
(1997) 07 GUJ CK 0021
In the Gujarat High Court

Dy. General Manager, O.N.G.C.

APPELLANT

Vs

Chaturji Lalaji and Others

RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43
Land Acquisition Act, 1894 — Section 18, 23, 23(1A), 23(2), 23(2)(2)

Citation : (1998) 1 GLR 130

Hon'ble Judges : J.N. Bhatt, J;H.R. Shelat, J

Bench : Division Bench

Judgement

J.N. Bhatt, J.—Admit. In this group of eight appeals, the service is waived by learned Advocate Mr. A.. Patel for the respondents-original

claimants, by learned A.G.P. Mr. Mukesh Patel for Spl. Land Acq. Officer in F.A. Nos. 5137 of 1996 to 5141 of 1996 and by learned G.P. Mr.

P.G. Desai, for Spl. Land Acq. Officer in F.A, Nos. 5134 of 1996 to 5136 of 1996. Upon joint request, the entire group of eight appeals is taken

up today for final hearing. In view of the fact that the common questions are involved arising out of common award and common notification, they

are being disposed of by this common judgment simultaneously.

2. The appellant O.N.G.C. is the original opponent No. 2, has questioned the legality and validity of the two common judgments and eight awards

arising out of land Acq. I case Nos. 772 to 779 of 1991. The aforesaid eight Land Acq. Cases were heard upon a reference, by the District

Court, Ahmedabad (Rural) and recorded two judgments which are under challenge in this group of eight appeals. Thus, as there were eight Land

Acq. Cases out of which Land Acq. Case Nos. 777, 778 and 779 all of 1991 (three cases) came to be decided by the District Court by a

common judgment on 16-8-1996 involving F.A. Nos. 5134, 5135, 5136 all of 1996, whereas in remaining five cases. Land Acq. Case Nos. 772

to 776 all of 1991 came to be decided by the District Court, Ahmedabad (Rural) on the same day, i.e., on 16-8- 1996 involving F.A. Nos. 5137

to 5141 all of 1996. Thus, eight Land Acq. Cases which came to be disposed of by two common judgments by the District Court, are under

challenge in this group of eight appeals.

3. The appellant-Acquiring Body - O.N.G.C. had acquired different parcels of lands situated at village Uvarsad, Taluka & District Gandhinagar

for the purpose of Water Injection Plant at O.N.G.C. Group Gathering Station. Notification u/s 4(1) of the Land Acq. Act, 1894 (Act) was

published on 1-2-1990 and notification u/s 6 came to be published on 26-7-1990. Notification u/s 9 of the Act was also issued to the claimants.

Spl. Land Acq. Officer, after hearing the claimants, offered and awarded compensation at the rate of Rs. 5/- per sq.mt. in all the cases. A

reference came to be made at the instance of the claimants for higher compensation. The claimants claimed an amount of Rs. 70/- per sq.mt.

before the reference Court in Land Acq. Cases, inter alia, contending that the Spl. Land Acq. Officer has not offered and awarded the amount of

compensation considering the real market value of the lands at the relevant time.

4. The claimants claimed higher amount of compensation on the following grounds:

(i) That the village Uvarsad is a developed village;

(ii) That the acquired lands are irrigated agricultural lands;

(iii) That the lands which came to be acquired were available for three crops per years;

(iv) That the village has infrastructural facilities like water, light, bank, schools, etc.

(v) That the geographical locations of the lands were prominent.

The reference Court, after taking into account the facts and circumstances emerging from the evidence on record and hearing the parties, reached

to the conclusion that the claimants would be entitled to the additional amount of Rs. 30/- per sq. mt. In all, the claimants were found entitled to an

amount of Rs. 5/- per sq.mt. as awarded by the Spl. Land Acq. Officer and an additional amount of Rs. 30/- per sq. mt. as awarded by the

District Court totaling to Rs. 35/- per sq.mt. as against the claim of Rs. 70/- sq. mt. The Spl. Land Acq. Officer's Award came to be recorded on

30-1-1991. The reference Court decided group of eight claims by two common judgments on 16-8-1996. Reference Court held that the amount

offered and awarded by the Spl. Land Acq. Officer is not reflecting correct market value of the lands under acquisition and awarded an additional

amount of Rs. 30/- per sq. mt. with solatium and interest from the date of possession, i.e., from 8-1-1996 to the date of award passed by the

Land Acq. Officer, i.e., 28-1-1991. The reference Court also awarded interest at the rate of 9% p.a. for a period of one year from the date of

possession and thereafter at the rate of 15% pa. for subsequent years till the payment. Being aggrieved by the said judgment in 8 Land Acq. Cases

upon reference u/s 18 of the Act, the Acquiring Body - O.N.G.C. appellant, herein, has questioned the correctness, legality and validity of the said

two common judgments of the reference Court by filing this group of eight appeals by invoking aids of the provisions of Section 54 of the Act.

5. During the course of submissions before us, at the time of final hearing, learned Advocates appearing for the parties supplied copies of the

evidence and the record relevant. After taking into account the facts and circumstances emerging from the said record and after hearing the rival

versions, we are of the opinion that the reference Court has rightly awarded an additional amount, but the extent to the tune of Rs. 30/- per sq. mt.

which in total comes to Rs. 35/- per sq. mt. is on little higher side and does not represent the market price of the acquired lands on the date of

publication of notification in the official gazette, i.e., 1-2-1990. We have no hesitation in finding that the amount of Rs. 5/- by way of compensation

per sq. mt. offered and awarded by the Spl. Land Acq. Officer is inordinately low and, therefore, upward revision in the light of the evidence on

record is necessitated. However, the award of an additional amount of Rs. 30/- per sq. mt. in the factual scenario emerging from the record of the

present group of cases, is little higher requiring downward modification. At the same time, we find also no hesitation in stating that the claim of Rs.

70/- advanced by the claimants per sq. mt. of the acquired land is not reasonable and proper.

6. Section 23 of the Act prescribes the material grounds and aspects required to be born in mind while making assessment of market value for the

purpose of acquisition of land, are considered by the reference Court, but an additional amount which is awarded at the rate of Rs. 30/- per sq.

mt. appears to be on little higher side in the light of the evidence on record. The assessment of the market value and resultant award of an

additional amount of Rs. 30/- per sq. mt. made by the reference Court in the group of eight claims, is not justified. The evidence on record, copies

whereof supplied to us does not answer compatible to the assessment of the amount of compensation for the market value of the acquired land

made by the reference Court and awarded an additional amount of Rs. 30/- per sq. mt. In other words, we are convinced that there is a case for

upward revision, but not to the extent made by the reference Court.

7. In this context, the question would arise in the circumstances of the present case, what would be the just and reasonable amount of

compensation for the assessment of the market value of the land acquired on the date of publication of notification u/s 4(1) of the Act, i.e., 1-2-

1990. It is settled proposition of law that the award which is comparable and compatible with the lands under acquisition can be used as a basis

for reaching a fair and reasonable market value. The main anxiety of the authority or the Court for that purpose should be to ascertain and find out

fair and just amount of market value of the land under acquisition. The mandate of Section 23 of the Act is to place owner or the interested person

of the acquired land, as nearly as, possible in terms of money by making fair, just and reasonable amount of award of compensation of the market

value on the date of publication of the notification u/s 4(1) of the Act. Notification in the present case came to be published in the official gazette on

1-2-1990. The date of award made by the Spl. Land Acq. Officer is 30-1-1991, whereas, it is also an admitted fact that the date of possession in

all the cases was taken on 8-1-1996. Our attention is also drawn to the Division Bench decision of this Court rendered in F.A. No. 2386 of 1992

and allied matters (Coram : N.J. Pandya & A.R. Dave, JJ.) recorded on 19-1-1996. Relying on the said decision, it is contended that it is relevant

and comparable award. In that case, notification was published in the official gazette in March 1981. The lands acquired under the said notification

in the aforesaid decision were of same village, i.e., Uvarsad. The amount of Rs. 111 per sq. mt. was assessed and awarded to the claimants in a

similar group of matters. Relying on the earlier award which has become final by a decision of the Division Bench of this Court in First Appeal No.

1303 of 1990, the market value fixed at the rate of Rs. 20/- per sq. mt. by the reference Court in that case came to be confirmed by the Division

Bench of this Court by virtue of the decision rendered in F.A. No. 1303 of 1990, came to be relied on by this Court in the Division Bench decision

in F.A. No. 2386 of 1992. In our opinion, reliance can be placed on the said decision.

8. No doubt, in earlier case, i.e., F.A. No. 2386 of 1992, notification was published in March 1983 and the amount of Rs. 17/- per sq. mt. for the

acquired land for the same village came to be awarded, whereas, in the group of cases on the hand, in this group of appeals, notification u/s 4(1) of

the Act came to be published on 1-2-1990. Obviously, therefore, a reasonable rise for appreciation during the period of 9 years has to be

considered. The award which become final in the earlier Division Bench decision was for Rs. 17/- per sq. mt. and it is not disputed that, ordinarily,

a rise of 10% p.a. may be considered by way of appreciation of the land. It is in this context the learned Advocate for the appellant has contended

that the amount awarded by the reference Court at the rate of Rs. 35/- per sq. mt. is on a higher side and requires interference. Whereas, on the

other hand learned Advocate Mr. Patel appearing for the original claimants, candidly, pointed out that in the light of the award which became final

in F.A. No. 2386 of 1992, the claimants would not be entitled to more than Rs. 32.30 ps. per sq. mt. instead of an amount of Rs. 35/- per sq. mt.

(Rs. 51- per sq. mt. as awarded by the Spl. Land Acquisition Officer + Rs. 30/- per sq. mt. as awarded by the Reference Court = Rs. 35 per sq.

mt.). Thus, Mr. Patel, fairly, submitted that the amount of Rs. 32.30 ps. per sq. mt. against the total award of Rs. 35/- per sq. mt. will reflect the

fair and reasonable market value per sq. mt. of the lands acquired on the date of notification u/s 4(1) of the Act, i.e., 1-2-1990. We have no

hesitation in finding that the submission made on behalf of Mr. Mehta that the award of Rs. 35/- per sq. mt. is on higher side, is having much

substance. At the same time, after having thrown into the scale the entire evidence and also the award which became final in respect of the lands of

the same village in F.A. No. 2386 of 1992, a fair submission of Mr. Patel that the claimants in these cases will be entitled to an amount of Rs.

32.30 ps per sq. mt. only is required to be accepted. We are, therefore, of the opinion that an amount of Rs. 5/- + Rs. 30/- Rs. 35/- per sq. mt. is

required to be sliced down and substituted by an amount of Rs. 32.30 ps. per sq. mt. for the lands acquired in entire group of appeals. In other

words, instead of an amount of Rs. 35/- per sq. mt.. i.e., Rs. 3500/- per Are, the original claimants herein in this group of eight appeals, shall be

entitled to only an amount of Rs. 32.30 ps. per sq. ml., i.e.. Rs. 3.230""- per Are.

9. The impugned two judgments in this group of eight appeals, clearly, go to show that the reference Court has given a direction that 5%

Government share shall be deducted in case lands are of new tenure, is required to be quashed in view of unequivocal decision of the Hon''ble

Apex Court rendered in State of Maharashtra Vs. Babu Govind Gavate etc., .

10. In Babu Govind's case (supra), it has been clearly laid down while interpreting and appreciating the provisions of Section 23 of the Act, that

deduction of 1/3rd amount of market value u/s 43 of the Bombay Tenancy & Agricultural Lands Act (67 of 1948) is not permissible for the simple

reason that the provisions of Section 43 have no application to the compulsory acquisition of land. The direction contained in the impugned two

common judgments in this behalf, therefore, is quashed and set aside.

11. The date of possession is a common date in all the cases, i.e., 8-1-1996. So the possession came to be handed over much prior to the date of

publication of notification u/s 4(1) of the Act, i.e., 1-2-1990 and the award of the Spl. Land Acq. Officer was made on 30-1-1991. Ordinarily, in

view of the provisions of Section 23(1-A) as amended by the Act 68 of 1984, in addition to the market value of the land, the claimant is entitled to

in every case for an award of the amount at the rate of 12% p.a. on market value for the period commencing on and from the date of publication of

the notification u/s 4(1) in respect of such land to the date of award of the Collector or the date of taking over possession of the lands whichever is

earlier. (Emphasis supplied). It could very well be seen from the aforesaid provisions that ordinarily the date of possession must be reckoned with

for the purpose of Section 23(1-A) of the Act. However, in the present case, it will not be applicable for the obvious reason that the lands which

are covered under the notification dated 1-2-1990 were already temporarily under acquisition by the appellant O.N.G.C. on rental basis. Since the

lands were accruing compensation for temporary acquisition by the same authority, the date of possession, i.e., 8-1-1996 will pale into

insignificance and instead the date of publication of notification u/s 4(1) of the Act, i.e., 1-2-1990 will assume importance. In other words, the

claimants shall not be entitled to the benefit of the provisions of Section 23(1-A) of the Act from the date of possession, i.e., 8-1-1996 to 30-1-

1991 as awarded by the reference Court. Instead, the claimants would be entitled to 12% increase of benefit arising out of the provisions of

Section 23(1-A) of the Act from the date of notification u/s 4(1), i.e., 1-2-1990 to the date of award made by the Spl. Land Acq. Officer, i.e.,

30-1-1991. Obviously, therefore, the impugned judgments in this group of appeals shall stand modified accordingly.

12. Lastly, it leaves into the filed a question of grant of other benefits of the provisions of Section 23(1-A) of the Act. In this connection, it may be

stated that the benefits arising under the principles enunciated u/s 23(1-A) and Section 23(2)(2) the Act are rightly observed and considered or not

in the common judgments of the reference Court under challenge in this group of appeals. We would like to mention and refer the ratio

propounded by the Hon''ble Apex Court in the decision rendered in the ease of Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of

India Ltd. and Others, . After considering the aforesaid principles of law laid down in Prem Sath Kappor''s ease (supra), the impugned two

common judgments of the reference Court need clarification. Accordingly, it is hereby clarified that the claimants would not be entitled to:

(i) interest awarded on the additional amount payable u/s 23(A) of the Act and also solatium u/s 23(2) of the Act; and

(ii) no solatium on the additional amount u/s 23(1-A) of the Act.

The impugned common judgments of the reference Court in eight aforesaid Land Acq. Cases shall, therefore, stand modified to the aforesaid

extent,

13. Consequently, all these appeals are partly allowed. The composite judgments and awards under challenge dated 16-8-1996 shall stand

modified accordingly.

14. Before parting, we hereby also direct the appellant O.N.G.C. - Acquiring Body to deposit the amount of compensation awarded to the each

claimant with proportionate costs and interest as enumerated and indicated herein above by us, within a period of 10 weeks from today. In view of peculiar facts and circumstances of the case, we do not deem it expedient to pass any order with regard to costs of appeals. Therefore, parties shall bear their own costs.

In view of the order passed in main matters, i.e. First Appeals, Civil Applications do not survive. Hence, Civil Applications stand disposed of accordingly.