

(2011) 02 GUJ CK 0038
In the Gujarat High Court
Case No : First Appeal No. 3474 of 2008

General Manager

APPELLANT

Vs

Sankarbhai Mohanbhai and Another

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 35, 35(3), 54
Limitation Act, 1963 — Article 137

Citation : (2011) 02 GUJ CK 0038

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

Bench : Single Bench

Advocate : R.R. Marshall, for the Appellant; Pranav Dave, A.G.P for Defendant 2, for the Respondent

Judgement

M.R. Shah, J.—The present appeal u/s 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure, has been preferred by the Appellant herein - original opponent No. 2 - Oil and Natural Gas Corporation Ltd. (hereinafter referred to as "ONGC") challenging the impugned judgment and award dated 22/09/2005 passed by learned Principal Senior Civil Judge, Mahesana in Land Acquisition Reference Case No. 3879/2003, by which, in proceeding arises out of temporary acquisition u/s 35(3) of the Land Acquisition Act, the learned Reference Court has partly allowed the aforesaid Reference Application by determining the different additional yearly rent for different period from the date of taking over the possession.

2. Though served, nobody appears on behalf of the Respondent - original claimant. Hence, this Court has no other alternative but to proceed further with the appeal ex-parte.

3. It appears that the land of the original claimant came to be temporarily acquired by Special Land Acquisition Officer for ONGC. That possession of the land in question was taken over in the year 1983. After giving an opportunity to

the original claimant, the Special Land Acquisition Officer declared award in the year 1983 u/s 35 of the Land Acquisition Act awarding compensation/rent at the rate of 0.35 paise per sq.mtr. That after a period of approximately 18 years, the claimant submitted representation/ application before the Special Land Acquisition Officer making grievance with respect to yearly rent fixed by the Special Land Acquisition Officer in the year 1983. This application was sent to the District Court, Mahesana, which was numbered as Land Acquisition Reference Case No. 3879/2003. The Reference Application was opposed by Special Land Acquisition Officer by submitting that such reference application is not maintainable. Despite the above, learned Reference Court by impugned judgment and award partly allowed the said Reference Application and passed the following order:

(1) The Land Reference Case Nos. 3879/03 to 3885/03 are hereby partly allowed.

(2) The amount of compensation has been fixed as under:

Sr. No. Description of period Per Sq. Meter
1. From the date of taking possession up to 31-12-1983 3.00
2. From 01-01-84 to 31-12-1985 3.33
3. From 01-01-86 to 31-12-87 4.00
4. From 01-01-88 to 31-12-1990 4.50
5. From 01-01-1991 to 31-12-1993 5.00
6. From 01-01-94 to 31.12.1996 6.66
7. From 01-01-97 to 31-12-1999 8.33
8. From 01-01-2000 to 31-12-2002 10.00
9. From 01-01-2003 to 31-12-2004 12.00
10. From 01-01-2005 to on wards 15.00

(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 deduced 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 realised 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."

Being aggrieved by and dissatisfied with the impugned judgment and award passed by learned Principal Senior Civil Judge, Mahesana in aforesaid Reference Case, the Appellant herein - original opponent No. 2 - ONGC, has preferred the

present First Appeal before this Court.

4. Mr. R.R. Marshall, learned Senior advocate appearing on behalf of the Appellant has heavily relied upon the decision of Division Bench of this Court in the case of Oil and Natural Gas Corporation Ltd. Vs. Sankarji Hemaji and Another, It is submitted that as held by Division Bench of this Court in the aforesaid decision, when Reference Application was submitted after unreasonable period, the same is not maintainable on the ground of delay and latches. It is further submitted that in the aforesaid decision, Division Bench of this Court has also held that Reference Court has no jurisdiction to determine the rent for the period beyond three years, after taking over the possession. Nothing is on record to show that when Special Land Acquisition Officer declared award u/s 35 of the Land Acquisition Act, the claimant had raised any objection. It is further submitted that in the present case, Reference Application was submitted after a period of 18 years and learned Reference Court has materially erred in entertaining such application and partly allowing the same. It is further submitted that impugned judgment and award passed by Reference Court determining and directing the Appellant to pay yearly different rent for different period and in future also, which cannot be sustained, in view of the aforesaid decision of the Division Bench of this Court. Hence, it is requested to allow the present First Appeal.

5. Mr. Pranav Dave, learned Assistant Government Pleader appearing on behalf of Opponent No. 2 - Special Land Acquisition Officer, has requested to pass appropriate order by submitting that in view of the aforesaid decision of Division Bench of this Court in the case of Sankarji Hemaji (Supra), the Reference Court has committed an error in entertaining the aforesaid Reference Application and in partly allowing the same.

6. Heard Mr. R.R. Marshall, learned Senior Advocate appearing with Mr. Adil Mirza, learned advocate appearing for the Appellant herein - ONGC and Mr. Pranav Dave, learned Assistant Government Pleader appearing on behalf of Opponent No. 2 - Special Land Acquisition Officer and considering the impugned judgment and award passed by the Reference Court and considering the evidence on record, it is to be noted that the Reference Application arises out of temporary acquisition u/s 35 of the Land Acquisition Act, the rent is required to be paid u/s 35 of the Land Acquisition Act. It is not in dispute that Special Land Acquisition Officer declared award u/s 35 of the Land Acquisition Act in the year 1983 and for the first time, Reference Application was submitted challenging the yearly rent/compensation awarded by the Special Land Acquisition Officer in the year 1983, after a period of approximately 18 years. Nothing is on record to show that at the relevant time when Special Land Acquisition Officer declared award u/s 35 of the Land Acquisition Act, the claimant raised any objection. Division Bench of this Court in the case of Sankarji Hemaji (Supra), dealing with the identical and similar facts and temporary acquisition, has specifically held that when the Reference Applications were submitted belatedly more particularly

after a period of three years, such reference applications are not maintainable on the ground of delay and laches. In para - 25 of the aforesaid Judgment, Division Bench of this Court has held and observed as under:

25. Even otherwise as stated above, the Special Land Acquisition Officer declared the award u/s 35 of the Act as back as on 11/8/1980 determining the compensation/rent at the rate of 0.35 paise per sq.mtr. per annum which was never objected to by the original land owners / interested persons, but the same came to be accepted without raising any objection and still the Respondents herein - original claimants submitted the applications for making reference to the reference court under Sub-section (3) of Section 35 i.e. after a period of 21 years raising the dispute as to sufficiency of the compensation which was determined while declaring award on 11/8/1980. It is the contention on behalf of the original claimants that as under Sub-section (3) of Section 58 of the Act on 11/8/2008, no time limit is prescribed and as it is the duty of the Collector to refer the dispute to the Reference Court and as the Collector has failed to perform the duty cast upon him, the application submitted by the claimants are within the period of limitation and/or not barred by delay and laches. It is the contention on behalf of the Appellants and the Special Land Acquisition Officer that when there is no limitation prescribed, Article 137 of the Limitation Act would come in picture and within three years from the date of cause of action, the applications could have been made. It is true that under Sub-section (3) of Section 35 of the Act, no limitation is prescribed. However, that does not mean that the application for reference can be made at any time. Article 137 of the Limitation Act provides that when there is no limitation prescribed or provided, three years would be the limitation and from the date of cause of action within three years, an aggrieved person can initiate proceedings. The reference court has misinterpreted the provisions of Section 35 of the Act. While considering the submissions with regard to the limitation, the reference court has held that as the entire land acquisition proceedings and the award are null and void, Article 137 of the Limitation Act (reference court has considered Section 137 of the Limitation Act wrongly) would not be applicable, more particularly when the Collector has failed to perform the duty cast upon him, making the reference to the reference court as provided under Sub-section (3) of Section 35 of the Act. As stated above, such a findings and the observations of the Reference Court are perverse and illegal. As held by us, there was no dispute with regard to sufficiency of the possession raised by the claimants at the relevant time when the award was declared, therefore, there was no occasion for the Collector to refer the dispute to the reference court and we have also held that the reference applications are not maintainable. Even otherwise, assuming that it was the duty of the Collector to refer the dispute to the reference court and when the Collector failed to perform his duty, in that case also, the claimants are required to initiate appropriate proceedings within reasonable time, as there is no time limit prescribed under the Act. Certainly the claimants cannot submit the applications and/or raise the dispute after a period of 21 years. Thus, on the ground of delay

and laches the reference applications were not maintainable. As such when the applications were submitted after a period of 21 years raising dispute with regard to adequacy of the compensation awarded in the year 1980, the Special Land Acquisition Officer, ought not to have referred the dispute to the reference court. As such the Special Land Acquisition Officer himself has committed an error and/or acted arbitrarily in referring the dispute to the reference Court after a period of 21 years.

Thus, Reference Court ought to have dismissed the reference application on the ground of delay and laches. Even otherwise as held by Division Bench of this Court in the aforesaid decision, Reference Court has no jurisdiction to determine the yearly rent for the period beyond three years from the date of taking over possession. In the present case, Reference Court has determined yearly rent and has directed the Appellant to pay different compensation/ rent for different period right from taking over the possession till onwards. It is to be noted that in the meantime, ONGC itself has enhanced rent in the year 1997 and 2001 and has decided on administrative side to pay yearly rent at the rate of Rs. 2.30 paise per sq.meter from the year 1997 and Rs. 3.75 paise per sq.meter from the year 2001. Direction issued by Reference Court has been quashed and set aside by the Division Bench of this Court in the aforesaid decision. The facts of the present case are squarely covered with the facts in the aforesaid decision rendered by Division Bench of this Court.

7. In view of the above and for the reasons stated hereinabove, the present First Appeal succeeds. The impugned judgment and award dated 22/09/2005 passed by learned Principal Senior Civil Judge, Mahesana in Land Acquisition Reference Case No. 3879/2003 is hereby quashed and set aside. No costs.