

(2011) 02 GUJ CK 0079

In the Gujarat High Court

Case No : First Appeal No's. 2606 and 2607 of 2006

General Manager

APPELLANT

Vs

Patel Tribhovanbhai Babaldas and Another

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

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

Citation : (2011) 02 GUJ CK 0079

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : K.J. Brahmbhatt, for the Appellant; Sachi Mathur, AGP, for the Respondent

Final Decision : Allowed

Judgement

J.C. Upadhyaya, J.—Both these appeals arise out of common judgment and award dated 19.10.2005 rendered by learned Principal Senior Civil Judge, Mehsana in Land Acquisition Reference Case Nos. 5830 of 2003 to 5834 of 2003 u/s 35 of the Land Acquisition Act ("the Act" for short). The Reference Court determined the compensation on the basis of the price of the land under temporary acquisition per Square Meter ranging from Rs. 3 per Square Meter to Rs. 15 per Square Meter. It further transpires that by common judgment and award five Land Acquisition Reference Cases came to be disposed of by the Reference Court, for which First Appeal No. 2606 of 2006 filed against Land Acquisition Reference Case No. 5832 of 2003 and First Appeal No. 2607 of 2006 filed against Land Acquisition Reference Case No. 5833 of 2003.

2. Heard Ms. K. J. Brahmbhatt, learned Counsel for the Appellant and Ms. Sachi Mathur, learned AGP for the Respondent No. 2 - State. Though served, none appears on behalf of the Respondent No. 1.

3. Ms. K. J. Brahmbhatt, learned Counsel for the Appellant has submitted that in the same group of matters namely Land Acquisition Reference Case Nos. 5830 of

2003 and 5834 of 2003, appeals came to be preferred before this Court bearing First Appeal No. 2604 of 2006 and First Appeal No. 2608 of 2003. It is submitted that both these appeals arising from the common impugned judgment and award came to be allowed by this Court vide judgment and order dated 09.12.2010. The copy of the said decision dated 09.12.2010 is presented for ready reference. Reliance is also placed in the case of Oil and Natural Gas Corporation Ltd. Vs. Sankarji Hemaji and Another, wherein this Court has laid down the relevant factors as well as scope of power of Reference Court u/s 35 of the Act. Relying upon the above referred decision, it is submitted that in the instant appeals also, the same observations, which were made by this Court in the judgment and order dated 09.12.2010 in the allied two appeals may apply in the present appeals and both these appeals deserve to be allowed and the impugned judgment and award dated 19.10.2005 be quashed and set aside.

4. As stated earlier, by virtue of impugned judgment and award dated 19.10.2005 in all five Land Acquisition Reference Cases collectively, came to be disposed of by the Reference Court. Out of them, so far as the Land Acquisition Reference Case Nos. 5830 of 2003 and 5834 of 2003 are concerned, the Appellant herein had preferred First Appeal Nos. 2604 of 2006 and 2608 of 2006 respectively and vide judgment and order dated 09.12.2010, both the aforesaid appeals were allowed and the impugned judgment and award dated 19.10.2005 came to be quashed and set aside on the line mentioned in the said judgment and order. Since both these appeals arise out of the common impugned judgment and award, obviously, both these appeals are required to be decided on the same ground also.

5. The illegality and infirmity noted by this Court in the impugned judgment and order dated 09.12.2005 in First Appeal Nos. 2604 of 2006 and 2608 of 2006 were enumerated and discussed, the present appeals are required to be allowed on the same ground also. Since the impugned judgment and award dated 19.10.2005 came to be quashed and set aside for allied two matters, both these appeals also deserve to be allowed on the same ground.

6. In the order dated 09.12.2010 passed in First Appeal Nos. 2604 of 2006 and 2608 of 2006, this Court has observed in paragraph No. 3 which reads as under:

3. This Court has decided the said First Appeals on 13/03/2008 wherein the lands of nearby villages were acquired for the same purpose. Therefore, for the reasons stated in the aforesaid First Appeal No. 790 of 2007 and other allied matters, the impugned judgment and award dated 19/10/2005 passed by the learned Principal Senior Civil Judge, Mehsana in respective LAR Cases in these appeals is hereby quashed and set aside with costs which is quantified at Rs. 5000 (Rupees Five Thousand only) per each appeal 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.

7. In above view of the matter, both these appeals are allowed and the impugned judgment and award dated 19.10.2005 passed by the learned Principal Senior Civil Judge, Mehsana in respective Land Acquisition Reference Cases in these appeals is hereby quashed and set aside in terms of paragraph No. 3 of the order dated 09.12.2010 passed in First Appeal Nos. 2604 of 2006 and 2608 of 2006 by this Court.