

(2020) 01 GUJ CK 0120

In the Gujarat High Court

Case No : R/First Appeal No. 5890, 5904, 5905, 5906, 5907, 5908, 5909, 5910, 5911, 5912, 5913, 5891, 5892, 5893, 5894 Of 2019

Gordhanbhai Mohanbhai

APPELLANT

Vs

Second Additional Special Land Acquisition Officer

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 28, 54

Citation : (2020) 01 GUJ CK 0120

Hon'ble Judges : A.J.Desai, J

Bench : Single Bench

Advocate : Kartik V Dhadhal, Sanjay M Amin, Dhvani Tripathi

Final Decision : Allowed

Judgement

A.J.Desai, J

1. First Appeals preferred under Section 54 of the Land Acquisition Act, 1894 have been taken up for final hearing as short question of law involved therein.

These appeals arise out of common judgement and award dated 28/03/2018 passed by learned Principal Senior Civil Judge, Ahmedabad (Rural) in Land Reference Case No.221 of 2006 and other allied matters.

2. Several parcel of land situated at various villages of Ahmedabad (Rural) were intended to be acquired for construction of Canal.

It is the case of the appellant that possession of the land in question was taken by the authority in the year 1989. Notification under section 4 of the Land Acquisition Act came to be issued thereafter in the year 2002 and ultimately, an award came to be passed in the year 2003. The claimants have not satisfied with the award and therefore they have requested to refer the case to the competent court. By the impugned judgement, learned Trial Court has accepted the reference in part and enhance the amount of compensation.

Trial Court also observed that the possession was taken way back in the year 1989 and accordingly it was observed that under the provisions of the Land Acquisition Act, the claimant shall be entitled for interest on the amount of compensation at the rate of 9% for the first year from taking the possession under the Act and shall be entitled for interest at the rate of 15% on the amount of compensation from the date of initiation of the proceedings under the Land Acquisition Act.

3. Mr.Nitin Amin, learned advocate appearing for the appellants would submit that appellants have challenged only part of interest awarded by the learned Trial Court. It is not disputed fact that the possession of the land was taken by the authority in the year 1989, however, notification under section 4 of the Act was issued in the year 2002 i.e. after 12 years from taking the possession of the land. The appellants were not in possession of the property in question and therefore, they were not in position to cultivate. Hence, in view of the provision of Section 28 of the Land Acquisition Act, the appellants would be entitled for the interest at the rate of 15% on the amount of compensation from the date of initiation of the proceedings under the Land Acquisition Act.

He would further submit that the case of R.L.Jain (D) By LRS. V/s. DDA and others reported in (2004)4 SCC 79, which has been considered in the case of Balwan Singh and others V/s. Land Acquisition Collector and another reported in AIR 2016 SC 1565 held that for the period between the date of dispossession and the date of Notification under Section 4(1) of the Act, damages at the rate of 15% per annum on the amount awarded by the Land Acquisition Officer shall be paid to the land owners and therefore, award may be properly modified.

4. I have heard learned advocates appearing for the respective parties and perused the judgement. It is undisputed fact that possession of the property has been taken in the year 1989 in each appeal. However, notification has been issued in the year 2002. If the impugned judgement and award is perused, Reference Court has committed an error in awarding interest from the date of initiation of proceedings i.e. issuance of Notification u/s.4 of the Land Acquisition Act. I have also gone through the aforesaid decisions rendered by Hon'ble Apex Court.

5. The issue involved in these appeals is no longer res integra. The Supreme Court, in the case of Balwan Singh and others vs. Land Acquisition Collector [AIR 2016 SC 1565] considering its earlier three decisions, held as follows:

"1. The short issue arising for consideration in this appeal is whether the appellants are entitled to interest for the period from the date of dispossession to the date of Notification under Section 4(1) of the Land Acquisition Act, 1894 (For short 'the Act'). That issue is no more res integra. In the case of R.L. Jain (D) by Lrs. Vs. DDA & Ors. reported in (2004) 4 SCC 79 at paragraph 18, this Court has taken the view that the land owner is not entitled to interest under the Act. However, it has been clarified that the land owner will be entitled to get rent or

damages for use and occupation for the period the Government retained possession of the property.

2. Noticing the above position, this Court in the case of *Madishetti Bala Ramul (dead) by Lrs. Vs. Land Acquisition Officer* reported in (2007) 9 SCC 650, took the view that it may not be proper to remand the matter to the Collector to determine the amount of compensation to which the appellants therein would be entitled for the period during which they remained out of possession and hence, in the interest of justice, this Court directed that additional interest at the rate of 15% per annum on the amount awarded by the Land Acquisition Collector, shall be paid for the period between the date of dispossession and the date of Notification under Section 4(1) of the Act.

3. The said view was followed by this Court in the case of *Tahera Khatoon & Ors. Vs. Revenue Divisional Officer/Land Acquisition Officer & Ors.* reported in (2014) 13 SCC 613.

4. Following the above view taken by this Court, these appeals are disposed of directing the respondents to award additional interest by way of damages, at the rate of 15% per annum for the period between 1.7.1984, the date when the appellants were dispossessed till 2.9.1993, the date of Notification under Section 4(1) of the Act.

5. Needless to say that this compensation will be on the basis of land value fixed by the Reference Court. The amount C.A. Nos. 1867-1872/2009 as above shall be calculated and deposited before the Reference Court within a period of three months from today."

6. The facts in this group of appeals are almost identical. The possession of the lands were taken over in the year 1989. The Notification under Section 4 of the Act was published in the year 2002 i.e. almost after twelve years from the date on which the appellants / claimants were dispossessed. The Government, thus retained possession of the lands from 1989 to 2002. Hence, the appellants / claimants are entitled to rent or damages for the use and occupation for the period the Government retained possession of the lands.

7. Following the view taken by the Supreme Court, these appeals are allowed. The respondents are directed to award additional interest by way of damages at the rate of 9% for one year from the date of taking possession by the Government and interest by way of damages at the rate of 15% per annum thereafter as per observation of the Hon'ble Supreme Court in the case of *Balwan Singh (supra)*. This damages will be on the basis of land value fixed by the Reference Court. The amount as above shall be calculated and deposited before the Reference Court within a period of three months from today. The compensation awarded by the Reference Court by its judgment and award dated 28/03/2018 passed by learned Principal Senior Civil Judge, Ahmedabad (Rural) in Land Reference Case No.221 of 2006 and other allied matters shall also be deposited by the respondents, as per the judgment within three months from

today.

8. The appellants / claimants are entitled to interest at the rate of 9% from the date of issue of Notification under Section 4 for the first year, and thereafter, at the rate of 15% per annum till the compensation amount is deposited before the Reference Court.