(1995) 03 GUJ CK 0045

In the Gujarat High Court

Case No : First Appeal No''s. 1293 to 1302 of 1984

Govindbhai Dajibhai and etc. APPELLANT

Vs

Special Land Acquisition Officer and Another RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 30(2)
Land Acquisition Act, 1894 — Section 23, 23(2), 28, 4, 4(1)

Citation : AIR 1995 Guj 200 : (1996) 1 GLR 265

Hon'ble Judges : N.N. Mathur, J;M.B. Shah, J

Bench : Division Bench

Advocate : P.B. Majmudar, for P.T. Patel, for the Appellant; P.S. Champaneri, AGP and M.R. Gehani, for the Respondent

Final Decision : Partly Allowed

Judgement

Shah, J.—Being aggrieved and dissatisfied with the judgment and award dated 19th September, 1983 passed by the learned Second Extra Assistant Judge, Nadiad, in Compensation Case No. 8 of 1980 and others, the appellants (original claimants) filed the following appeals:

Sr. No.

First Appeal No.

Compensation Cases

1.

1293/84

8/80

2.

1294/84

3/80

3.

1295/84

4/80

4.

1296/84

5/80

5.

1297/84

6/80

6.

1298/84

7/80

7.

1299/84

9/80

8.

1300/84

10/80

9.

1301/84

11/80

10.

1302/84

12/80

By the impugned award, the Court has enhanced compensation from Rs. 55/- per Are awarded by the Special Land Acquisition Officer to Rs. 250/- per Are. The Court has directed that on the additional amount of compensation, the claimants are entitled to get solatium at the rate of 15%. The claimants are also awarded interest at the rate of 4.1/2% per annum from the date of award of the Special Land Acquisition Officer.

2-3. In these appeals, the learned advocate for the appellants vehemently submitted that:

(i) the Court ought to have granted compensation at the rate of Rs. 400/- per Are on the basis of sale instances relied upon by the claimants;

(ii) in any case, the claimants are entitled to receive solatium at the rate of 30% as prescribed u/s 23(2) of the Land Acquisition Act; and

(iii) the claimants are also entitled to receive compensation with interest at the rate as is provided in Section 28 of the Land Acquisition Act;

With regard to last two submissions, the learned advocate for the appellants has relied upon Section 30(2) of the Land Acquisition (Amendment) Act, 1984 (No. 68 of 80).

Re: Whether the Claimants are Entitled to Compensation at the Rate of Rs. 400/- per Are as contended by the Learned Advocate for the appellants:

For appreciating the aforesaid contention, it would be necessary to narrate a few facts: The land situated in the sim of village Sangol, Tal.: Thasara, Dist.: Kheda was proposed to be acquired for constructing a railway siding for Vanakbori Thermal Power Station. For acquisition of land in question, notification u/s 4 of the Act was published on 18th May, 1978 and thereafter by further, notification dated 6th July, 1978 it was corrected. Thereafter, Section 6 notification came to be published on 21st August, 1978. Before the Special Land Acquisition Officer, the claimants had claimed compensation at the rate of Rs. 10,000/- per acre (i.e. Rs. 250/- per Are) for the land under acquisition. Subsequently, they had enhanced the claim and they claimed compensation at the rate of Rs. 20,000/- per acre. After considering various contentions, the Special Land Acquisition Officer had awarded compensation at the rate of Rs. 55/- per Are to the claimants.

4. Before the District Court, the claimants have relied upon the following documentary evidence in support of their claim.

(i)Exh.27: Sale deed dated 30th June, 1975 for the land admeasuring is gunthas of village Padal for a consideration of Rs. 10,000/-.

(ii) Exh.29: Sale deed dated 12th May, 1975 for land bearing S. No. 357 of village Padal admeasuring 2 acres and 13 gunthas for a consideration of Rs. 29,000/-.

(iii)Exh.31: Mortgage deed with possession in respect of land beating Section No. 134 situated in the sim of village Sangol. The consideration mentioned in the deed is Rs. 6,700/-.

(iv)Exh. 25: Judgment and award dated 5th May, 1981 passed by the learned Additional Judge, Nadiad, in Compensation Case

No. 37/79.

5. As regards sale instances at Exhs. 27 and 29, the learned Judge has not relied upon the said sale instances on the ground that the lands sold under Exh. 27 and 29 are situated in different villages. The lands under acquisition are situated in the sim of village Sangol whereas the sale instances are pertaining to the lands situated at village Padal. For proving sale deed Ex. 27. on behalf of the claimants, one Abumiya Kasammiya Malek is examined. In his deposition, he stated that he sold the land bearing Section No. 247 admeasuring 18 gunthas situated at village Padal for a consideration of Rs. 10,000- to one Mangal-bhai Shanbhai; the land under acquisition is situated at a distance of 1 1/2 k.m. (one and a half kilometer) away from the said survey number. In cross examination, he admitted that the land under acquisition is situated on the eastern side of his village whereas the land which was sold is situated on the western side of his village; he admitted that the land was sold to Mangaldas who was the owner of the adjoining land for the purpose of making it a big plot,

6. Considering the afoeresaid facts, it is apparent that the lands under acquisition are situated at far distance from survey No. 247 sold by the witness. It is also apparent that it was a small piece of land admeasuring 18 gunthas situated in a different village and that too it was sold to the owner of the adjoining land. In this view of the matter, in our view, the learned Judge has rightly not relied upon the sale deed (Ext. 27) for fixing the market rate of the land under acquisition.

7. Similarly, for proving Exh. 29, the claimants had examined one Rahimmiya Amirmiya. it is the say of the witness that he had sold land bearing survey No. 357 admeasuring 2 acre 13 gunthas of village Padal by registered sale deed dated 12th May, 1975 for a consideration of Rs. 29,000/- to one Bhikhabhal Dahyabhai. He had also admitted that the land under acquisition is situated at a distance of 1 1/2 k.m. It is his say that the land was first mortgaged for a sum of Rs, 10,000/- and thereafter it was sold because of debt. In cross examination, it is his say that the purchaser of the land was also having lands at some distance and not in the vicinity of the land under acquisition.

8. Considering the aforesaid facts, in our view, this sale instance cannot also be relied upon mainly because that land is situated in another village. It is situated at a distance of 1 1/2 k.m. from the land under acquisition.

9. The next document (Ex.31) relied upon by the claimants is mortgage deed dated 6th May, 1975 executed by Bhalabhai Kala-bhai in favour of Udesinh. It is for survey No. 134 admeasuring 27 gunthas for a consideration of Rs. 6,700/-. For this purpose, the claimants had examined one Udesinh Jesabhai. It is his say that he had purchased this land from one Bhalabhai Kalabhai. That a mortgage deed was executed on 6th May, 1975. In cross examination, has admitted that, when he took over the possession of the land, he was aware that the land was going to be acquired for the purpose of power station. He was also having suspicion that his land would also be acquired. He also admitted that he was owner of adjoining land. He further admitted that the land owned by him is

mortgaged with some one and that he had not redeemed the said mortgage.

10. Considering the aforesaid facts, in our view, ho reliance can be placed upon the mortgage deed (Exh. 31) which is pertaining to a small piece of land admeasuring 27 gunthas for fixing the market rate of lands under acquisition. In cross examination, the witness had specifically admitted that he is the owner of other adjoining land admeasuring 8 bhighas. That land is mortgaged with some one and he did not redeem it even though its term had expired. He had also admitted that when the land was mortgaged to him, he was knowing that a power station was to be established and the lands were being measured for the purpose of acquisition. He was also having suspicion that the said land was also likely to be acquired but he was not sure about it.

11. At this stage, it would be just and proper to refer to the observations made by the Supreme Court in the case of Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another, , wherein the Court has observed that the reasonable method to determine the market value of the acquired land is on the evidence of transactions of bona fide sales, but not on evidence of sales of such land got up having the knowledge of the proposed acquisition. The Court has also observed that bona fide sale or series of sales of small pieces of land do not furnish the sole basis to determine market value. Bona fide sales may furnish evidence of the market conditions for consideration. The relevant discussion at paragraphs 6 and 7 is as under (at pp; 826 : 827 of AIR SCW):

"Therefore, to say, that for compulsory purchase, compensation is to be assessed and market value is to be determined in that state of saffairs has to be visualised in terms by its direct opposite. To solve the riddle, courts have consistently evolved the principle that the present value as on the date of the compulsory acquisition comprised of all utility reached in the competitive field as on the date of the notification and the price on which a prudent and willing vendor and a similar purchaser would agree. The value of the land shall be taken to be the amount that the land if sold in the open market by a willing seller might be expected, to realise from a willing purchaser. A willing seller is a person who is a free agent to offer his land for sale with all its existing advantages and potentialities as on the date of the sale and willing purchaser taking all factors into consideration would offer to purchase the land as on the date of the sale. Further suitability or adaptability of the land for any purpose shall not be taken into account. The compensation must, therefore, be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser as oh the date of the notification published u/s 4(1). The disinclination of the seller to part with his land and the urgent necessity of the vendee to purchase the land must, alike, be disregarded and neither of them must be considered as acting under compulsion.

7. The reasonable method to determine the market value of the acquired land is on the evidence of transactions of bona fide sales of acquired land, but not on evidence of sales of such land got up having had knowledge of the proposed

acquisition, the former would furnish reasonable basis to determine the compensation. In its absence, bona fide sales but not manipulated sales of the lands in the neighbourhood possessed of same or similar quality and having the same or similar advantages would give an unerring assurance to the Court to determine just and proper compensation. Such sales must not only be proved but also be bona fide transactions etc. These factors must be established as a fact by examining either the vendor or the vendee. Markings of certificate copies of sale deeds are not proof of either the contents or the circumstances in which it came to be executed. Bona fide sale or series of sales of small pieces of land do not furnish the sole basis to determine market value. Bona fide sales may furnish evidence of the market conditions for consideration. Fixation of market value on the basis of the basic valuation register is, therefore, illegal and unsustainable."

12. The last document relied upon by the claimants is the award (Exh. 25) dated 5th May, 1981 passed in Compensation Cases Nos. 26/79 and others. In that case also, the lands of villages Kuni and Sagol, Taluka Thasara, Dist.: Kheda, were acquired for the purpose of thermal power station near Sevalia, for which notification u/s 4 of the Act was published on 12th June, 1975. After considering various sale instances, the Court had enhanced compensation to Rs. 195/- per Are from Rs. 95/- per Are awarded by the Special Land Acquisition Officer. At the time of hearing of these matters, it is admitted by the learned advocates for the parties that, against the said award, the claimants had preferred First Appeals Nos. 1503/82 and others for enhancing the amount of compensation. This Court, by its judgment and order dated 2nd July, 1993, dismissed those appeals. After appreciating the evidence led by the claimants, the Division Bench of this Court observed as under:

"25. In view of the above-referred principle laid down for arriving at correct market value of large block of lands acquired, it cannot be said that the learned Judge has committed any error in granting compensation at the rate of Rs. 195/- per Are to the claimants, more particularly when in the present case it is admitted by the claimant''s witnesses Talsi-bhai Boghabhai Patel, Exh. 20, and Surabhai Chunabhai, Exh. 43, that (a) lands under acquisition are situated on a river bed and were damaged whenever river Mahi was flooded, (b) in the lands, there were big ravines, (c) the lands were uneven and were rocky. The claimants have not produced specific evidence with regard to fertility and other relevant aspects of different survey numbers under acquisition. The compensation determined by the learned Judge is just and fair and in no circumstances, it can be termed as ''inadequate''. The claimants have not made out any case for granting additional compensation in these appeals.

26. Mr. Gehani, learned counsel appearing for the Acquiring Body, has pointed out that apart from the compensation awarded to the claimants, one person from each of the claimants'' family members has been given job. In our view, this aspect at present would have no bearing in deciding these appeals."

Against the judgment and order dated 2nd July, 1993 passed by the Division

Bench of this Court, the claimants have preferred SLP before the Hon''ble Supreme Court and the Hon''ble Supreme Court has dismissed the said Special Leave Petition.

13. Considering the aforesaid facts, in our view, the learned Judge has rightly relied upon award (Exh. 25) dated 5th May, 1981 passed by the learned Additional Judge, Nadiad, in Compensation Cases Nos. 26/79 and others for determining the market rate of the land under acquisition. In that case Section 4 notification was published on 12th June, 1975 whereas, in the present case Section 4 notification was published on 18th May, 1978. On account of time-lag of three years, the learned Judge has arrived at the conclusion that it would be reasonable to fix the market rate of the lands under acquisition at the rate of Rs. 250/ - per Are.

14. From the documentary evidence produced on record, it is apparent "that the claimants have not made out any case for enhancement of the said compensation to Rs. 400/- per Are. Not only this, even before the Special Land Acquisition Officer, the claimants had claimed compensation at the rate of Rs. 10,000/- per Acre, i.e., Rs. 250/-per Are, which would clearly indicate that at the relevant time, the claimants were of the view that Rs. 250/- per Are was the market rate of the lands under acquisition on the date of publication of Section 4 notification.

15. Considering the aforesaid facts, it cannot be said that the Award passed by the learned Judge fixing the market value of the land under acquisition at the rate of Rs. 250/ -per Are requires enhancement.

RE: Contentions Nos. (ii) and (iii).

For the contention that the petitioner is entitled to additional solatium as provided u/s 23(2), and interest as provided u/s 28 of the Act, the said contention requires to be accepted. In the present case, the Land Reference Cases were decided by the learned 2nd Extra Assistant Judge, Nadiad on 19-9-1983. Under Sub-section (2) of Section 30 of the Land Acquisition (Amendment) Act, 1984, the provisions of Sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by the said Act, are applicable in relation to any award made by the Collector or Court under the provisions of the principal Act, if it is made later than 30th April, 1982 and before the commencement of the amending Act (i.e. 24-9-1984).

16. The aforesaid question is concluded by the various decisions of the Supreme Court, viz.

(i) In the case of K.S. Paripoornan Vs. State of Kerala and Others, ; and

(ii)In the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , wherein after considering the various decisions, the Court has held that.... "we think that what Parliament intends to say is that the benefit of Section 30(2) will be available to an award by the Collector or Court made between the aforesaid two dates or to an appellate order of the High Court or of the Supreme Court which arises out of an award of the Collector or the Court made between the said two dates. The word ''or'' is used with reference to the stage at which the proceeding rests at the time when the benefit u/s 30(2) is sought to be extended."

The Court has also observed that "In every case, the award of the Collector or of the Court must have been made between 30th April, 1982 and 24th Sepetember, 1984."

17. In the above view of the matter, the claimants are entitled to solatium u/s 23(2) at the rate of 30% on the excess amount awarded by the 2nd Extra Assistant Judge, Nadiad. They are also entitled to the benefit of the amended Section 28 of the Act, and are entitled to have the said amount with interest at the rate of 9% instead of 4 1/2% awarded by the learned Judge, on the excess amount of compensation, for a period of one year from the date of taking possession, and at the rate of 15% per annum after the expiry of one year, till the date of deposit of the excess amount.

18. In the result, all the appeals are partly allowed to the aforesaid extent. It is ordered that the claimants are entitled to recover the excess amount as awarded by the learned 2nd Extra Assistant Judge, Nadiad, along with solatium at the rate of 30% instead of 15%. They are also entitled to recover interest at the rate of 9% instead of 4 1/2% awarded by the learned Judge, on the excess amount of compensation, for a period of one year from the date of taking possession, and at the rate of 15% per annum after the expiry of one year, till the date of deposit of the excess amount. There shall be no order as to costs.

