

(2011) 07 GUJ CK 0142
In the Gujarat High Court

Case No : First Appeal No's. 2511, 2662, 2265, 2537 and 2540 of 2001

General Manager ONGC Ltd.

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 35

Citation : (2011) 07 GUJ CK 0142

Hon'ble Judges : R.M. Chhaya, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : Rajni H. Mehta, for the Appellant; Moxa Thakkar, AGP and I.M. Pandya, for original claimants in FA Nos. 2537-2540 of 2001, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—As in all these appeals common questions of law arise for consideration, we have taken up the same for hearing together and are being disposed of by this common judgment.

2. The relevant facts in First Appeal No. 2511 of 2001 are that for the project of the Appellant, possession of the land of the original claimants at Village Lanva, Tal. Chansma, Dist. Mehsana was taken on 13.09.1988. Thereafter award was passed for the payment of the rental compensation at Rs. 0.80/- sq.mtr. The claimants were not satisfied with the said compensation and, therefore, they raised dispute and demanded compensation at Rs. 22/- sq.mtr. The said dispute was referred to the Reference Court being Land Acquisition Reference No. 2188 of 1993. The Reference Court, at the conclusion of the reference, awarded additional compensation at Rs. 2.20/- sq.mtr. with the interest @ 9% p.a. and also ordered to pay 20% more amount of additional compensation of standing crop on the amount awarded and paid to the different claimants. Under these circumstances, the present appeal before this Court.

3. In the group of First Appeal Nos. 2262-2265 of 2001 in the same manner,

possession of the lands, located at Village Saduthalal, Tal. Vijapur, Dist. Mehsana, was taken on 04.04.1989. The Land Acquisition Officer had awarded compensation of Rs. 0.80/- sq.mtr., against which a dispute was raised by the land owners, which came to be referred to the Reference Court for adjudication being Land Acquisition Reference Nos. 2426-2429 of 1993. The Reference Court, at the conclusion of the references awarded compensation at Rs. 2.20/- sq.mtr. as additional compensation by the impugned judgment and award, against which the present group of appeals before this Court.

4. In the group of First Appeal Nos. 2537-2540 of 2001, possession of the lands at Village Jagudan, Dist. Mehsana was taken for the same project of ONGC on 08.04.1991 and thereafter the Special Land Acquisition Officer had awarded compensation at Rs. 0.80/- sq.mtr., against which a dispute was raised, which came to be referred to the Reference Court for adjudication being Land Acquisition Reference Nos. 2971-2974 of 1993. The Reference Court, at the conclusion of the references, passed the impugned judgment and award and directed to pay additional compensation at Rs. 2.20/- sq.mtr. and also directed to pay 20% more amount of additional compensation towards standing crop on the amount awarded and paid to the different claimants. Under these circumstances the present group of appeals before this Court.

5. In the group of First Appeal Nos. 2262-2265 of 2001 the additional direction has been given to pay the amount of rental compensation from the date of taking of possession till the date on which the possession is handed over back to the applicants/claimants. However, such direction has not been given to continue to pay the rental compensation until the possession is handed over in the other judgment and award of the Reference Court, which are the subject matter of the remaining first appeals.

6. We have heard Mr. Ajay Mehta, learned Counsel for the Appellant in all the appeals and Mr. I.M. Pandya, learned Counsel appearing in the group of First Nos. 2537-2540 of 2001 for the original applicants/claimants. In the remaining appeals the claimants are served but none appears on their behalf. Ms. Moxa Thakker, learned Assistant Government Pleader, appeared for the Special Land Acquisition Officer in all the appeals.

7. The perusal of the judgment and the reasons recorded by the Reference Court in Land Acquisition Reference No. 2188 of 1993, which is the subject matter of First Appeal No. 2511 of 2001, shows that the Reference Court has relied upon the earlier decision dated 23.02.2000 in Land Acquisition Reference Nos. 2475-2479 of 1993 for the rental compensation for the lands located at the very Village Lunava whereby the compensation was fixed at Rs. 2.70/- sq.mtr. but the additional compensation was fixed at Rs. 1.90/- sq.mtr. since the amount of Rs. 0.80/- sq.mtr. was already awarded as the compensation. If the said judgment, (copy whereof is produced at Exh.16), is considered with the impugned judgment, it appears that the aspect of compensation already paid is not properly considered by the learned Judge. As such in the said case the

possession was taken over on 30.07.1989, whereas in the present case the possession was taken on 13.09.1988 i.e. prior to the date of taking over of the possession in the earlier judgment (Exh.16). Therefore, once the Reference Court found that the said decision (Exh.16) was required to be considered, the amount of compensation could not have exceeded Rs. 2.70/- sq.mtr. but at the same time the amount of Rs. 0.80/- sq.mtr., which was the compensation already paid, could not have been ignored and the same was required to be deducted. If the net additional compensation was to be considered accordingly such amount would come to Rs. 1.90/- sq.mtr. Under these circumstances, it can be said that the error to that extent has been committed by the Reference Court in awarding additional compensation at Rs. 2.20/- sq.mtr. as against the amount of Rs. 1.90/- sq.mtr. Hence, the judgment and award passed by the Reference Court deserves to be modified accordingly.

8. So far as the other aspects of awarding compensation towards standing crop being 20% more, we find that it cannot be said that exercise of power is erroneous since even in the award there is reference to the standing crop and the compensation is paid for that purpose. As there is no specific direction to continue to pay rental compensation until the possession is handed over, it is to be considered keeping in view the limit for exercise of power u/s 35 of the Land Acquisition Act, 1894 (hereinafter to be referred to as "the Act") for three years.

9. The perusal of the judgment and award of the Reference Court in the group of First Appeal Nos. 2262-2265 of 2001 shows that the Reference Court has not relied upon any specific decision in respect of the adjacent land for the rental compensation or otherwise. It has only considered the matter for compensation at Rs. 3/- sq.mtr. on the basis of the oral evidence. In view of the reasons recorded by us hereinabove, for the rental compensation of the land at Village Lunava, we find that it should not exceed Rs. 2.70/- sq.mtr. and the reason being that even in respect of land in question, the possession is taken on 04.04.1989 during the said period only. However, for the purposes of additional compensation the amount of Rs. 2.70/- sq.mtr. would be required to be deducted and net compensation would come to Rs. 1.90/- sq.mtr. As against the same the Reference Court has awarded additional compensation at Rs. 2.20/- sq.mtr. Hence, the judgment would be required to be modified accordingly.

10. Another pertinent aspect is that in the impugned judgment, learned Judge has directed to pay the compensation from the date of taking of possession until the date of possession is handed over back to the claimants/applicants. As such as per Section 35 of the Act power of the Reference Court is restricted to the period not exceeding three years and, therefore, direction cannot be given for indefinite period but would be restricted to only upto three years. The said aspect is also considered by this Court in the decision of Dy. General Manager v. Patel Anil Bachubhai and Anr. 2008 (2) G.L.H. 767 (Guj.) and, therefore, the said aspect is required to be clarified.

11. In the group of First Appeal Nos. 2537-2540 of 2001, the perusal of the

judgment of the Reference Court shows that the Reference Court has relied upon the earlier decision of the Reference Court in Land Acquisition Reference Nos. 1805 of 1993 and allied matters in respect of the rental compensation of the land at Village Kukas, Dist. Mehsana, (copy whereof was produced at Exh.12). If the said judgment is considered it appears that the amount awarded therein is of Rs. 2.20/- sq.mtr. as the additional compensation, after taking into consideration the amount of Rs. 0.80/- sq.mtr. as the amount already paid. The relevant aspect is that in the said decision (at Exh.12) the possession was taken over on 23.03.1992, whereas the possession in the present case has been taken over on 08.04.1991. Therefore, the rental compensation would not be the same but some amount lesser than the compensation awarded in respect of the land at Village Kukas, which was the subject matter of the decision (Exh.12). Hence, we find that the appropriate compensation would be Rs. 2.70/- sq.mtr. being the amount of compensation out of which Rs. 0.80/- sq.mtr. as the amount of compensation has already been awarded. The net additional amount of compensation would come to Rs. 1.90/- sq.mtr., whereas the Reference Court has awarded Rs. 2.20/- sq.mtr. as the additional compensation. Under these circumstances, the judgment and award passed by the Reference Court would be required to be modified.

12. We do not find any infirmities in the additional compensation awarded towards standing crop @ 20% more than the amount of compensation already paid towards the standing crop since even as per the award there were standing crop at the relevant point of time.

13. There is no specific direction for the period during which the rental compensation is to be paid but, in any case, as observed earlier, in view of the provision of Section 35 of the Act it has to be read for the period of three years since jurisdiction of the Reference Court is limited to that extent.

14. In view of the aforesaid observations and discussion, the following orders:

(i) In First Appeal No. 2511 of 2001, the claimants would be entitled to the additional compensation at Rs. 1.90/- sq.mtr. The other benefits awarded by the Reference Court in impugned judgment and award are not interfered with, save and except that the amount of compensation shall be restricted to for a period upto three years from the date of taking over of the possession but the interest shall be payable until the amount is actually realized or paid @ 9% p.a.

(ii) In the group of First Appeal Nos. 2262-2265 of 2001, the claimants would be entitled to the additional compensation at Rs. 1.90/- sq.mtr. The other benefits awarded by the Reference Court in impugned judgment and award are not interfered with, save and except that the amount of compensation shall be restricted to for a period upto three years from the date of taking over of the possession but the interest shall be payable until the amount is actually realized or paid @ 9% p.a.

(iii) In the group of First Appeal Nos. 2537-2540 of 2001, the claimants would be

entitled to the additional compensation at Rs. 1.90/- sq.mtr. The other benefits awarded by the Reference Court in impugned judgment and award are not interfered with, save and except that the amount of compensation shall be restricted to for a period upto three years from the date of taking over of the possession but the interest shall be payable until the amount is actually realized or paid @ 9% p.a.

15. In the result, the appeals are partly allowed to the aforesaid extent. All the impugned judgments and awards of the Reference Court, which are subject matter of the concerned First Appeals, shall stand modified to the aforesaid extent. Considering the facts and circumstances of the case, there shall be no order as to costs.

16. Registry to place a copy of this order in connected matters.