

(2011) 09 GUJ CK 0027
In the Gujarat High Court

Case No : First Appeal No. 2594 of 2011 to First Appeal No. 2599 of 2011

Dy Collector and Another

APPELLANT

Vs

Rathod Chatursinh Pratapsinh

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11(1), 18, 23(2), 23A, 28

Citation : (2011) 09 GUJ CK 0027

Hon'ble Judges : R.M. Chhaya, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : Moxa Thakkar, AGP, for the Appellant; Prajapati, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Admit. Mr. Prajapati learned Counsel appears for original claimants-Respondents in all the matters and he states that he has filed his appearance in all the matters, but somehow, his name is not shown. Learned Counsels appearing for both the sides agree for final disposal.

2. All the appeals arise against the common judgment and award dated 4.9.2009 passed by the Reference Court in Land Acquisition Reference Cases Nos. 163/2006 to 167/2006 & 356/2006, whereby, the Reference Court has awarded additional compensation at Rs. 193/-per square meter, plus the increase in the market value, solatium and the interest as per the provisions of the Land Acquisition Act (hereinafter referred to as "the Act").

3. The relevant facts are that the land at village Anodiya, Taluka Mansa, District Gandhinagar, were to be acquired for the project of Sujlam-Suflam Vibhag-I, under the Land Acquisition Act (hereinafter referred to as "the Act"). The notification u/s 4 of the Act was published on 17.8.2004 and notification u/s 6 of the Act was published on 10.11.2044. Thereafter, the award was passed by the Special Land Acquisition Officer u/s 11(1) of the Act on 28.2.2005, whereby, he granted compensation at Rs. 7/-per square meter. As the claimants were not

satisfied with the award they demanded compensation at Rs. 500/-per square meter and raised the dispute u/s 18 of the Act which were referred to the District Court for adjudication being above referred Land Acquisition Reference Cases, and the Reference Court, at the conclusion of the said Reference Cases, passed the above referred judgment and award. Under the circumstances, the present appeals before this Court.

4. We have heard learned AGP Ms. Moxa Thakkar for the Appellant and learned Counsel Mr. Prajapati for the original claimants-Respondents.

5. We have considered the judgment and the reasons recorded by the reference Court. We have also considered the relevant document, which has been relied upon by the learned Counsel for the both sides for supporting their contention during the course of hearing.

6. The perusal of the reasons recorded by the reference Court shows that the Reference Court has relied upon the document of award at Exh. 22 for acquisition of the land at Prantij for the purpose of Gujarat State Petronet Ltd., Gandhinagar. The perusal of the said award at Ex. 22, shows that the said award has been passed by the competent authority under the relevant Act and as per the said award, compensation has been fixed at Rs. 260/-per square meter. It is an admitted position that the boundary of village Anodiya is touching to the boundary of Prantij and the said aspect is also apparent from the map, which was part of the record before the Reference Court at Ex. 23. Therefore, it appears to us that the Reference Court was justified in relying upon the aforesaid award passed by the competent authority for acquisition of the land at village Prantij, more particularly, when the boundaries of village Anodiya was touching to village Prantij.

7. The relevant and rather important aspect is that Prantij is taluka head quarter and the total population of Prantij is 20,000, even as stated in the aforesaid award. Consequently, it would be a municipal area since the population is exceeding 10,000. Further, the location of Prantij is in such a manner that the development is like a small city at taluka level, whereas, the village in question, Anodiya is village panchayat. At this stage, we may record that this Court had an occasion to consider the aspect of difference in the valuation between a village whose boundaries are touching to a municipal area in case of State of Gujarat v. Thakor Fatehsing Somaji, rendered in First Appeal No. 2794/2009 and allied matters, decided on 1.4.2011 and it was observed at para-7, thus:

7. In both the matters, the Reference Court has lost sight of the important aspect that Unjha is a municipal area whereas Brahmanwada is a gram panchayat area. In a case where the valuation is made of the land which is falling in the municipal area, it cannot be compared at para with the land situated at village area even if the boundary of municipal area and the boundary of the said village area may be touching to one another. The reason is that there would be basic difference in the infrastructural facilities and the amenities in the municipal

area in comparison to the gram panchayat area. For municipal area, there will be facilities of water, light, transportation, road, school, etc., which may not be available in the gram panchayat area. Further, even if it is considered that since the area is adjacent to each other, there was more development in gram panchayat area, which is adjacent to the municipal area, it appears to us that if it is to be examined for the purpose of tracing the appropriate valuation, such valuation will be minimum 30% less in comparison to the value of the land in the municipal area. It appears that the Reference Court has totally lost sight of the said aspect and has considered the valuation of the land at par with Unjha which is a municipal area. The learned Counsel for the original claimants is also not in a position to show any evidence to the contrary save and except that the village of Brahmanwada is touching to Unjha city. In our view, would not make much difference as observed earlier and the difference of valuation by 30% at least would continue even after the boundary of the village attached to the municipal area since the basic difference of various facilities and infrastructure and development between the municipal area and the gram panchayat area would continue.

8. The aforesaid shows that, at least, difference of 30% will be there in the valuation of land located in the municipal area in comparison to valuation of the land located in the adjacent village though boundaries may be touching to the municipal limits. It appears that the aforesaid aspect has not been considered by the Reference Court in the impugned judgment. The another aspect is that in respect of the award passed by the competent authority for acquisition of the land at Prantij, the relevant notification was dated 28.12.2004, whereas, in the present case, the notification is dated 17.8.2004, and therefore, there is No. much time gap between the notification in both the cases. Under the circumstances, even if it is considered that Rs. 260/-per square meter could be said as market value of the land at village Prantij applying the aforesaid decision, the deduction in the valuation by 30% would come to Rs. 78/-per square meter, and consequently, the market value of the land in question at village Anodiya can be assessed at Rs. 182/-per square meter for the purpose of compensation under the Land Acquisition Act, out of the said amount, Rs. 7/-per square meter is already awarded as the compensation, and therefore, net additional amount of compensation would be Rs. 175/-per square meter, whereas, the reference Court has awarded the compensation at Rs. 193/-per square meter. Under the circumstances, the award passed by the Reference Court for granting additional compensation exceeding Rs. 175/-per square meter will be required to be quashed and set aside.

9. So far as though additional benefit awarded by the Reference Court as that of increase in the market value u/s 23(1A) of the Act and the solatium u/s 23(2) of the Act and the interest u/s 28 of the Act are concerned, the same are by way of a statutory consequences, and, therefore, such benefits are not required to be interfered with, save and except, to the extent that on account of the reduction of the principal amount of compensation from Rs. 193/-to Rs. 175/-per square

meter, such amount shall proportionately get reduced.

10. In view of the aforesaid, the impugned judgment and award passed by the Reference Court are quashed and set aside for granting additional compensation exceeding amount to Rs. 175/-per square meter. It is also observed that the original claimants shall be entitled to the additional compensation at Rs. 175/-per square meter. The original claimants - Respondents herein, shall also be entitled to the increase in the market value u/s 23(1A) of the Act, solatium u/s 23(2) of the Act and the interest u/s 28 of the Act, on the aforesaid amount of additional compensation at Rs. 175/-per square meter.

11. The judgment and award of the Reference Court shall stand modified accordingly. Appeals are partly allowed. Considering the facts and circumstances of the case, there shall be No. order as to costs. If the amount of compensation is not deposited, the same shall be deposited within a period of eight (8) weeks from the date of receipt of the order of this Court.