

(2014) 01 GUJ CK 0053
In the Gujarat High Court

Case No : First Appeal No. 428 of 2006 with First Appeal No. 429 of 2006

General Manager

APPELLANT

Vs

Mafabhai Gandabhai Vanand and Another

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 10 17 35 35(3) 36(2)

Citation : (2014) 01 GUJ CK 0053

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : R.R. Marshall with Mr. V.K. Bhatia, for the Appellant; Alkesh N. Shah, AGP for the Defendant(s) No. 2, for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Chhaya, J.—As common question of law and facts arise in these appeals and as the same set of evidence is adduced before the Reference Court, the same were heard together and are hereby decided by this common judgment. These appeals are filed u/s 54 of the Land Acquisition Act, 1894 (the Act) read with Section 96 of the Code of Civil Procedure, 1908 (the CPC) by the acquiring body challenging the common judgment and award dated 11.10.2005 passed by Principal Senior Civil Judge, Mahesana in Land Reference Case Nos. 3756-3757/2003.

2. The record of the case reveals that the acquiring body acquired land belonging to the respondent-original claimants temporarily under the Section 35 of the Act for the public purpose of drilling project by ONGC, situated at village Telavi, Taluka and District Mehsana. The Land Acquisition Officer by award dated 28.07.1980 fixed the rental compensation @ 0.20 ps./- sq. mtr. per year. Aggrieved by the same, the original claimants preferred the aforesaid references before the Reference Court and claimed Rs. 15/- sq. Mtr. per year wherein by the impugned order dated 11.10.2005 following order is passed:

ORDER

1. The Land Reference Case Nos. 3756/03 or 3757/03 are hereby partly allowed.

2. The amount of compensation has been fixed as under:--

[3] It is hereby declared that each of the claimant of above stated LAR cases are entitled for the compensation as fixed hereinabove. The amount of compensation paid by the opponents to each of the claimant shall be deducted from the payable amount of each of the claimant. The opponents shall pay arrears of compensation with interest from the date on which the amount become due at the rate of 12% p.a. up to the period of 31.12.1999 and thereafter at the rate of 9% p.a. till the amount realized or paid by the opponents.

[4] The amount of compensation fixed at Rs. 15/- p.a. per sq. mtr. with effect from 01-01-2005 shall be increased at the rate of 15% at the every interval of three years, commencing from 01-01-2005. The increased 15% shall be calculated on the amount of last preceding amount and the claimant or the opponents shall have a right after expiration of period of 20 years, if the land has not been surrender to the original owner to move before the competent court for refixation of amount of compensation in future.

[5] The opponents shall pay the cost of the present proceedings to each of the claimant and the opponents shall bear their own respective costs.

[6] A separate award be drawn up accordingly in each of the LAR cases stated hereinabove.

[7] The original judgment is hereby ordered to be kept with the main LAR Case No. 3757/03 and in the rest of the cases, a certified copy of this judgment is hereby ordered to be kept.

3. Heard Mr. R.R. Marshall, learned Senior Counsel, with Mr. V.K. Bhatia, learned Counsel for the appellant, acquiring body, Mr. Alkesh N. Shah, learned Assistant Government Pleader for the respondent-Special Land Acquisition Officer, and Mr. Nitin Amin, learned counsel for the original claimant in First Appeal No. 429 of 2006. Though served, none appears on behalf of the original claimant in First Appeal No. 428 of 2006.

4. Learned Senior Counsel appearing for the appellant-acquiring body has taken this Court through the impugned judgment and award. It is submitted that the impugned judgment and award is erroneous, illegal and the same is contrary to the facts on record and de hors the provisions of the Act. It was submitted that the Reference Court has materially erred in awarding 10% rise without there being any cogent evidence on record. Relying upon the judgments in case of Oil and Natural Gas Commission Ltd. Vs. Pandya Prahladbhai Manilal and Others, as well as in case of Oil and Natural Gas Corporation Ltd. Vs. Sankarji Hemaji and Another, it is contended that the Reference Court has exceeded its jurisdiction by awarding rental compensation beyond the period of three years. It is contended

that without taking into consideration the aspect of limitation the references were entertained and the same are allowed. It is therefore contended that the impugned judgment and award deserves to be quashed and set aside and the references deserve to be remanded back for re-hearing before the Reference Court.

5. Learned Assistant Government Pleader adopted the arguments made by the learned Senior Counsel for the appellant, whereas Mr. Nitin Amin, learned counsel for the original claimant in First Appeal No. 429 of 2006, has supported the impugned judgment and award passed by the Reference Court.

No other or further submissions are made by learned Counsel for the parties.

6. Upon considering the submissions made by the learned counsel appearing for the parties and on perusal of the impugned judgment and award as well as considering the binding decision of this Court in case of Oil and Natural Gas Corporation v. Sankarji Hemaji & Anr (supra), it transpires that the Reference Court has awarded 10% increase rental compensation per year till the possession is handed over back to the claimants without any jurisdiction. This Court in the case of Oil & Natural Gas Commission Ltd. v. Pandya Prahladbhai Manilal and Others (supra) has held thus:

9. There are two State amendments so far as section 35 is concerned. The said amendments are, by section 17 of the Land Acquisition (Gujarat Unification and Amendment Act XX of 1965, in Sub-section (1) of section 35 of the principal Act, the words "waste and arable" are deleted. Similarly, the Maharashtra amendment by section 10 of the Land Acquisition [Bombay amendment] Act XXXV of 1953 has been extended to the whole State of Gujarat by Gujarat Act XX of 1965. The said amendment in section 35 reads as under: In section 35 -

(a). after sub-section (1), insert the following sub-section, namely, -

(1A). Before issuing a direction under sub-section (1) the State Government may require the Collector to submit-

a). a plan of the land which is needed for occupation and use; and

(b). an estimate of the compensation that would be payable under Sub-section (2); and upon the issue of such requisition the Collector shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situated.

(1B). After the issuance of such notice, it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants and workmen to exercise the powers conferred by Sub-section (2) of Section 4.

(1C). The officer authorised under Sub-section (1B) shall at the time of his entry pay or tender payment for all necessary damage to be done as aforesaid and, in the case of dispute as to the sufficiency of the amount so paid or tendered, he

shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

(b). in-sub-section (2), for the words "the Collector shall thereupon" substitute the words "upon the issue of a direction under Sub-section (1) the Collector shall".

10. Reading the aforesaid provisions, it is clear that temporary acquisition is permissible for a period of three years only. At the time of acquiring the land for a period of three years as envisaged u/s 35 of the Act, it is open to the claimants to ask for Reference u/s 35(3) of the Act. The Court is, therefore, required to determine the fixation of compensation, either in a gross sum of money, or by monthly or other periodical payments [which is popularly known by all concerned as "rent"] in such Reference to find out whether compensation, either in a gross sum of money, or by monthly or other periodical payments fixed by Land Acquisition Officer is proper or not. Looking to the scheme of the Act, it is clear that beyond three years, the provisions of section 35 of the Act is not applicable. On the expiration of the term of temporary acquisition of three years, so far as the Collector is concerned, his duties are prescribed in Sections 36(2) and 37 of the Acts, i.e.:

- (1). make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement;
- (2). restore the land to the persons interested therein; and,
- (3). if there is any difference as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, refer such difference to the decision of the Court.

11. It is, therefore, not open to the Collector to make a Reference for determining the compensation, either in a gross sum of money, or by monthly or other periodical payments for the subsequent period after expiration of the temporary acquisition period by resorting to Sec. 35(3) of the Act. If the acquiring body has entered into any written or oral agreement with the landowners, the acquiring body may retain the lands in pursuance of such oral or written agreement, if any, and such retention will be governed by the oral or written agreement, but certainly the provisions of section 35 of the Act would have no application after the aforesaid temporary acquisition period is over. Whatever amount is fixed between the parties will be governed by the new contract, if any, between the landowners and the acquiring body. Such retention of possession or fixation of amount of rent will be governed under ordinary law, and not under the Act. If the acquiring body has retained the possession by separate agreement between the acquiring body and the landowners, the same would be subject to an agreement between the parties, but in such an eventuality, if there is any dispute between the acquiring body and landowners, the Collector cannot make a reference for such period as if it is a reference u/s 35(3) of the Act. In other words, the Collector has no power to make a reference

for fixing the amount of rent or compensation for a period exceeding three years from the commencement of such occupation. In a Reference u/s 35(3) of the Act, the Court can only determine compensation/amount in connection with the period of three years from the date of taking possession. Considering the aforesaid provisions, it is clear that interested persons can ask for reference to the Court u/s 35(3) of the Act if such persons are not satisfied by the sufficiency of the compensation or apportionment fixed by the Collector at the time of taking possession for occupation of the land for a temporary period of three years.

After the aforesaid period is over, there are two options available:

(1). u/s 36(2), on the expiration of the term, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government can proceed under this Act to acquire the land as if it was needed permanently for a public purpose or, if there is any difference as to the condition of the land, make Reference to the Court u/s. 37;

(2). The landowners and the acquiring body may enter into independent contract or agreement but the same is outside the purview of the provisions of the Act.

7. Similarly this Court (Coram: K.S. Jhaveri, J.) in First Appeal No. 5096 of 2007 and allied matters in Paragraph No. 6 has observed thus:

6. Heard learned counsel for the respective parties and perused the documents on record. Similar issues arose for consideration of this Court 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 21st March 2006, relevant portions of which are 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.

5.3 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.

6.0 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.

7. From the above order passed by this Court, it is clear that while dealing with 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. Hence, the impugned orders passed by the reference Court, being bad in law, deserves to be quashed and set aside and the matter requires reconsideration.

8. For the foregoing reasons, present group of appeals are partly allowed. The impugned awards passed by the reference Court are quashed and set aside. The matters are remanded to the concerned reference Court for consideration afresh on merits in view of the principle laid down by this Court in the above decision and also being uninfluenced of this order. The references, being very old, the concerned reference Court is directed to dispose of the same expeditiously preferably within a period of two years from the date of receipt of writ of this order.

8. Division Bench of this Court in the case of Oil & Natural Gas Corporation Ltd. v. Sankarji Hemaji & Another (supra), in Paragraph No. 37 has observed thus:

37. Now so far as the amount of compensation awarded by the reference court and the operative portion of the order which is reproduced hereinabove in para 1 of the judgement, the reference court has awarded the compensation even for the period beyond three years i.e. till date and even for future also. As held by this Court in the case of Oil & Natural Gas Commission v. Pandya Prahladbhai Manilal and Ors., reported in 2006 (3) GLH 662 and in the case of Patel Shambhubhai Bhaichanddas Vs. State of Gujarat and Another, the reference court, in temporary acquisition under sec. 35 of the Act, has no jurisdiction to determine sufficiency of compensation for retention of the land beyond the period of three years. In other-way, the Collector in a reference under sec. 35 has power to determine sufficiency of compensation only for retention of land upto a maximum period of three years and recourse to possession after the stipulated period can be sought only by remedy provided under common law. This court is in complete agreement with the aforesaid two decisions. Thus, even the order passed by the reference court awarding compensation beyond the period of three years in a reference under sec. 35 of the Act, is wholly without jurisdiction. In the present case, even the question may arise whether in view of the periodical rise given by ONGC at the interval of every three years, which have been accepted by the claimants without raising any objection, whether the

claimants are entitled to raise dispute with regard to sufficiency of compensation/rent.

9. Cumulatively therefore it appears that the Reference Court has not taken into consideration the provisions of Section 35 of the Act. The observations and directions issued by the Reference Court with regard to additional amount of compensation is beyond the scope of Reference as held by the Division Bench and the Reference Court has no jurisdiction to grant rental compensation beyond the period of three years and as such it lacks jurisdiction.

10. Accordingly these appeals are partly allowed. Impugned judgment and award dated 11.10.2005 passed by Principal Senior Civil Judge, Mahesana in Land Reference Case Nos. 3756-3757/2003 is hereby quashed and set aside. The matters are remanded back to the concerned Reference Court for re-consideration afresh in accordance with law, without in any manner influenced by this judgment. It would be open for the parties to take all contentions. The Reference Court shall give priority to the present References as they are of the year 2003 and shall endeavour to dispose of the same as expeditiously as possible, preferably within a period of 02 (two) years from the date of the receipt of this judgment and order.

11. Parties to bear their own costs. Registry to place a copy of this order in connected matters.