

(2012) 12 GUJ CK 0011
In the Gujarat High Court

Case No : First Appeal No. 3275 of 2012 to First Appeal No. 3281 of 2012, First Appeal No. 3714 of 2012 to First Appeal No. 3721 of 2012, First Appeal No. 3632 of 2012 to First Appeal No. 3636 of 2012, First Appeal No. 3568 of 2012 to First Appeal No. 3578 of 2012,

Deputy Collector and 2

APPELLANT

Vs

Somabhai Bapujibhai Patel and 1

RESPONDENT

Date of Decision : 28-12-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 51A

Citation : (2012) 12 GUJ CK 0011

Hon'ble Judges : G.R.Udhwani, J;D.H. Waghela, J

Bench : Division Bench

Advocate : Niraj Ashar, AGP in First Appeal Nos. 3275 to 3281 of 2012 with Civil application No. 10020 of 2012 and Civil application No. 10021 of 2012, in First Appeal Nos. 3632 to 3636 of 2012 and First Appeal Nos. 3568 to 3578 of 2012 and Civil applications No. 12913 of 2012 to Civil application No. 12923 of 2012 and Mr. Udit Mehta, AGP in First Appeal Nos. 3714 to 3721 of 2012, for the Appellant; A.V. Prajapati, Amicus Curiae in First Appeal Nos. 3275 to 3281 of 2012 with Civil Application No. 10020 of 2012 and Civil Application No. 10021 of 2012, Mr. Vijay N. Raval in First Appeal Nos. 3714 to 3721 of 2012 and in First Appeal Nos. 3568 to 3578 of 2012 and Civil Applications No. 12913 of 2012 to Civil Application No. 12923 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G.R. Udhwani

1. All these appeals arise from the award made by the learned Principal Senior Civil Judge, Panchmahals at Godhra in various Land Acquisition Reference cases of the claimants whose lands were acquired as per the details mentioned in the table below.

Since the lands were acquired by virtue of same notification and for the same purpose i.e. Sujalam Sufalam Kadana Left Bank High Level Main Canal, it will be

convenient to decide all these appeals by common judgment and order.

2. The Referral Court, on appreciation of oral as well as documentary evidence produced before it, enhanced the compensation in each of the cases as per the details mentioned in last column of the above statement.

3. The appellants-original opponents in each of Land References are aggrieved and dissatisfied with the award made by the Referral Court and, therefore, they are before this Court in appeals.

4. The limited ground agitated for consideration by this Court is as to whether the award made by the competent authority under the Land Acquisition Act, 1894, is duly appreciated and market price of the land is duly determined by the Referral Court in exercise of the powers conferred upon it u/s 18 of the Act. Since that limited question is to be considered, it is not necessary for this Court to enter into other facts of the case except those tabulated as above.

5. Having heard learned advocates for the parties and perused the papers, we are of the opinion that the additional compensation awarded by the Referral Court is just and proper and is not required to be interfered with for the following reasons.

6. The arguments made by learned AGP appearing for the appellants were that the claimants had not discharged their burden of establishing the fact that the lands in question were so valued as to fetch the price determined by the Referral Court. In his submission, the Referral Court seriously erred in relying upon the earlier award in Land Acquisition Reference Case No. 112 of 2009 and allied matters of Village Movasa, Taluka Santrampur, District Panchmahals (hereinafter referred to as "previous award") awarding Rs. 177/- per sq.mtr as additional compensation, and that in absence of any evidence that the said lands and the lands under the present references were similar in fertility and other potentialities, the Referral Court could not have relied upon the previous award. In his submission, the claimants of the present cases were taking only one crop, and in some cases, the claimants were not even carrying on any agricultural activities in their respective lands; whereas in cases of lands acquired in previous award, the claimants were taking crops of maize, paddy, wheat, grain etc., and, therefore, in his submission, those lands and the lands under present cases were not comparable.

Reliance has been placed upon the decision of the Hon"ble Supreme Court in the case of JAI PRAKASH AND OTHERS VS. UNION OF INDIA reported in 1997 (3) Supreme Today 280 and in the case of Basant Kumar and Others Vs. Union of India (UOI) and Others, .

7. In view of the above submission made by learned AGP for the appellants, the question which falls for our consideration is as to whether previous award made in respect of the lands which were comprised in the same notification, though of different village, could have been relied upon by the Referral Court.

8. To appreciate this aspect, we may glance through the previous award. The lands with which the Referral Court was concerned in previous award were comprising of Village Movasa, Taluka Santrampur, District Panchmahals. Item No. 8 to 12 in the above table also relates to the land comprising of Movasa Village, Taluka Santrampur, District Panchmahals. Rs. 3.00 and Rs. 3.75/- respectively was the award per square meter in case of jirayat (non-irrigated) and kyari (irrigated) land, as determined by the Special Land Acquisition Officer. In Land Acquisition Reference Case No. 112 of 2009 and allied matters (previous award) also, similar was the position insofar as the award made by the Collector was concerned. The claimants in the above Land Acquisition Reference Cases were awarded Rs. 180/- per sq.mtr i.e. award was enhanced to Rs. 180/- per sq.mtr. In the said case the award was made on 21st August, 2010. The appellants have admittedly not preferred any further proceedings against that award, and thus, it has been accepted and has become final.

9. In the said reference, the claimants had lodged a claim of Rs. 300/- per sq.mtr, and the Referral Court, after recording that there was no cogent evidence for income and irrigation facilities, awarded only Rs. 180/- per sq.mtr, though, the Government Approved Valuer had valued the land at the rate of Rs. 200/- per sq.mtr. Thus, it was not fair for learned AGP to submit that, in previous award, it was established that the claimants were earning more from agriculture.

10. There can be no dispute on the following facts:

(1) That Notification u/s 4 of the Act for acquisition of the lands under previous award was issued on 24th March, 2005, and relevant Notification u/s 4 of the Act in the present cases is also issued on 24th March, 2005.

(2) That both the lands were acquired for the same scheme.

(3) That the lands involved in previous award and those mentioned at Item No. 8 to 12 in the above table are situated at Village Movasa, Taluka Santrampur and were rated by the acquiring authority at Rs. 30,000/- per hectare for jirayat land and Rs. 37,500/- per hectare for kyari land, and in the previous award compensation has been enhanced to Rs. 180/- per sq.mtr.

(4) The lands comprised in Village Mahetana Chakaliya were rated at Rs. 30,000/- per hectare which came to be enhanced by Rs. 177/- per sq.mtr by Referral Court.

(5) The lands comprised in Village Dhuniya were rated at Rs. 60,000/- per hectare for jirayat land and Rs. 75,000/- per hectare for kyari land which came to be enhanced by Rs. 173/- per sq.mtr by Referral Court.

(6) Similarly the lands of Tochna Gorada Village were valued at Rs. 74,000/- per hectare for jirayat land and Rs. 92,500/- for kyari land which also came to be enhanced by Rs. 173/- per sq.mtr.

(7) The enhancement so made by the Referral Court were all based upon the

previous award relating to the lands comprised in Village Movasa.

11. It cannot be disputed that, inferior the land, lower the price and superior the land, higher the price, if the lands are within the same vicinity. The Special Land Acquisition Officer, by valuing lands of Movasa Village at Rs. 30,000/- per hectare i.e. Rs. 3.00 per sq.mtr, and other lands either equal or more than the value of the lands of Movasa Village itself indicated that the lands which were rated higher than the lands of Village Movasa were superior in quality. No better proof than this was required and perhaps, had the Referral Court considered this aspect, the weightage in proportion to the valuation of each of the lands made by Special Land Acquisition Officer could have been given by the Referral Court, particularly when the previous award has been accepted by the appellants. For example, if the price of the land of Village Movasa i.e. Rs. 30,000/- per hectare (Rs. 3.00 per sq.mtr) was enhanced by Rs. 177/- per sq.mtr in the previous award, the price of the lands valued at Rs. 60,000/- per hectare (Rs. 6.00 per sq.mtr) of Village Dhuniya could have been safely enhanced to Rs. 360/- per sq.mtr. Likewise, the lands comprised in Village Tochna Gorada which is valued roughly at 2.5 times as compared to the lands comprised in Village Movasa by acquiring authority itself, could have been enhanced to Rs. 450/- per sq.mtr. However, this exercise has not been done by the Referral Court and the claimants appear to be satisfied with the price of the land equivalent to that of Village Movasa, which, by virtue of valuation made by Special Land Acquisition Officer himself were inferior in quality as compared to their lands. Suffice it to say that the Referral Court, by awarding lesser amount than what the claimants could have legally claimed has already been lenient towards the appellants, and therefore, there can be no question of reducing the amount of compensation. It is true that the lands comprised in Village Movasa were not comparable to other superior lands. However, if such comparison is carried further, that is disadvantageous to the appellants rather than to the claimants. Therefore, the acquiring authority has no basis to make any grievance on that count. In fact, we are of the opinion that the appeals suffer from non-application of mind. Reliance placed by the appellants on the cases of Jai Prakash and others (supra) and Basant Kumar (supra) is also misconceived, since none of those cases have the facts similar to what has been discussed above.

11.1 Similarly, on perusal of the following authorities relied upon by learned AGP, it was seen that except the case of Charan Dass (supra), none of them would apply in the facts of the present cases. In Charan Dass (supra), the Hon'ble Apex Court was considering the methods for ascertaining the market value of the lands under acquisition, and it was held that the sale transactions on or about the date of issue of notification, and in absence of such sale transaction, contemporaneous transactions in respect of the lands which have similar advantages and disadvantages is considered as a good piece of evidence. It was further held that in absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to

work out the market value of the land etc. Thus, it cannot be said that the Referral Court erred in relying upon the award made in respect of the lands which were either comprised in same village or neighbouring villages.

We may now deal with other authorities viz.

(1) Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, .

(2) Charan Dass (Dead) by L.Rs. Vs. Himachal Pradesh Housing and Urban Development Authority and Others, .

(3) Union of India (UOI) Vs. Harinder Pal Singh and Others, .

(4) Patel Joitaram Kalidas and Others Vs. Spl. Land Acquisition Officer and Another, .

(5) The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, .

11.2 In Harinder Pal Singh (supra), the Supreme Court has approved the approach of High Court concerned in fixing the market value of the land forming the subject matter of acquisition at a uniform rate for five different villages with little to choose between one stretch of land and another. The entire area was in a stage of development into one unit and uniform compensation was awarded for all the units. In the instant case also the lands comprised in different villages were acquired and the Referral Court has taken into consideration the lowest valued lands as yardstick for enhancing the compensation even in respect of the lands which were valued higher by the Land Acquisition Officer.

11.3 In Mohd. Hanif Sahib Bawa Sahib (supra), the Supreme Court approved the method of providing 10% appreciation in the value of the land in absence of any other evidence.

11.4 In the case of V. Narasaiah (supra), the Supreme Court was called upon to decide inter-alia the question as to whether certified copy of sale deed regarding similarly situated or neighbouring land were to be treated as evidence in view of Section 23 and Section 51-A of the Act and the said question was answered in affirmative.

Further more, reliance placed upon the case of Patel Joitaram Kalidas and others (supra) is also irrelevant inasmuch as the issue before the Apex Court was regarding interest which is not in issue herein.

12. We may also refer to the following cases cited before the court below.

12.1 In Basant Kumar (supra), the question which fell for consideration before the Apex Court and which was negatived was as to whether the entire lands in the village can be treated as one unit. This fact situation is not available on record.

12.2 In Jaiprakash (supra), on facts, the High Court concerned was justified in

granting lesser compensation than the lands situated in neighbouring village, considering all other relevant aspects of the case before it.

13. In view of what has been discussed above, we do not find any substance in this group of First Appeals. The appeals are, therefore, dismissed summarily along with civil applications filed in respective appeals, with no order as to costs. The amounts due under the impugned award, if deposited before this Court, shall be transmitted to the Referral Court for disbursement to the claimants. Record & Proceedings, if any, shall be returned to the Tribunal forthwith.