(2014) 12 GUJ CK 0027

In the Gujarat High Court

Case No : First Appeal Nos. 4577, 4578 of 2008 and 3778 of 2010

General Manager APPELLANT

Vs

Dhanjibhai Hargovinddas RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 4(1), 6

Citation : (2014) 12 GUJ CK 0027

Hon'ble Judges : V.M. Pancholi, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Ajay R. Mehta and Devendra Patel, Advocate for the Appellant; Jaimin Gandhi, Kkashyap Pujara, A.G.Ps., Jayesh Patel and A.J. Patel, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—These first appeals are filed by the Oil and Natural Gas Corporation Ltd. (''ONGC'' for short), the acquiring body calling in question the common judgment and award dated 12.4.2007 passed by the learned Principal Senior Civil Judge, Gandhinagar in Land Acquisition Reference No. 100 of 2002 and connected references. Being covered by a common notification for acquisition issued under section 4(1) of the Land Acquisition Act, 1894, (''the Act'' for short) these appeals would be disposed of by this common judgment. Brief facts are as under:

2. ONGC required land for its oil drilling purposes in village called Motera in the district and city of Ahmedabad. Notification under section 4(1) of the Act was issued on 21.6.99. Notification under section 6 of the Act was issued on 11.9.2000. The Land Acquisition Officer, passed his award under section 11 of the Act in two of the cases on 16th May 2002 and in the third case on 7th October 2002. He awarded compensation to the claimants at the rate of Rs. 68 and Rs. 70 per sq. meters in Land Reference Case Nos. 101 and 102 of 2002 and at the rate of Rs. 90 per sq. meters in Land Reference Case No. 34 of 2008.

3. The claimants dissatisfied with such compensation, sought reference before the District under section 18 of the Act and claimed compensation at the rate of Rs. 2000/Rs. 3000 per sq. meters in such references. The case of the claimants was that the lands acquired were fertile agricultural lands yielding three crops a year from which the claimants were earning annually Rs. 75000 per vigha of net income. They also contended that the lands were situated in highly developed area. Though technically outside the limits of the Municipal Corporation of Ahmedabad, the lands were covered by non-agricultural development. Number of housing societies, commercial complexes and other infrastructural facilities were existing. The lands were abutting on a main road which leads to a cricket stadium where international cricket matches were being placed since years. The lands thus had NA potential. Inter alia on such grounds, the claimants sought higher compensation.

4. On the other hand, ONGC contended that the lands were agricultural lands and the yield was highly exaggerated. A nearby land was sold for Rs. 73 per sq. meter around the same time. ONGC also relied on the acquisition of lands of Chandkheda village for which the High Court had fixed the market price at the rate of Rs. 195 per sq. meter. Even granting uniform escalation for the time gap between the two acquisitions, the compensation would not come to more than Rs. 350 per sq. meter according to the ONGC.

5. The Reference Court placed reliance on sale instances of lands of the same village for which documents were produced at Ex. 31 and Ex. 33. Such lands were sold at Rs. 1196/- per sq. meter. Granting adjustment for the sale instances for non-agricultural land, the learned Judge slashed down 20 per cent thereof for coming to the conclusion that the market value of the land on the date of the notification should be fixed at Rs. 957/- per sq. meter. Curiously, however, the learned Judge while awarding compensation reduced the same to Rs. 750 per sq. meter on the ground that he was of the opinion that the opponent being a Government body working in the field of public purpose and for the prosperity of the country, such authority should not suffer great monetary loss.

6. Before analyzing the evidence on record and dealing with the rival contentions, we may record our disapproval of the approach of the learned Judge of reducing compensation payable to the claimants from the market value assessed by him on the ground that ONGC being a Government body and engaged in the activity for the purpose of prosperity of the country, it should not be burdened with high financial liabilities. What the Land Acquisition Act recognizes is the principle of just compensation to be paid to persons whose properties are compulsorily acquired for public purposes. There is no element of leniency or soft-handling of Government organization on the perceived idea that the organization is working for the benefit of the common good. A person who has been deprived of his property must receive a fair compensation to be worked out on the principles contained in the statutory provisions of the Land Acquisition Act and as those judicially recognized. If the result of such exercise is awarding

compensation which may place certain financial burden on the public exchequer, so be it. Such compensation to the land-loser cannot be under any circumstances reduced on the ground that the acquiring body should not be saddled with such liabilities. In other words, computation of compensation under the Land Acquisition Act is a matter of applying known methods and judicially recognized parameters and not of sympathy for the acquiring bodies.

7. Before the Reference Court, the claimants examined one Shakriben Savdhanbhai Thakore at Ex. 18. She deposed that the lands acquired formed a common block. They were agricultural lands. The lands were abutting on a road right opposite to Motera cricket stadium. The lands were 1 k.m. away from Sabarmati and 3 k.m. from Ahmedabad International Airport and 10 k.ms. from Gandhinagar. The Ahmedabad Municipal Corporation was 200 meters away. On the date of the deposition, i.e. 26th June 2008, the lands were already covered within the municipal limits. Since the year 1995, large number of residential societies had come into existence around the lands. By the time, the lands were acquired in the year 1999, there were 50 housing societies in existence in Motera village. On the date of deposition, more than 150 societies were constructed. The land had all the urban facilities, was surrounded by factories, markets, hotels, petrol pumps, club, etc. Even before the acquisition, the lands were situated in the residential zone in the Town Planning Scheme No. 21 framed by the Ahmedabad Urban Development Authority. The land having been covered under the residential zone, procedure for covering non-agricultural use was simple.

8. In the cross-examination, she agreed that there was no scientific evidence to show that the lands were fertile agricultural land. There was no evidence of multiple crops being taken.

9. The claimants had also relied on the deposition of one Dhanjibhai Hargovinddas Prajapati, Ex. 34. He deposed that the lands were irrigated through wells in which multiple corps were being taken which were sold in the market yard. The farmers were earning net income of Rs. 70,000/- per vigha. Village Motera had population of more than 20,000. The village had the facility of 24 hour water supply and electricity. There were cooperative societies, Government hospitals, cooperative banks, post office and primary schools in the village. Boundary of the village and the Municipal Corporation was common. Sardar Patel Stadium was situated in the village. The village was linked with ST facility of high frequency. There were many housing societies. This witness also referred to two sale deeds Ex. 31 and 33 where lands were sold at the rate of Rs. 1196/- per sq. mtr.

10. In the cross-examination, he agreed that there was no evidence for the yield of agricultural products. He admitted that the lands are not abutting on highway but were situated on the Motera stadium road.

11. The claimants placed heavy reliance on sale instances Ex. 31 and 33 for which the indexes were produced at Ex. 30 and 32 respectively. Such sale

instances pertained to non-agricultural lands of the same village sold under registered sale deed dated 24.2.99.

12. The acquiring body, on the other hand, relied on sale deed Ex. 49 along with index of registration Ex. 48. Ex. 49 was a registered sale deed dated 23.9.99 of 1710 sq. meters of agricultural lands of village Motera which was sold for a consideration of Rs. 1,25,000/- i.e. Rs. 73 per sq. mtr.

13. The acquiring body also relied on the judgment of the High Court in First Appeal No. 1122 of 1999 and connected appeals dated 23.11.2000 by which for the lands of village Chandkheda, which were acquired under notification issued under section 4(1) of the Act published on 15th September 1992. Under such judgment, the Division Bench of this Court assessed the market value of the land at Rs. 195 per sq. mtr.

14. On the basis of such evidence, learned counsel Mr. Ajay Mehta for the appellant submitted that the Reference Court committed a serious error in awarding compensation at the rate of Rs. 750/- per sq. mtr. The sole comparable sale instance was the sale deed of agricultural land Ex. 48. Such land was sold shortly after notification under section 4(1) of the Act in the present case was issued. The land was sold at the rate of Rs. 73 per sq. mtr. He further submitted that in any case, even this Court in the case of Chandkheda lands, which is a village situated next to village Motera, confirmed compensation at the rate of Rs. 195/- per sq. mtr. This notification, of course, was issued in the year 1992. However, even after granting 10% increase per year, the valuation of the land in the present case would not go beyond Rs. 350 per sq. mtr.

15. Learned counsel further submitted that the Reference Court committed a serious error in comparing sale instances of small non-agricultural lands with superstructure. The lands under acquisition were large areas of agricultural lands.

16. The counsel relied on the decisions in the case of Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others, and in the case of Chandrashekar (D) by L.Rs. and Others Vs. Land Acquisition Officer and Another, to contend that even if sale instances Ex. 31 and 33 were to be taken as basis for awarding compensation, proper adjustment should have been made.

17. On the other hand, the learned advocates appearing for the claimants contended that the Reference Court has given proper reasons. The compensation is not excessive. The lands were situated in highly developed area. There were comparable sale instances of the same period. The counsel relied on the following decisions:

(i) In the case of Udho Dass Vs. State of Haryana and Others, in which it was observed that increase in the rate of value of land at the rate of 10 to 12 per year cannot be applied in all cases. Often times, lands appreciate even at the rate of 100% in a year.

(ii) In the case of Ahsanul Hoda Vs. State of Bihar, where on facts, the Court held that the principle applied by the Reference Court for comparing sale instances of small lands was proper.

(iii) In the case of Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., in which finding that the lands under acquisition were situated in semi-urban area, the Court granted price escalation by 10% over the price in the sale deed relied upon. It was further held that the acquired lands were within the close vicinity of residential localities, educational institutions and hospitals on the junction of two important roads. There was no evidence to show that the acquiring body would have to expend considerable amount for developing the land. The Court held that deduction of 40% towards development charges were improper.

(iv) The decision in the case of Mehrawal Khewaji Trust (supra) was relied upon in which the Court reiterated that when several sale instances are on record, highest of the exemplars to be considered and accepted for computing the market value of the acquired land.

18. The claimants also relied on the valuation adopted by the Ahmedabad Urban Development Authority based on its town planning scheme. It was pointed out that way back in May 1996, AUDA had fixed the market value of the land at Rs. 430 for undeveloped and Rs. 955 for the developed land.

19. Few things emerge from the record. The lands which were under acquisition for which notification under section 4(1) was issued on 21.6.99 were situated in village Motera. At that time Motera village had a common boundary with the Ahmedabad Municipal Corporation. The lands in question were surrounded by large number of residential societies. The village itself was highly developed area with banks, commercial establishments, electricity and water supply. The lands were abutting on a road connecting to the main road leading to Motera cricket stadium. It is a stadium where all international cricket matches hosted by the Cricket Association and allotted to the city of Ahmedabad were played. The Ahmedabad domestic and International Airports are within a couple of kilometers from the acquired lands. The lands are also connected through highway directly to Gandhinagar which is at a distance of just over 10 kms.

20. Though, therefore, the lands in question were agricultural lands, they had extremely high non-agricultural use potential. It has remained uncontroverted that the area was covered under the town planning scheme framed by AUDA and the region was earmarked for residential development. With these parameters in mind, we may attempt to compare the comparable sale instances. Since we are basing our computation on comparison of sale instances, the question of yearly yield of such lands through agricultural activities would pale into insignificance. ONGC has placed heavy reliance on two aspects. One was the sale instance of agricultural land, sale deed of which was produced at Ex. 49 and the second was the computation of compensation by the High Court in case of Chandkheda lands acquired by notification issued under section 4(1) of the Land Acquisition Act in

the year 1992. For the reasons to follow the compensation cannot be based on these two factors. Firstly, the Chandkheda lands were not forming part of the same village. There is nothing on record to suggest the exact location and situation of these lands. It would be unsafe, therefore, to compare the two parcels of lands acquired during different periods, situated in two different villages when those relative locational advantages and disadvantages were not presented before the Court. Merely because Chandkheda village is situated close to village Motera per se would not provide for a safe foundation for comparing the land prices that too when sale instances of the same village around the same period are available on record. Further, the sale instance Ex. 49 would have to be discarded since even as per the computation of compensation by the High Court in the case of Chandkheda village, the consideration indicated in sale deed Ex. 49 would be completely out of tune. For the Chandkheda lands, the High Court granted compensation at the rate of Rs. 195 per sq. mtr. This was in the year 1992. For the year 1997, even going by a modest increase at the rate of 10% per year, the compensation would go beyond Rs. 300 per sq. mtr. Surely, the isolated sale instance of Ex. 49 indicating sale consideration at the rate of Rs. 73 per sq. mtr. would be highly unsafe to base the ultimate computation of compensation.

21. On the other hand, we have sale instances Ex. 31 and 33. These sale deeds were executed on 24.2.99, i.e. before the notification under section 4(1) of the Land Acquisition Act was issued in the present case. These lands also formed part of village Motera. Such sale instances therefore which were produced and proved on record should form the yardstick for computing the compensation for the claimants. This, of course, would be subject to certain adjustments. Firstly, the land under acquisition came to approximately 14000 sq. mtrs. The lands under sale deeds Ex. 31 and 33 were small pieces of lands admeasuring 780 and 390 sq. meters respectively. These were non-agricultural lands and the sale deeds record that the lands had superstructure on it. In comparison, the lands under acquisition were agricultural lands.

22. We would, therefore, have to adopt appropriate reduction for comparing sale instances of non-agricultural lands with agricultural lands acquired as also for the purpose of comparing sale instances of small plots of land with superstructure as against the relatively large tracks of lands without any such additional benefits at all. We cannot, however, lose sight of the fact that the lands under acquisition were situated in a highly developed area. The area had all the amenities and the manner in which other housing societies, commercial establishments, banks and restaurants had converted use of the lands, these lands also could have been so converted for which no special investments for development of the land would be needed. It is not as if the lands were situated in a far away remote village with no facilities in the surrounding area for which to put any such land to non-agricultural use considerable effort and investment would be needed for development.

23. In the case of Chandrashekhar (supra), the Supreme Court observed as under:

"19. Based on the precedents on the issue referred to above it is seen, that as the legal proposition on the point crystallized, this Court divided the quantum of deductions (to be made from the market value determined on the basis of the developed exemplar transaction) on account of development into two components.

19.1 Firstly, space/area which would have to be left out, for providing indispensable amenities like formation of roads and adjoining pavements, laying of sewers and rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants, electricity sub-stations, electricity lines and street lights, telecommunication towers etc. Besides the aforesaid, land has also to be kept apart for parks, gardens and playgrounds. Additionally, development includes provision of civic amenities like educational institutions, dispensaries and hospitals, police stations, petrol pumps etc. This "first component", may conveniently be referred to as deductions for keeping aside area/space for providing developmental infrastructure.

19.2. Secondly deduction has to be made for the expenditure/expense which is likely to be incurred in providing and raising the infrastructure and civic amenities referred to above, including costs for levelling hillocks and filling up low lying lands and ditches, plotting out smaller plots and the like. This "second component" may conveniently be referred to as deductions for developmental expenditure/expense.

20. It is essential to earmark appropriate deductions, out of the market value of an exemplar land, for each of the two components referred to above. This would be the first step towards balancing the differential factors. This would pave the way for determining the market value of the undeveloped acquired land on the basis of market value of the developed exemplar land.

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23. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing two paragraphs, we are of the view that there is no discrepancy on the issue, in the recent judgments of this Court. In our view, for the "first component" under the head of "development", deduction of 33-1/3 per cent can be made. Likewise, for the "second component" under the head of "development" a further deduction of 33-1/3 per cent can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67 per cent. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds 33-1/3 percent, the two

components under the head of "development" put together, should not exceed the upper benchmark."

24. Bearing in mind these observations and referring back to the facts of the case, as noted, the sale instances Ex. 31 and 33 are of lands of the same village of nearby localities sold a few months before the notification under section 4(1) in the present case was issued. They would, thus, provide for comparable sale instance, of course, after making suitable adjustments since these lands were relatively smaller pieces of land which were non-agricultural lands. On the other hand, though the acquired lands were agricultural lands, they were surrounded by highly developed area touching the border of the Ahmedabad Municipal Corporation and surrounded by non-agricultural development. Bearing in mind all these factors, in our opinion, 40 per cent deduction from the recorded sale consideration for the sale instances Ex. 31 and 33 would be just and proper. The market value of the sale deeds Ex. 31 and 33 came to Rs. 1196 per sq. meter. 40 per cent thereof would be Rs. 478 per sq. meter. Net market value for the acquired land would therefore come to Rs. 718/- per sq. mtr. The award in the Land Acquisition References granting compensation of Rs. 750/- per sq. meter is modified accordingly.

25. Before closing, we notice that the Reference Court has granted interest from the date of the notification under section 4(1) of the Act which clearly and concededly is not in tune with the statutory provisions. It is an undisputed position that such interest would be payable only from the date of the award under section 11 of the Land Acquisition Act which happens to be 16th May 2002 and 7th October 2002 respectively. It is, therefore, clarified that the claimants would receive interest on the enhanced compensation from such dates. With these two modifications, the appeals are allowed in part and disposed of accordingly.

26. The appellant would be entitled to recover the excess compensation from the claimants. To the extent such compensation or part thereof is with the Reference Court , the same shall be refunded to the appellant. If there is any residue, the same shall be released in favour of the claimants.

