
(2020) 01 GUJ CK 0184
In the Gujarat High Court
Case No : R/First Appeal No. 530 Of 2004

General Manager Mehsana Project	Vs	APPELLANT
Thakore Fulaji Talaji Decd., Thro' Heirs And L/R & 1 Other(S)		RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

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

Citation : (2020) 01 GUJ CK 0184

Hon'ble Judges : R.P.Dholaria, J

Bench : Single Bench

Advocate : KJ Brahmbhatt, Megha Chitaliya

Final Decision : Allowed

Judgement

R.P.Dholaria, J

1. By way of preferring the present appeal, the appellant-original opponent has challenged the judgment and award dated 15.09.2001 passed by the

learned Extra Assistant Judge, Mehsana in LAR No.149 of 1998.

2. Though rule is served, none appears for the respondents no. 1.2 to 1.7.

3. Today, when the matter is called out, Ms. K.J. Brahmbhatt, learned advocate for the appellant submits that there was a joint award of three cases

which came to be challenged before this Court in three different appeals being First Appeal No.2328 of 2003, First Appeal No.2329 of 2003 and the

present appeal being First Appeal No.530 of 2004. As award of heirs of deceased land owner passed away, the present appeal remained pending and

in the aforesaid two appeals being First Appeal No.2328 of 2003 and First Appeal No.2329 of 2003, this Court passed following order on 09.12.2010:

These appeals are filed under Section 54 of the Land Acquisition Act read with Section 96 of Civil Procedure Code against the judgment and

award dated 15th September 2009 passed by the learned Extra Assistant Judge, Mehsana in Land Acquisition Reference Nos.148 of 1998 to 150 of

1998.

2 The appellant had acquired certain land on temporary basis of the original claimants under Section 35 of the Land Acquisition Act, 1894 (hereinafter

referred to as the Act). After following procedure the Special Land Acquisition Officer vide his order dated 24th September 1984 awarded

compensation at the rate of Rs.0.48 per sq. mtr. Per year in Compensation Case No.226 of 1984. Feeling aggrieved by the said decision, the claimants

filed references before the learned Principal Senior Civil Judge, Mehsana claiming additional rental compensation, The learned Principal Senior Civil

Judge, Mehsana has awarded additional compensation at the rate of Rs.2.52 per sq. mtr. Per annum and also ordered that the claimants are entitled to

20% more compensation under the head of standing crops etc. It is against the said award the present appeals have been filed.

3. Learned Advocate for the appellant submitted that the issue involved in these appeals is squarely covered by the ratio laid down in the case of Oil

& Natural Gas Corporation Ltd. Vs. Sankarji Hemaji & Anr reported in [2008] 17 GHJ (523). The operative part of the said Judgement reads as

under:

41. Similarly, even the conduct and the action of the then Special Land Acquisition Officer, who has referred the references applications in more

than 100 cases to the reference court, though the applications for reference were filed after a period of more than 20 years, is also required to be

considered seriously at the hands of Government. Under the circumstances, Chief Secretary, Revenue Department is directed to hold necessary

inquiry against the concerned Special Land Acquisition Officer with regard to his conduct and actions. Registry is directed to communicate this order

to the Chief Secretary, Revenue Department, State of Gujarat for compliance.

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 judgement and award dated 15.10.2005 passed by the learned Principal Senior Civil Judge, Mehsana

(Mr. J.R. Shah) inland Reference Case Nos.3780 to 3784 of 2003 is hereby quashed and set aside and it is held that:

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

[ii] 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.

[iii] The reference court has no jurisdiction to decide any other question except the difference as to sufficiency of compensation in a reference under sec.35(3) of the Act.

[iv] The reference court has no jurisdiction to decide any other question except the difference as to sufficiency of compensation in a reference under section 35(3) of the Act.

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

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

[vii] The reference court has no jurisdiction toward compensation by way of mesne profit declaring compensation of the acquiring body as illegal and unauthorized.

[viii] 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.

[ix] 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.

[x] The Reference Court has no jurisdiction to restore the possession of the land to the original owners while deciding the reference under sec.35(3) of the Act.â??

4. The ratio laid down in the aforesaid case is squarely applicable to the facts of

the case. Learned advocate for the respondents is not able to point out anything to take a different view of the matter.

5. In the premises aforesaid, these appeals are allowed. The judgment and award impugned in these appeals is quashed and set aside. No order as to costs. If the amount is deposited and not withdrawn, the same will be paid to the appellant.â??

3. In the result, present appeal stands allowed. The impugned judgment and award dated 15.09.2001 passed by the learned Extra Assistant Judge, Mehsana in LAR No.149 of 1998 stands quashed and set aside. No order as to costs. If the amount is deposited and not withdrawn, the same will be refunded to the appellant.