

(2010) 12 GUJ CK 0100
In the Gujarat High Court
Case No : First Appeal No. 3893 of 2008

General Manager

APPELLANT

Vs

Keshabhai Somabhai Another

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 35, 35(3)
Limitation Act, 1963 — Article 137

Citation : (2010) 12 GUJ CK 0100

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : R.R. Marshall, for the Appellant; Government Pleader for Defendant 2, for the Respondent

Judgement

K.S. Jhaveri, J.—This appeal has been filed against the judgment and award passed by the learned Principal Senior Civil Judge, Mehsana in Land Acquisition Reference No. 5120/2003, whereby, the reference was partly allowed and the Appellant-ONGC was held liable to pay additional amount of compensation to the original claimants along with interest and costs.

2. The facts in brief are that the competent authority under the Land Acquisition Act made a proposal for temporary acquisition of the lands belonging to the Respondent-original claimant. After following due procedure, the lands came to be acquired. Award came to be passed by the competent authority fixing the amount of compensation.

3. However, being dissatisfied with the award, the original claimant raised dispute, by way of reference, after a delay of several years. The reference Court partly allowed the same by way of the impugned award. Hence, these appeals.

4. The main contention raised by the Appellant-Corporation is that the reference Court has not appreciated the law governing the subject, more particularly, Section 35 of the Land Acquisition Act in its proper perspective. It has been

submitted that the reference Court has also lost sight of several other important factors while awarding additional compensation. Further, the reference applications ought not to have been entertained on the ground of limitation since the same were filed after considerable delay from the date of taking over of the possession and the impugned award. It is, therefore, submitted that the impugned award passed by the reference Court deserves to be quashed and set aside.

5. Heard learned Counsel for the respective parties and perused the documents on record. The issue regarding grant of future rent came up for consideration of this Court earlier in a group of appeals being First Appeal No. 792/2003 & allied matters. The said group of appeals came to be disposed of by this Court vide judgment and order dated 21.03.2006. Relevant portion of the said judgment is reproduced hereunder for ready reference;

5.2 On the facts of the case, it is evident that the Reference Court has also determined the further rent which issue was not before it. I am, therefore, of the opinion that the contention raised by the learned Advocate for the Appellant that the observation or direction issued by the Reference Court in the operative part of the orders require to be quashed and set aside, is required to be accepted. If the said direction is allowed to remain then it would amount to granting the rent which is over the rent fixed by the Appellant-O.N.G.C. from time to time. Moreover, the same has been fixed without considering as to what would be the future rent fixed by the Appellant- O.N.G.C, which is beyond the scope of reference. Hence if the said observation is allowed to remain then, in that event such compensation would be much more than the amount which has been found to be adequate by the Court.

It may be noted that the Reference Court was dealing with a particular acquisition and it was not open for the said Court to pass an order in respect of future rent. Such an observation on the part of the Reference Court is clearly bad in law in view of the provisions of Section 35(3) of the Act. In that view of the matter, the observations or direction issued by the Reference Court with regard to additional amount of compensation, requires to be quashed and set aside.

In the result, these appeals are allowed. The observation "over the rent fixed by O.N.G.C. from time to time with the running interest at the rate of 9% p.a. from the date of due date of running till the day of payment is made", made by the Reference Court in the operative part of the impugned judgments and awards, is quashed and set aside. These appeals are allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

6. From the above order passed by this Court, it is clear that while considering an application u/s 35(3) of the said Act, the reference Court is not empowered to pass an order in respect of future rent. In other words, the reference Court has no jurisdiction to grant additional amount of compensation while dealing with an application u/s 35(3) of the said Act.

7. It is pertinent to note that challenge to the award passed by the competent authority by way of a reference was made after several years of delay. Looking to the facts and circumstances of the case, it would be beneficial to refer to a decision of this Court in the case of Oil and Natural Gas Corporation Ltd. Vs. Sankarji Hemaji and Another, more particularly, on the observations made in Para-42 therein, which reads as under;

42. For the reasons stated hereinabove, all the appeals succeed and are allowed with costs which is quantified at Rs. 5000 (Rupees Five Thousand only) per each appeal. The impugned common judgment and award dtd. 15/10/2005 passed by the learned Principal Senior Civil Judge, Mehsana (Mr.J.R. Shah) in Land Reference Case Nos. 3780 to 3784 of 2003 is hereby quashed and set aside and it is held that:

The reference applications submitted by the original claimants were not maintainable.

The reference applications were required to be dismissed on the ground of limitation considering Article 137 of the Limitation Act. In the alternate, the same were required to be dismissed on the ground of delay and laches.

The reference court has no power, authority, competence and/or jurisdiction to decide the dispute de-hors the reference made to him.

The reference court has no jurisdiction to decide any other question except the difference as to sufficiency of compensation in a reference u/s 35(3) of the Act.

The reference court has no jurisdiction to declare acquisition proceedings and the award declared by the Special Land Acquisition Officer u/s 35(3) of the Act as illegal and/or non-est in a reference u/s 35(3) of the Act.

The reference court has no jurisdiction to declare possession of the acquiring body as illegal and/or unauthorised and consequently the reference court has no jurisdiction to declare the ONGC - acquiring body as trespasser that too without framing any issue.

The reference court has no jurisdiction to award compensation by way of mesne profit declaring compensation of the acquiring body as illegal and unauthorised.

The reference court has also no jurisdiction to award statutory benefits and/or interest, as awarded by the reference court, as if the acquisition proceedings is a permanent acquisition.

The reference court has no jurisdiction to determine the dispute with regard to sufficiency of the compensation beyond the period of three years from the date of taking the possession.

The Reference Court has no jurisdiction to restore the possession of the land to the original owners while deciding the reference u/s 35(3) of the Act.

8. As can be seen that in the above decision of this Court, it has been

categorically held that the reference Court has no power to decide the dispute dehors the reference nor it has jurisdiction to determine the dispute with regard to sufficiency of compensation beyond three years. It has also been further held therein that the reference Court cannot restore the possession of land while deciding the reference u/s 35(3) of the said Act.

9. On the facts of the present case and in view of the principle laid down by the Division Bench of this Court in *O.N.G.C. v. Sankarji Hemaji's case* (supra), I am of the view that the impugned award passed by the reference Court cannot be sustained in the eyes of law, as the same being illegal and improper, and therefore, it deserves to be quashed and set aside. Consequently, the matter requires reconsideration by the reference Court.

10. For the foregoing reasons, the appeals are partly allowed. The impugned award passed by the reference Court is quashed and set aside. The matter is remanded to the concerned reference Court for consideration afresh on merits and also without being influenced by this order, in view of the principle laid down by this Court in the above decisions. The reference Court concerned is directed to dispose of the references expeditiously preferably within a period of two years from the date of receipt of writ of this order.

11. With the above observation and direction, the appeal stands disposed of. No costs.