
(2010) 12 GUJ CK 0221
In the Gujarat High Court
Case No : First Appeal No. 2837 of 2009

Deputy General Manager	Vs	APPELLANT
Deceased Ambalal Madhavdas and Another		RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 35
Limitation Act, 1963 — Article 137

Citation : (2010) 12 GUJ CK 0221

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Trivedi and Gupta, for the Appellant; A.J. Patel, for Defendant 1 and Neeraj Soni, Ld. Asst. Government Pleader for Defendant 2, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—Present appeal has been filed against the judgment and award dated 31st March 2008 passed by the Principal Senior Civil Judge, Gandhinagar in Land Acquisition Reference Case No. 70 of 2007, whereby, the reference was partly allowed and the Appellant-ONGC was held liable to pay Rs. 5-45 ps. per sq. metre as annual rent to the original claimants along with interest as enumerated in the award till the entire amount is realised.

2. The facts in brief of the case are that the Land Acquisition Officer made a proposal for temporary acquisition of the lands belonging to the Respondents, original claimants. After following due procedure, the lands came to be acquired.

3. Thereafter, award came to be passed by the competent authority fixing the amount of compensation.

4. However, being dissatisfied with the award, the original claimants raised dispute by way of reference before the Court below. The reference Court, after appreciating the documents on record, partly allowed the same by way of the impugned award.

Hence, present appeal.

5. The main contention raised by the Appellant-Corporation is that the reference Court has not appreciated the law governing the subject, more particularly, Section 35 of the Land Acquisition Act, in its proper perspective. It has been submitted that the reference Court has also lost sight of several other important factors while awarding additional amount of rent.

6. Heard learned Counsel for the respective parties and perused the documents on record. The issue involved in this appeal is squarely covered by the ratio laid down by the Division Bench of this Court in the case of Oil and Natural Gas Corporation Ltd. v. Sankarji Hemaji and another, reported in (2008) 17 GHJ 523. It would be beneficial to reproduce the relevant portion of the said decision as under:

5.2 On the facts of the case, it is evident that the Reference Court has also determined the further rent which issue was not before it. I am, therefore, of the opinion that the contention raised by the learned Advocate for the Appellant that the observation or direction issued by the Reference Court in the operative part of the orders require to be quashed and set aside, is required to be accepted. If the said direction is allowed to remain then it would amount to granting the rent which is over the rent fixed by the Appellant-O.N.G.C. from time to time. Moreover, the same has been fixed without considering as to what would be the future rent fixed by the Appellant- O.N.G.C, which is beyond the scope of reference. Hence if the said observation is allowed to remain then, in that event such compensation would be much more than the amount which has been found to be adequate by the Court.

5.3 It may be noted that the Reference Court was dealing with a particular acquisition and it was not open for the said Court to pass an order in respect of future rent. Such an observation on the part of the Reference Court is clearly bad in law in view of the provisions of Section 35(3) of the Act. In that view of the matter, the observations or direction issued by the Reference Court with regard to additional amount of compensation, requires to be quashed and set aside.

6. In the result, these appeals are allowed. The observation "over the rent fixed by O.N.G.C. from time to time with the running interest at the rate of 9% p.a. from the date of due date of running till the day of payment is made",made by the Reference Court in the operative part of the impugned judgments and awards, is quashed and set aside. These appeals are allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

7. It would also be beneficial to reproduce the operative part of the said judgment, which reads as under:

41. Similarly, event he conduct and the action of the then Special Land Acquisition Officer, who has referred the references applications in more than 100 cases to the reference court, though the applications for reference were filed

after a period of more than 20 years, is also required to be considered seriously at the hands of Government. Under the circumstances, Chief Secretary, Revenue Department is directed to hold necessary inquiry against the concerned Special Land Acquisition Officer with regard to his conduct and actions. Registry is directed to communicate this order to the Chief Secretary, Revenue Department, State of Gujarat for compliance.

42. For the reasons stated hereinabove, all the appeals succeed and are allowed with costs which is quantified at Rs. 5000/- (Rupees Five Thousand only) per each appeal.

The impugned common judgment and award dated 15.10.2005 passed by the learned Principal Senior Civil Judge, Mehsana (Mr. J.R. Shah) inland Reference Case Nos. 3780 to 3784 of 2003 is hereby quashed and set aside and it is held that:

[i] The reference applications submitted by the original claimants were not maintainable.

[ii] The reference applications were required to be dismissed on the ground of limitation considering Article 137 of the Limitation Act. In the alternate, the same were required to be dismissed on the ground of delay and laches.

[iii] The reference court has no jurisdiction to decide any other question except the difference as to sufficiency of compensation in a reference u/s 35(3) of the Act.

[iv] The reference court has no jurisdiction to decide any other question except the difference as to sufficiency of compensation in a reference u/s 35(3) of the Act.

[v] The reference court has no jurisdiction to declare acquisition proceedings and the award declared by the Special Land Acquisition Officer u/s 35(3) of the Act as illegal and/or non-est in a reference u/s 35(3) of the Act.

[vi] The reference court has no jurisdiction to declare possession of the acquiring body as illegal and/or unauthorized and consequently the reference court has no jurisdiction to declare the ONGC-acquiring body as trespasser that too without framing any issue.

[vii] The reference court has no jurisdiction toward compensation by way of mesne profit declaring compensation of the acquiring body as illegal and unauthorized.

[viii] The reference court has also no jurisdiction to award statutory benefits and or interest, as awarded by the reference court, as if the acquisition proceedings is a permanent acquisition.

[ix] The reference court has no jurisdiction to determine the dispute with regard to sufficiency of the compensation beyond the period of three years from the

date of taking the possession.

[x] The Reference Court has no jurisdiction to restore the possession of the land to the original owners while deciding the reference u/s 35(3) of the Act.

7. From the above order passed by this Court, it is clear that while dealing with an application u/s 35(3) of the said Act, the reference Court is not empowered to pass an order in respect of future rent. The ratio laid down in the aforesaid case is squarely applicable to the facts of the case. The learned advocate for the Respondents is not able to point out anything to take a different view in the matter. Hence, the impugned order passed by the reference Court, being bad in law, deserves to be quashed and set aside.

8. For the foregoing reasons, present appeal is hereby allowed. The judgment and award impugned in the appeal is hereby quashed and set aside. No order as to costs.