(2011) 07 GUJ CK 0118

In the Gujarat High Court

Case No : First Appeal No''s. 805 to 809 of 1994, Cross Objection No. 331 of 2001 in First Appeal No. 805 of 1994, Cross Objection No. 10 of 2006 in First Appeal No. 809 of 1994, Cross Objection No. 71 of 2011 in First Appeal No. 808 of 1994, Cross Objection No. 69

Gujarat Industrial Development Cororation APPELLANT

Vs

Patel Bhagwanmbhai Bhimjibhai and Another RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : (2011) 07 GUJ CK 0118

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

Bench : Division Bench

Advocate : M.G. Nagarkar, for the Appellant; K.M. Sheth, for for Defendant 1 and Moxa Thakker, AGP for for Defendant 2, for the Respondent

Judgement

Jayant Patel, J.—As all the appeals arise from common judgment and award passed by the Reference Court, they are being considered by the common Judgment.

2. The relevant facts are that for the project of GIDC Estate, lands at Limbdi were to be acquired under the Land Acquisition Act (hereinafter referred to as "the Act"). The notification u/s 4 of the Act was published on 24.09.1981. The notification u/s 6 of the Act was published on 16.03.1983. Thereafter, the award was passed u/s 11 of the Act on 17.12.1985 by the Land Acquisition Officer and he granted compensation of Rs. 3.25, Rs. 4 and Rs. 4.50 per square metre for the various parcels of the land with the other consequential benefits as per the award. As the claimants/land owners were not satisfied with the compensation, they raised dispute u/s 18 of the Act and demanded compensation at Rs. 15 and Rs. 20 per square metre. All such disputes were referred to the Reference Court for adjudication being Land Referece Case Nos. 3/86 to 7/86. The Reference Court at the conclusion of the reference awarded additional compensation at Rs. 12 per square metre and further awarded 30% solatium and interest at the rate

of 12% p.a. from the date of the notification till the amount is deposited and the Reference Court has also awarded interest at the rate of 9% p.a. u/s 28 of the Act until the amount is deposited.

3. We have considered the judgment and the reasons recorded by the Reference Court. We have considered the R & P. We have heard Mr. Nagarkar for Gujarat Industrial Development Corporation and Mr. K.M. Sheth for the original claimants and Ms. Thakker, learned AGP for the State in all the appeals as well as in the cross-objections.

4. We may record that the original claimants have also filed cross objections for enhancement of the compensation. As the cross examinations arise from the very judgment and award passed by the Reference Court, they are simultaneously heard.

5. Perusal of the judgment and the reasons recorded by the Reference Court shows that the relevant reasonings are at paragraphs 16 and 17 of the judgment of the Reference Court. Various Sale Deeds were produced to show sale instances of the different parcels of the land. However, it does appear that the Reference Court has discarded all the sale instances except one sale instance of the Sale Deed, copy whereof is produce at Exh.31 concerning to the land bearing Survey No. 278 Paiki admeasuring 1 Acre and 11 Gunthas. Upon re-appreciation of the various documents produced, we find that the Reference Court has rightly discarded the other sale instances and has rightly relied upon the sale instance at Exh.31 for the aforesaid land bearing Survey No. 278 in view of the two peculiar circumstances; one was that the land of the said Sale Deed could be said as more or less of the same period since the Sale Deed is dated 03.07.1981 and the location of the land is on the national highway at par with the land under acquisition and located at Limbdi and even the learned Counsel for the Appellant has not been able to show any valid reason to discard the said sale instance for the purpose of assessing the market value of the land under acquisition. However, it appears that there is an apparent mistake committed by the Reference Court in considering the area of the land mentioned in the Sale Deed. In the award of the Reference Court, at paragraph 17, the Reference Court has recorded the area of the land as admeasuring 4158.15 square metre, whereas, no such area is mentioned in the Sale Deed. On the contrary, in the Sale Deed area of 1 Acre and 11 Guntha is mentioned and is described as 0 Hectare 51 Acre and 60 square metre. Therefore, if the area mentioned in the Sale Deed is considered, it will be 5160 square metre and not 4158.15 square metre as recorded by the Reference Court. If the area of 5160 square metre is considered against the consideration of Rs. 49,500/- as mentioned in the Sale Deed, the price per square metre would come to Rs. 9.59 per square metre and if rounded, it would come to Rs. 9.60 per square metre. As against the same, on account of the mistake committed by the Reference Court in recording of the correct area of the land in Sale Deed exh.31, the Reference Court has calculated the amount at Rs. 11.90 ps per square metre. We find that such mistake being apparent on the

face of record, deserves to be corrected and the sale instance at the most could be considered at Rs. 9.60 per square metre for the land which is subject matter of the Sale Deed, exh.31.

6. The another aspect is that the land which is subject matter of the Sale Deed Exh.31, is irrigated land because there is reference to the right in the well and also the right of water for irrigation purpose. Whereas, the lands which are subject matter of the acquisition are all non-irrigated lands irrespective of their location, whether adjacent to the highway or on the backside of the highway. The aforesaid aspect is apparent from the schedule attached to the award which was produced before the Reference Court. Therefore, the Reference Court has lost sight of the aspect that the price of the irrigated land and non-irrigated land would not be same even if the basis is considered as that of the Sale Deed exh.31. In normal circumstances, even if a conservative difference is considered, the value of the non-irrigated land will be less by 20% in comparison to the value of the irrigated land. Therefore, if the aforesaid 20% is deducted from the price mentioned in the Sale Deed at Rs. 9.60 per square metre, such amount would come to Rs. 7.68 per square metre for non-irrigated land and if rounded off, it would come to Rs. 7.70 per square metre for the non-irrigated land.

7. It is apparent that the land which is of the Sale Deed at Exh.31 is located on the highway and if the said aspect is considered with the award and difference of the potentiality and location of the land, as found by the Land Acquisition Officer, the said amount of Rs. 7.70 per square metre would be the market value of the land under acquisition for which the Special Land Acquisition Officer has awarded compensation at Rs. 4.50 per square metre being the land of higher value on account of the location on the highway. However, so far as the remaining land is concerned, the Land Acquisition Officer has awarded compensation at Rs. 4.25 per square metre, Rs. 4 per square metre and Rs. 3.25 per square metre depending upon the different location and other relevant aspects of potentiality etc. Under the circumstances, we find that the difference in the potentiality of the land which was considered by the Special Land Acquisition officer while awarding compensation was also required to be considered by the Reference Court, more particularly in absence of any other evidence to the contrary showing that the distinction as was made by the Land Acquisition Officer in the award was without any basis and all the land could be said as having the same value with the land located on the highway. Even otherwise also, it cannot be said that the land located on the interior side of the highway will have the same value if compared with the value of the land located on the highway itself. Normally, the prices of the interior land would be lesser in comparison to the land located on the highway. Hence, we find that even if the base is considered of the market value at Rs. 7.70 per square metre for the land located on the highway for which the compensation has been awarded by the Special Land Acquisition Officer at Rs. 4.50 per square metre, for the land on the interior of the highway for which the Land Acquisition Officer has awarded compensation of Rs. 4.25 per square metre, Rs. 4 per square mtre and Rs. 3.25 per square metre, there shall

be proportionate reduction and accordingly, it would come to Rs. 6.85 per square metre and if rounded off, it would come to Rs. 6.85 per square metre and Rs. 5.56 per square metre and if rounded off, it would come to Rs. 5.55 per square metre respectively and for the land wherein the compensation is awarded at Rs. 4.25 per square metre, it would come to Rs. 7.27 per square metre and if rounded off, it would come to Rs. 7.30 per square metre.

8. The another aspect which appears to us as not taken into consideration by the Reference Court is that after assessment of the market price, after having considered the sale instance at Exh.31, the compensation already paid by the Land Acquisition Officer is required to be deducted and the Award could be passed by the Reference Court for the difference as additional compensation. But it appears that the award of the Reference Court has directed the excess amount to be paid at Rs. 12 per square metre.

9. That aspect is not specifically mentioned and Reference Court has directed for additional excess amount. We find that on account of the difference in the valuation of the land, as found by us and consequently, the difference in the principal amount of compensation, such figure may vary and therefore, the said aspect is required to be clarified in the operative portion as stated hereinafter.

10. In view of the aforesaid observations and discussions, it is held that the original claimants whose lands were acquired and for which the compensation awarded by the Land Acquisition Officer is at Rs. 4.50 per square metre shall be entitled to receive the principal amount of compensation at Rs. 7.70 per square metre, whereas the land for which the compensation is awarded at Rs. 4 per square metre, the principal amount of compensation shall be Rs. 6.85 ps. per square metre and for the land for which the compensation is awarded at Rs. 3.25 per square metre, the principal amount of compensation shall be Rs. 5.55 per square metre and for Rs. 4.25 per square metre, it will be Rs. 7.30 per square metre.

11. There is considerable force in the submission made by the learned Counsel for the original claimants that the claimants would be entitled to the interest as per Section 28 of the Act which provides interest at the rate of 9% p.a. for the first year and interest at the rate of 15% p.a. for the subsequent year until the amount of compensation is fully deposited with the Court.

12. So far as remaining amount of compensation is concerned, the position of law is clear inasmuch as, as per Section 28 of the Act, the claimants/land owners would be entitled to the interest at the rate of 9% p.a. for one year and at the rate of 15% p.a. for the subsequent year from the date of the possession until the amount of compensation is deposited with the Court.

13. We may record that on the aspects of entitlement of interest, the position is settled by the Apex Court in the case of Sunder Vs. Union of India, and also the another decision of the Apex Court in the case of Patel Joitaram Kalidas and Others Vs. Spl. Land Acquisition Officer and Another, In the case of Sunder

(supra), the Apex Court has observed at paragraph 24 as under:

The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount u/s 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest u/s 34 was not in the contemplation of the legislature when that section was framed or enacted.

14. Therefore, the liability to pay interest would get attracted. However, in the case of Iyasamy and Anr. v. Special Tehsildar, Land Acquisition reported at (2010) 1 SCC 464, the Apex Court on the aspects of interest on solatium observed that as the matter was pending before the High Court, the claimants would be entitled for the benefit of the decision of the Apex Court in the case of Sunder (supra) from 19.09.2001, but shall not be entitled to the interest on solatium for the period prior to 19.09.2001.

15. Considering the facts and circumstances, we find that the said ratio can be made applicable to the present case since the appeal has remained pending before this Court even after 19.09.2001 and the decision is being rendered today. Same situation would prevail for the entitlement of the interest on the amount payable u/s 23(1-A) on the principal amount of compensation but as per the above referred decision of the Apex Court, such would also be the entitlement for the interest from 19.09.2001 and not prior thereto. Hence, we find that the said aspect is required to be clarified to the aforesaid extent for entitlement of the interest u/s 28 of the Act.

16. In view of the aforesaid observations and discussions, the judgment and the award passed by the Reference Court is modified to the effect that -

17. The original claimants shall be entitled to the principal amount of compensation at Rs. 7.70 per square metre (as against Rs. 4.50 per square metre), Rs. 7.30 per square metre (as against Rs. 4.25 per square metre), Rs. 6.85 per square metre (as againt Rs. 4 per square metre) and Rs. 5.55 per square metre (as against Rs. 3.25 per square metre) of the land under acquisition.

18. Additionally, the claimants shall be entitled to the statutory benefit of increase in the price u/s 23(1-A) of the Act and solatium at the rate of 30% u/s

23(2) of the Act.

19. The claimants shall be entitled to the interest u/s 28 of the Act on the amount of compensation for the first year at the rate of 9% p.a. and for the subsequent year at the rate of 15% from the date of possession until the amount of compensation is deposited with the Court.

20. The claimants shall also be entitled to the interest on the increase in the price u/s 23(1-A) of the Act and solatium u/s 23(2) of the Act as per the rates provided u/s 28 of the Act, but for the period after 19.09.2001 and not prior thereto.

21. All the appeals as well as the cross objections are disposed of accordingly. Considering the facts and circumstances, there shall be no order as to costs.

22. Considering the facts and circumstances, the amount already deposited shall be given set off and the remaining amount shall be deposited with the Reference Court within a period of eight weeks from the receipt of the order of this Court.

23. Record and Proceedings be returned to the Trial Court.

