

(2010) 12 GUJ CK 0076
In the Gujarat High Court

Case No : First Appeal No's. 5089 and 5090 of 2007

Deputy General Manager

APPELLANT

Vs

Patel Nathiben Bhikhabhai and Another

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 35, 35(3)

Citation : (2010) 12 GUJ CK 0076

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

Bench : Single Bench

Advocate : Ajay R. Mehta, for the Appellant; A.J. Patel and Jayesh M. Patel for Defendant 1.2.1 and 1.2.2, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—Both these appeals involve common questions on law and facts and therefore, they are disposed of by this common judgment.

2. Both these appeals have been filed against the judgment and award passed by the Principal Senior Civil Judge, Gandhinagar in Land Acquisition Reference Case No. 164 of 2002 dated 23rd August 2006, whereby, the references were partly allowed and the Appellant-ONGC was held liable to pay Rs. 5-20 ps. per sq. mtr. as annual rent to the original claimants along with interest as enumerated in the award till the entire amount is realised.

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

4. However, being dissatisfied with the awards, the original claimed raised disputes 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 orders. Hence, these appeals.

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. Similar issues arose for consideration of this Court in a group of appeals being First Appeal No. 792/2003 & allied matters. The said group of appeals came to be disposed of by this Court, vide judgment and order dated 21st March 2006, relevant portions of which are reproduced hereunder for ready reference;

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.

6.0 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. 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. Hence, the impugned orders passed by the reference Court, being bad in law, deserves to be quashed and set aside and the matter requires reconsideration.

8. For the foregoing reasons, both these appeals are partly allowed. The impugned awards passed by the reference Court are quashed and set aside. The matters are remanded to the concerned reference Court for consideration afresh on merits in view of the principle laid down by this Court in the above decision and also being uninfluenced of this order. The references, being very old, the concerned reference Court is directed to dispose of the same expeditiously preferably within a period of two years from the date of receipt of writ of this order.

9. With the above observations and directions, both these appeals stand disposed of. No costs.