

(2014) 01 GUJ CK 0040
In the Gujarat High Court

Case No : First Appeal No. 4487 of 2007 to First Appeal No. 4491 of 2007

Deputy General Manager

APPELLANT

Vs

Special Land Acquisition Officer 2 and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 11(1) 18 23(1-A) 23(2) 28

Citation : (2014) 01 GUJ CK 0040

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : R.R. Marshall, for the Appellant; Alkesh Shah, AGP for the Defendant(s) No. 1 and Mr. A.J. Patel, Advocate for the Defendant(s) No. 2-3, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Chhaya, J.—By this group of appeals u/s 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged common judgment and award dated 13.04.2007 passed in Land Reference Case Nos. 241 to 244 and 381 of 2001 by learned Principal District Judge, Mahesana. In view of the fact that common judgment and award is challenged by way of this group of appeals, all the five appeals are heard together and are hereby disposed of by this common judgment.

2. Heard Mr. R.R. Marshal, learned Senior Counsel with Mr. V.K. Bhatia, learned counsel for the appellant, Mr. A.J. Patel, learned counsel with Mr. Jayesh Patel, learned counsel for respondent Nos. 2 and 3-original claimants and Mr. Alkesh Shah, learned Assistant Government Pleader for respondent No. 1-Special Land Acquisition Officer, ONGC, Mahesana in all these appeals.

3. The lands belonging to the respondents-original claimants in each appeal situated at Village Rantej, Tal: Chanasma, Dist: Mahesana, is sought to be acquired for the purpose of drilling of well for ONGC by the State Government.

Notification u/s 4 of the Act was issued on 03.02.1999 followed by declaration u/s 6 of the Act dated 18.08.1999. Proceedings so initiated, culminated into the award u/s 11(1) of the Act, which was made and declared by the Special Land Acquisition Officer on 30.12.2000. The Special Land Acquisition Officer awarded Rs. 6.75/- per Sq.Mtr., as compensation.

4. Being dissatisfied with the amount of compensation so awarded by the Special Land Acquisition Officer, the original claimants filed references as provided u/s 18 of the Act, which came to be referred to the Reference Court and were registered as Land Reference Case Nos. 241 to 244 and 381 of 2001. After considering the evidence on record, Principal District Judge, Mahesana, vide order dated 13.04.2007 determined the market value under the acquisition pertaining to respondent No. 2-original claimant at the rate of Rs. 35.50/- per Sq.Mtr. (Rs. 6.75/- + Rs. 28.75/- per sq.Mtr.) along with other statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act.

5. Being aggrieved by the judgment and award of the Reference Court, the appellant has preferred this group of appeals.

6. Learned counsel for the respective parties have candidly submitted that the issue involved in this group of appeals is covered by the Division Bench of this Court (Coram: Hon"ble Mr. Justice B.J. Shethna and Hon"ble Mr. Justice M.C. Patel as their lordships the then were) rendered in First Appeal No. 2380 of 2005 and allied matters vide judgment and order dated 23.08.2005.

7. On perusal of the impugned judgment and award as well as the other documents, which were produced by the learned counsel for the parties, it is an admitted position that the lands, which have been acquired by the State Government for the appellant are situated at village Rantej, Tal: Chanasma, Dist: Mehsana (now Patan District). It is also an admitted position that Section 4 Notification is published on 03.02.1999.

8. On perusal of the judgment relied upon by the original claimants in particular, it appears that this Court has considered the Notification, which was published on 03.02.1999 for acquisition of the lands, situated at village Rantej for the very appellant, wherein the Division Bench of this Court has observed thus:

2. Learned counsel for the appellant vehemently submitted that the Reference Court ought not to have partly allowed the reference cases filed by the respondents ? claimants. He submitted that the Land Acquisition Officer rightly awarded compensation at the rate of Rs. 6.75 per sq. mtr. to the respondents ? claimants which should not have been interfered in the reference cases by the Reference Court in absence of any authentic or material evidence produced by the claimants before the court. The learned counsel for the appellant also submitted that the Reference Court committed grave error in relying upon the award of the Reference Court in Land Reference Case Nos. 573 to 583 of 1997 of village Dedana, which was at a distance of 2 kms. from village Rantej and there was no evidence regarding the nature of the land. In spite of it, the Reference

Court, on mere assumption, relied upon the said award by observing that the nature of the land appears to be similar and same. In support of his submission, a reliance was placed on the decision of the Supreme Court in the case of Integrated Rural Development Agency Vs. Ram Pyare Pandey, . From the evidence on record shown to us by the learned counsel for the appellant and the finding recorded by the Reference Court in its judgment, it is clear that the boundaries of village Dedana, which was at a distance of only 2 kms. from village Rantej, were common. In that case, when there was a distance of hardly 2 kms. between these two villages, then, in our considered opinion, the Reference Court was absolutely justified in relying upon the previous judgment. In the case of Dedana village, notification u/s 4 of the Land Acquisition Act was published on 22nd June, 1999 whereas in the instant case, the notification u/s 4 was published on 02nd June, 1999 for village Rantej. In that view of the matter, the Reference Court was absolutely justified in applying multiplier of 10% which comes to Rs. 35.42 per sq. mtr. Therefore, the Reference Court rightly put up the round figure of Rs. 35.50 per sq. mtr.

3. Before parting, we must also state that the Reference Court has not only relied upon the previous award of an adjoining village but has also relied on the sale deed dated 18th June, 1997 of this very village Rantej of the land Survey No. 697 which was sold at the rate of Rs. 25/- per sq. mtr. This piece of evidence was very much present before the Land Acquisition Officer somehow or the other, he totally ignored the same and mechanically awarded only Rs. 6.75 per sq. mtr. In that view of the matter, in our considered opinion, the Reference Court was fully justified in relying on the sale deed of this very village. The submission of the learned counsel for the appellant is that even if the sale deed is taken on its face value then also, it would not be more than Rs. 30/- per sq. mtr. whereas the Reference Court awarded Rs. 35.50 per sq. mtr. It is true that it would come to Rs. 30/- per sq. mtr. as per the sale deed but at the same time, as stated earlier, there was a previous award for the adjoining village which is hardly at a distance of 2 kms. where the nature of the land is same and similar and in that view of the matter, when the Reference Court had awarded Rs. 35.50 per sq. mtr. then, in our considered opinion, it cannot be said that it was on a higher side. When just and reasonable amount is awarded by the Reference court, then we would not like to interfere when it is few rupees more.

9. The Reference Court in the impugned judgment and award has also relied upon the Sale Deed dated 18.06.1997 of the above judgment, which reflects the market value of Rs. 24.37/- per Sq.Mtr., in the year 1997.

10. In view of the fact that Section 4 Notification, which was considered is in proximity of Section 4 Notification, in the instant case Mr. A.J. Patel, learned counsel for respondent Nos. 2 and 3-original claimants has rightly relied upon the judgment of the Division Bench of this Court in First Appeal No. 2380 of 2005 and allied matters.

11. In view of the aforesaid, no interference is called for by this Court in its

appellate jurisdiction as in the instant case also, Notification is of the same time and no other or further evidence is led either by the acquiring body or the State, which requires any different view to be taken then the view taken by the Division Bench.

12. In light of the aforesaid, the appeals fail and are hereby dismissed. The impugned judgment and award dated 13.04.2007 passed in Land Reference Case Nos. 241 to 244 and 381 of 2001 by learned Principal District Judge, Mehsana stands confirmed. No order as to costs. Decree be drawn accordingly. Registry is directed to send back the Record and Proceedings, if any of these appeals, to the Reference Court forthwith.