

(1998) 11 GUJ CK 0057
In the Gujarat High Court

Case No : Special Civil Application No. 9268 of 1998

Dinkarraai Vallabhrai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Land Acquisition Act, 1894 — Section 11, 18, 18(1), 28A, 31

Citation : (1998) 11 GUJ CK 0057

Hon'ble Judges : M.H. Kadri, J;J.M. Panchal, J

Bench : Division Bench

Advocate : A.B. Munshi and A.J. Patel, for the Appellant; U.A. Trivedi, A.G.P., for the Respondent

Judgement

J.M. Panchal

1. Rule. Mr. U.A. Trivedi, learned A.G.P. waives service of notice of rule on behalf of the respondents. At the joint request of learned Counsel appearing for the parties, the petition is taken-up for final hearing today.

By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated October 14, 1998 passed by the Officer on Special Duty (Land Acquisition), Surat by which application submitted by the petitioners u/s 28A of the Land Acquisition Act, 1894 is rejected on the ground that the petitioners had accepted the offer of compensation made by the Land Acquisition Officer without protest.

2. The petitioners were owners of lands bearing Survey No.146/2 and 241/2 situated at village Kavas, Taluka : Choryashi, District : Surat. It was proposed to acquire lands belonging to the petitioners and others for public purpose of establishing G.I.D.C. Estate. On receipt of the proposal, State Government was satisfied that the lands belonging to the petitioners and others were likely to be

needed for the said purpose. Therefore, notification u/s 4 of the Land Acquisition Act, 1894 ("the Act" for short) was published in the Official Gazette on March 18, 1986. The land owners were served with notices, who filed their objections against proposed acquisition. After considering the objections submitted by the owners, Land Acquisition Officer forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. On receipt of the report, State Government was satisfied that lands of the petitioners and others were needed for public purpose of establishing G.I.D.C. Estate. Therefore, declaration u/s 6 of the Act was made which was published in the Official Gazette on May 4, 1987. Interested persons were thereafter served with notices for determination of compensation. After considering the materials placed before him, Land Acquisition Officer by his award dated July 5, 1989 offered compensation to the claimants at the rate ranging between Rs. 3/- to Rs. 7/- per sq. mt. Some of the claimants were dissatisfied with the offer made by the Land Acquisition Officer and, therefore, by making applications, they required the Land Acquisition Officer to refer the matter to the Court for determination of compensation. Accordingly, references were made to the District Court, Surat which were numbered as Land Acquisition Reference Cases No. 57/89 to 72/89, 83/89 to 115/89, 120/89 to 131/89, 133/89 to 137/89, 1/90 to 7/90, 9/90, 10/90, 13/90 to 25/90, 27/90 to 71/90, 114/90 to 131/90, 147/90, 148/90 and 162/90. The Reference Court by award dated September 30, 1996 determined compensation payable to the claimants at the rate of Rs.20/- per sq. mt. The award rendered by the Reference Court is produced by the petitioners at Annexure-B to the petition. As the Reference Court had allowed to the claimants amount of compensation in excess of the amount awarded by the Land Acquisition Officer u/s 11 of the Act, the petitioners who were interested in their lands covered by the same notification issued u/s 4 of the Act and who were aggrieved by the award of the Land Acquisition Officer, made application to the Special Land Acquisition Officer within three months from the date of the award of the Court requiring Land Acquisition Officer that the amount of compensation payable to them be redetermined on the basis of the amount of compensation awarded by the Court. The application submitted by the petitioners to the Officer on Special Duty (land acquisition) G.I.D.C. is produced by the petitioners at Annexure-A to the petition. The Officer on Special Duty (land acquisition) G.I.D.C., Surat has ordered to file the application submitted by the petitioners vide communication dated October 14, 1988 on the ground that the petitioners had accepted the award of Land Acquisition Officer without protest, giving rise to the present petition. The communication dated October 14, 1988 addressed by the Officer on Special Duty (land acquisition) GIDC, Surat is produced by the petitioners at Annexure-F to the petition.

3. Learned Counsel for the petitioners submitted that the respondent no.2 committed an error in interpreting Section 28A of the Act and, therefore, order dated October 14, 1988 produced at Annexure-F to the petition deserves to be set aside. It was pleaded that the Court had allowed to the claimants an amount

of compensation in excess of the amount awarded by the Land Acquisition Officer u/s 11 of the Act and as the petitioners were interested in their lands which were covered by the same notification u/s 4(1) of the Act and as the petitioners were aggrieved by the award of the Land Acquisition Officer, they were entitled to make an application to the Land Acquisition Officer requiring him to redetermine compensation payable to the petitioners on the basis of amount of compensation awarded by the Court and, therefore, the application submitted by the petitioners should not have been ordered to have been filed by the respondent no.2. What was claimed was that the impugned order is contrary to the judgment of the Supreme Court rendered in Babua Ram and Others Vs. State of U.P. and Another, and, therefore, the prayer made in the petition should be granted.

4. Mr. U. A. Trivedi, learned A.G.P. submitted that the petitioners had accepted award of the Collector without protest and, therefore, the petition filed by the petitioners should be dismissed in view of provisions of Section 28A of the Act.

5. In view of the rival submissions advanced at the bar, the short question which falls for consideration of the Court is whether the petitioners can be said to be aggrieved persons within the meaning of section 28A of the Act so as to entitle them to submit application before the Land Acquisition Officer requiring him to redetermine the amount of compensation payable to them on the basis of amount of compensation awarded by the Court. In the case of BABUA RAM AND OTHERS (Supra), the Supreme Court has considered the question as to who should be treated as an aggrieved person for the purpose of Section 28A of the Act. On interpretation of section 28A, the Supreme Court has held as under :-

"16. In *Krapa Rangiah v. Special Dy. Collector, Land Acquisition* this Court observed that in an acquisition proceedings, lands situated in the same locality and in the neighbouring locality when are possessed of the same comparable advantages, the owners of the former lands are entitled to the same rate of compensation as the owners of other lands as determined by the judgment of the High Court which had become final as otherwise, it would be inequitable and discriminatory. In other words, the owners of the lands possessing the same kind and same quality etc. are entitled to parity in payment of compensation for their lands. Section 28-A(1) is intended to overcome the hurdle created by Section 18(1) and 2nd proviso to Section 31(2) in the matter of obtaining equal compensation for similar acquired lands. Equal compensation for similar acquired lands could be got by all the interested persons, if their lands are acquired under the same notification. In other words, if an owner fails to avail of the right and remedy u/s 18(1), Section 28-A(1) grants an extra right and remedy for redetermination of the compensation payable to him for his land on the basis of an award of the court giving to an owner of another land covered by the same notification u/s 4(1) and under the same award. The payment of higher compensation to his neighbouring landowner makes an applicant an aggrieved person to claim redetermination of the compensation payable to him for his land. The person aggrieved, therefore, in this context, would mean a person who had

suffered legal injury or one who has been unjustly deprived or denied of something, which he would be interested to obtain in the usual course of similar benefits or advantage or results in wrongful affection of his title to compensation.

18. The person aggrieved must, therefore, be one who has suffered a legal grievance because of a decision pronounced by civil court giving higher compensation for the acquired lands similar to his own while he is denied of such higher compensation for his land because of operation of Section 18 read with Section 31 of the Act resulting in affectation of his pecuniary interest in his acquired land directly and adversely by that award of the Collector made u/s 11. As such he becomes an aggrieved person entitled to avail of the right and remedy conferred upon him u/s 28-A(1) to make good his denied right to receive compensation in excess of the amount awarded by the Collector/LAO. Acceptance of the contention of Shri G. L. Sanghi, learned Senior Counsel and his companions, that persons who under protest received payment of compensation for their lands but failed to avail of the right and remedy u/s 18 waiting in the wings for success of the landowners of the adjoining lands to get higher compensation u/s 28-A(1) as person aggrieved robs the poor and inarticulate who by reason of their property or ignorance failed to avail of the right and remedy u/s 18, and creates not only invidious discrimination between same class of persons similarly situated but would be highly unjust and arbitrary offending Article 14 of the Constitution, apart from flying in the face of express animation of the statute as espoused in its Statement of Objects and Reasons and the Financial Memorandum. In this context, we make it clear that we have looked into Statement of Objects and Reasons and the Financial Memorandum to know what is it that induced the introduction of the Bill but not as an aid to interpret Section 28-A(1). Therefore, we have no hesitation to hold that any interested person in the land acquired under the same notification published u/s 4(1) who failed to avail the right and remedy u/s 18(1) read with second proviso to Section 31(2), becomes a person aggrieved u/s 28-A(1) of the Act when the owner of the other land covered by the same notification is awarded higher compensation by the civil court on a reference got made by him u/s 18."

6. In view of the above-referred to proposition of law laid down by the highest Court of land, there is no manner of doubt that the petitioners were aggrieved persons within the meaning of Section 28A of the Act. The application submitted by them u/s 28A of the Act could not have been ordered to be filed on the ground that they had received the amount of compensation awarded by the Land Acquisition Officer without protest. The petitioners became aggrieved when for other lands covered by the same notification u/s 4(1) of the Act, the Reference Court awarded higher compensation and, therefore, as aggrieved persons the petitioners were entitled to invoke provisions of section 28A of the Act. In view of the clear pronouncement of the Supreme Court in the case of BABU RAM AND OTHERS (Supra), we are of the opinion that the impugned order produced at Annexure-F is liable to be set aside and the petition deserves acceptance.

For the foregoing reasons, the petition succeeds. The order dated October 14, 1998 produced at Annexure-F is hereby set aside and quashed. Respondent no.2 is hereby directed to redetermine compensation payable to the petitioners on the basis of amount of compensation awarded by the Court in Land Acquisition Reference Case No. 84/89 and other allied 153 matters as early as possible and preferable within 3 months from today. Rule is made absolute accordingly, with no order as to costs.