. From this evidence read with that of the claimant at Ex. 39, it appears abundantly clear that these lands were agreed to be purchased for genuine and bona fide purpose. It was not a transaction between one individual or the other out to enter into speculative market as we come across some irresponsible brokers entering into agreement for the purchase of lands in the hope of rising prices of lands in the near future. This was a transaction on behalf of members of a co-operative society of whom one was the General Manager of Sarabhai Chemicals. The purpose was, as we said above, for the construction of houses for the members of that society and more particularly in the interest of those who were working in that factory area nearby. Thus, the purchasers were in our view, bona fide purchasers. The purpose for the purchase of those lands was again a genuine purpose. Not a single question has been put to this witness whereby any suggestion has been made about the doubtful character of purpose or about their having not been bona fide purchasers in respect of these lands. In fact, they made an attempt to see that the lands remained with them and the acquisition was dropped. It was only when that could not happen that they had to cancel the same and get back the amount. In this connection, it is worth noting that there is nothing to show much less to suggest even in a remote manner that they knew of any such impending acquisition by about the time when they entered into the transaction

with the owners of this property. There is no suggestion made in the cross-examination of Sudhakar about the transaction being of a speculative or collusive character. Nor is any suggestion made about their having not paid any amount by way of earnest money to them. It may be worth nothing that later on the Government did not acquire the two other lands S. Nos. 41/1 and 41/2 which were adjacent to S. No. 70 and these persons who later on formed another society viz., Gautamnagar Housing Society purchased those two lands by even giving a somewhat higher price than what they had agreed to pay for the same under the agreement of sale. That strengthens the conclusion that we have reached about their bona fide desire of going for such lands for the purpose of construction of houses for the members of such a society. It is no doubt true, as pointed out by Mr. Desai, the learned Government Pleader, that the claimant Haridas Ex. 39 has admitted about his having not credited the sum of Rs. 2000 in his account books. He has also admitted about his having not mentioned about the Banakhat in the claim petition. He has, however, averred about his having received a sum of Rs. 2000 from the organizers of the society at the time when the agreement of sale had taken place and there is hardly any good ground to reject his evidence particularly when it finds support from Shri Sudhakar Mehta Ex. 53 in the case. The writing itself refers to the same. The mere fact that he had not credited the sum in his account books does not justify us to hold that no such amount was received and that the transaction was sham. As to his having not mentioned about the Banakhat in the claim petition, he has explained the same by saying that he had already intimated that fact earlier to the Land Acquisition Officer. In fact an attempt was made to see that the lands were not acquired particularly when they were agreed to be sold to a Housing Society. We do not think that this evidence read with that of Sudhakar at Ex. 53 can justify us to say in any way about the transaction being sham or that it was not bona fide. The learned Judge has believed that evidence and we think quite rightly.

7. The contention of the learned Govt. Pleader then was that even if such a transaction was a genuine one, having regard to certain conditions set out in the agreement, it cannot be treated as a good and conclusive piece of evidence for the ascertainment of the market value of the land under acquisition. According to him, having regard to the conditions set out in the agreement, the risk of the purchasers was in respect of a mere loss of Rupees 2000 in case they were not to purchase the property even after the period of about 15th months, and that there was no right given to the vendors to enforce the specific performance of the contract against the purchasers. Their right was only to forfeit the amount of Rs. 2000 which was given to them by way of earnest money. That appears to be no doubt true. But we have to take into account the nature of the transaction and the character of the property as it then stood. As we said above it was an agricultural land. It was not so far converted into the use for non-agricultural purpose. Now as set out in the agreement that was required to be done. Then they had to obtain the necessary permission or sanction from the revenue authorities as also the Town Planning authorities before using the same for

housing purposes. Even the title in the property would have to be cleared before sale-deed could be executed. Now all these things were required to be done by the purchasers obviously with the full co-operation and help the vendors. All that would take necessarily some time and it was from that point of view that they had fixed a period of nine months within which all those requirements were to be carried out. If any more time was needed, it was to be extended by six months more. This provision for the period was perfectly natural and quite necessary in such transactions involving large property. There is nothing unusual therein. The period provided in the agreement cannot affect the fixing of the price of the property when it took place or even within such a short period of nine months. Thereafter it has been provided that if after all that has been done they did not purchase the same, the vendors had a right to forfeit the amount of earnest money, and if on the other hand, the vendors failed to pass a registered sale-deed on payment of full consideration and after having carried out the conditions set out in the agreement, they were entitled to have it enforced by having recourse to any remedy in accordance with law. Now this shows the extent of their readiness and willingness to pay the balance of the amount and take over the property. The purchasers could have easily asked for the lands on payment of the amount even within a short period of a few days or a month or so if all those requirements could be carried out within that period. There was nothing to prevent them from claiming so. If they did not the vendors were entitled to forfeit Rs. 2000 the earnest money paid to them. The vendors may have felt such a bargain a proper one, for they may well hope that they can get purchasers for such a price or more later on and in fact as the evidence shows, these very people purchased the two other lands out of this agreement later on at a higher rate, after they were dropped from acquisition by the Government. What mattered was the agreement between the parties and it is nowhere shown that it was a speculative or imprudent transaction which is that event may not be treated as a bona fide transaction. While, therefore, such an agreement of sale may not stand on the same footing as a sale transaction transferring right to the property, it can be said to be indicative of and in reality reflecting the price of the property as on that date viz., in January 1960 or thereabout.

8. In our view, therefore, since it was in respect of the same land bearing S. No. 70 under acquisition and it took place only three months before the date of the notification issued u/s 4 of the Act for acquisition of that land, it can serve as a very good piece of evidence for determining the market price of the land under acquisition. The price cannot be taken in any way less having regard to the period fixed for the reason that the property remained with the vendors during that period. The amount of Rs. 2000 as deposit cannot also be said to be far less for much depended upon the lands being turned into non-agricultural use and again required to be permitted by the Revenue and Town Planning authorities. We are satisfied that the market value of the land as it stood as on the date when the notification was published u/s 4 was as given in the agreement of sale. That has been accepted by the learned Judge below and we agree with him.

9. In the view that we have taken in agreement with the learned trial Judge, it is unnecessary to go into other instances of sale and evidence in the case. In the result, therefore, the order passed by the learned Civil Judge is proper and calls for no interference whatsoever.

10. The appeal is dismissed. The appellant shall pay the costs of the respondents and bear his own.

11. Appeal dismissed.