
(2014) 01 GUJ CK 0054
In the Gujarat High Court
Case No : First Appeal No. 465 of 2006

General Manager	Vs	APPELLANT
Zala Shivsinh Sursinh and Another		RESPONDENT

Date of Decision : 21-01-2014

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 0054

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

Bench : Single Bench

Advocate : R.R. Marshall, with Mr. V.K. Bhatia, for the Appellant; Alkesh Shah, AGP. for the Defendant(s) No. 2 and Mr. A.J. Patel, Advocate with Mr. Jayesh Patel for the Defendant(s) No. 1, for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Chhaya, J.—This appeal is preferred by Acquiring Body u/s. 54 of Land Acquisition Act, 1894 read with S. 96 of the CPC against the judgment and award in Land Reference Case No. 5735 of 2003 dated 20.9.2005 passed by Principal Senior Civil Judge, Mehsana. The record of the case reveals that the State Government acquired land belonging to the respondent-original claimant temporarily under the provisions of Section 35 of the Act for the public purpose of drilling project by ONGC situated at village Govindwadi (Sanathal), Taluka District Mehsana. The Special Land Acquisition Officer respondent No. 2 herein, fixed the rental compensation @ 0.40 ps. per sq. mtr. per year. It may be noted that respondent No. 2 Special Land Acquisition Officer passed the said order on 20.7.1987.

2. Being aggrieved by the rental compensation so fixed by the Special Land Acquisition Officer, the original claimant preferred the Reference on 16.7.2001 which came to be referred to the Reference Court u/s. 35(3) of the Act and the same came to be registered as Land Reference Case No. 5735 of 2003. The

Reference Court vide impugned judgment and award dated 20.9.2005 passed the following order:

53. For the reasons stated above, I decide all the issues accordingly and I pass the following final order:

[1] The Land Reference Case No. 5735/2003 is 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.

[7] The original judgment is hereby ordered to be kept with this LAR Case.

3. Heard Mr. R.R. Marshall, learned Senior Advocate with Mr. V.K. Bhatia, learned Advocate for the appellant, Mr. Patel, learned Advocate for original claimant and Mr. Alkesh Shah, learned Assistant Government Pleader for Special Land Acquisition Officer.

4. Mr. Marshall, learned Senior Advocate with Mr. V.K. Bhatia, learned Advocate, appearing for the appellant has taken this Court through the impugned judgment and award. Mr. Marshall 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 on behalf of the appellant that the Reference Court has materially erred in awarding 10% rise without there being any cogent evidence on record. Mr. Marshall further relying upon the judgment in case of Oil & Natural Gas Commission Ltd. v. Pandya Prahladbhai Manilal and others, reported in 2006(3) G.L.H. 662 as well as the judgment of the Hon''ble Division Bench in case of Oil and Natural Gas Corporation Ltd. Vs. Sankarji Hemaji and Another, and contended that the Reference Court has exceeded in its jurisdiction by awarding rental compensation beyond the period of three years.

Mr. Marshall therefore contended that the impugned judgment and award deserves to be quashed and set aside and the Reference deserves to be remanded back for its rehearing before the Reference Court.

5. Mr. Alkesh Shah, learned Assistant Government Pleader adopted the arguments made by Mr. Marshall, learned Senior Advocate for the appellant.

6. Mr. Patel, learned Advocate for the original claimant has not been able to justify the finding and the conclusion arrived at by the Reference Court more particularly on the aspect of awarding future rental compensation beyond the period of three years. Mr. Patel, learned Advocate for the original claimant has tried to support the impugned judgment and award but has not been able to justify the same on any other ground.

7. Upon considering the submissions made by learned Advocates 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.

8. Similarly this Court (Coram: Hon''ble Mr. Justice K.S. Jhaveri) in First Appeal No. 5096 of 2007 and allied matters in Para 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.

9. The Hon"ble Division Bench in the case of Oil and Natural Gas Corporation Ltd. Vs. Sankarji Hemaji and Another, 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 and Natural Gas Commission Ltd. Vs. Pandya Prahladbhai Manilal and Others, 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.

10. Cumulatively therefore it appears that the Reference Court has not taken into consideration the provisions of S. 35 of the Act. The observation and direction 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. Accordingly this appeal is partly allowed. Impugned judgment and award dated 20.9.2005 passed by Principal Senior Civil Judge, Mehsana, in Land Reference Case No. 5735 of 2003 is hereby quashed and set aside. The matter is remanded back to the concerned Reference Court for consideration afresh in accordance with law without in any manner influenced by this judgment. The Reference Court shall give priority to the present Reference as Reference is of the year 2003 and shall endeavour to dispose of the same as expeditiously as possible preferably within a period of two years from the date of the receipt of this judgment and order.