

(1980) 12 GUJ CK 0009
In the Gujarat High Court

Case No : First Appeal No's. 301, 890 and 568 of 1975

Hamidkhan Samsher Khan and etc.

APPELLANT

Vs

Special Land Acquisition Officer, Broach and etc.

RESPONDENT

Date of Decision : 03-12-1980

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Land Acquisition Act, 1894 — Section 23, 23(1), 23(2)

Citation : AIR 1982 Guj 157 : (1981) GLR 812

Hon'ble Judges : S.B. Majmudar, J; D.H. Shukla, J

Bench : Division Bench

Advocate : R.M. Vin, for the Appellant; J.R. Nanavati, Government Pleader and C.K. Patel, for the Respondent

Judgement

Majmudar, J.

These first appeals and cross-objections arise out of two land reference case No. 4 of 1974 as well as land reference case No. 6 of 1974 on the file of the learned Assistant Judge, Broach. The learned Assistant Judge awarded enhanced compensation to the concerned claimants at the rate of Rupees 500/- per Guntha in both these references though by separate judgment. Dissatisfied by the judgment and award of the learned trial Judge in land reference case No. 4 of 1974, the claimant as well as the Referer have filed two cross appeals being first appeal No. 301 of 1975 and appeal No. 890 of 1975 respectively; while the Referer has challenged the award of the trial Court in land reference case No. 6 of 1974 by filing first appeal No. 568 of 1975 and the claimants of that reference have filed their cross-objections. The claimants of this group of appeals seek compensation at the rate of Rs. 30,000/- per acre equivalent to Rs. 750/- per guntha while the trial Court has granted them compensation at the rate of Rs. 20,000/- per acre equal to Rs. 500/- per guntha.

2. In order to pin-point the controversial question involved in these appeals and the cross-objections, it is necessary to note a few relevant facts. In first appeals

No. 301 of 01 of 1975 with cross appeal No. 890 of 1975 which arise out of the order of the trial Court in land reference case No. 4 of 1974, the lands under acquisitions are S. Nos. 88 admeasuring 1 acre 17 gunthas and 89, admeasuring 0 acre 32 gunthas of village Kasak of Broach taluka of Broach district. These lands were situated on the outskirts of the Broach town and were within the limits of the Broach Municipality at the time of acquisition. In first appeal No " 568 of 1975 which arises out of the order of the trial Court in land reference case No. 6 of 1974 the concerned land is S. No. 86/2 admeasuring 0 acres 92 gunthas that is 2 acres 12 gunthas. The said land also was of village Kasak and was adjoining the lands with which the other land reference case was concerned. All these concerned lands which were the subject matter of the aforesaid two references before the trial Court, were sought to be acquired by the State of Gujarat for construction of houses of flood-affected people, by a notification u/s 4 of the Act 20-1-1972 and which came to be published in the Government gazette on 3-2-1972. The said notification was followed by Section 6 notification dated 19-5-1972 which was gazetted on 18-7-1972, Thereafter. notices u/s 9, were issued by the Land Acquisition Officer to the concerned claimants. The concerned claimants put forward their claims for compensation before the Land Acquisition Officer at the rate of Rs. 30,000/per acre so far as the acquired lands went. The Land Acquisition officer awarded compensation so far as the acquired S. No, 88 was concerned at the rate of Rs. 3/- per sq. meter and awarded compensation at the rate of Rs. 2.75 per sq. meter so far as S. No. 89 was concerned. So far as the acquired land S. No. 86/2 was concerned, the Land Acquisition Officer granted compensation for the land at the rate of Rs. 2.50 per sq. meter and for trees standing on the land at Rs. 213/-. So far as the lands S, Nos. 88 and 89 were concerned, they were new-tenure lands in the sense that the claimants were the deemed purchasers of these lands under the provisions of Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948. Consequently, the land acquisition officer deducted one third of the compensation payable to the claimant by way of premium charges payable to the Government The dissatisfied claimant

preferred land reference case u/s 18 of the Act to the District Court seeking enhanced compensation for the acquired lands S. Nos. 88 and 89 and claimed compensation at the rate of Rs. 30,000/- per acre, that is at the rate of Rs. 750/- per guntha, His reference was registered as reference No. 4 of 1974.

3. to 19. xx xx xx xx 20. That takes us to the two subsidiary contentions raised by Mr. Vin in support of his first appeal No. 301 of 1975. While discussing the facts of that appeal, we have pointed out that the claimant in this appeal is a deemed purchaser of agricultural lands being S. Nos. 88 and 89. As he became the deemed purchaser under S. 32 of the Tenancy Act, he had to pay purchase price as fixed by the, Agricultural Lands Tribunal under S. 32-G of the Tenancy Act. The claimant contended that he had already paid the purchase price to the original landlords. Claimant Hamidkhan Shamsheer Khan ex. 20 in his examination-in-chief stated that the proceedings for determination of value under the Tenancy

Act were held and prices were fixed for purchase of these lands. The price of S. No. 88 was determined at Rs. 2200/-. That amount has been paid out of the compensation for acquisition of the said land and hence sale certificate for that land was issued to him as per ex. 18. Similarly S. No. 89 was also purchased by him as a deemed purchaser. The price of the said land was determined at Rs. 1290/-. That amount was also paid to the owners of the land. A sale certificate was issued as per ex. 19. Relying on these sale certificates exs. 18 and 19 for the concerned lands as issued by the tenancy authorities under S. 32-M of the Tenancy Act. Mr. Vin submitted that there was no occasion for the learned trial Judge to once again deduct these amounts of Rs. 2200/- and Rs. 1290/- from the additional compensation which he granted to the claimant for being paid to the ex-landlords. They could not have been paid twice over. Mr. Vin submitted that the landlords were never demanding these amounts once again and were not contesting on this aspect. Under these circumstances, submitted Mr. Vin, the learned trial Judge ought not to have given a direction for deducting the aforesaid two amounts from the additional compensation granted by him to the claimant. The aforesaid submission of Mr. Vin is quite justified. S. 32-A certificates Exs. 18 and 19 clearly show that the concerned landlords were paid the purchase price as fixed under the Tenancy Act and now nothing remains due and payable to them by the claimant. Under these circumstances, the first subsidiary submission of Mr. Vin has got to be accepted and it must be held that the learned trial judge was not justified in deducting the amounts of Rs. 2200/- and Rs. 1290/- from the additional compensation which he granted to the claimants for acquisition of the concerned lands.

21. That takes to the last and the second subsidiary submission of Mr. Vin for the claimant. He submitted that it is true that the claimant was holding the acquired lands as new tenure lands as he was the deemed purchaser under the provisions of S. 32 of the Tenancy Act and he could not have sold or dealt with the lands in open market without the sanction of the Collector under S. 43 of the Tenancy Act. But according to Mr. Vin, for that purpose, from the amount of compensation for the lands one-third premium price can be deducted. But that deduction can be effected from the market value of the lands and not from the solatium of 157c. So far as the solatium amount at 15 % is concerned. the entire amount of solatium on the total market price of the lands deserves to be awarded to the claimant. In order to support his aforesaid contention, he invited our attention to a judgment of a learned single Judge of this court (M. K. Shah, J.) in Deputy Collector of Rajpipla v. Balubhai Muljibhai Machhi (1980) 21 Guj LR 774. The learned single Judge has clearly taken a view that while computing the market value of land held by claimant on new tenure, the market value had to be computed without considering the nature of the restricted tenure. in view of the amendment brought about by the Land Acquisition (Gujarat Unification and Amendment) Act, 1965 by which clause seventhly was added after clause 6th1V to S. 23 of the Land Acquisition Act. The said clause read as under:-

"In the case of any land which according to the terms of the tenure on which it is

held is not transferable or partible by metes and bounds without the sanction of the State Government or any competent officer, the market value of similar land held without restriction."

It was held by the learned Single Judge in the aforesaid decision that having so, one-third premium can be deducted as payable to the State Government on account of the land being held on new tenure. But so far as the solatium was concerned, it was payable under sub-s. (2) of S. 23 and it was payable to the Government on the consideration of the compulsory nature of acquisition. Solatium, in other words, is something provided in terms

of money as and by way of solace to the party who is deprived of his land. It will, therefore, have a direct nexus

with the owner of the land or person having interest in the land and it will not have no connection what so ever with the Government who by virtue of the restrictive nature of the tenure, has the right to charge for permitting transfer or partition. Thus, by the very nature of the relief which a solatium grants, it would be an award available to the owner of the land or a person having interest in the land and not to the State who has merely a right to get a specified amount out of compensation in lieu of the amount which would have been payable to it for permitting transfer or partition of the land annexed with a restrictive, tenure so that it will not be transferable or payable without the sanction of the Government. The learned single Judge on the aforesaid reasoning took the view that so far as solatium under S. 23(2) of the Act was concerned, it did not form part of the compensation and hence no further deduction of one-third could be effected from the solatium as payable to the restricted

tenure-holder who may be a claimant in land acquisition proceedings. The learned single Judge had also placed

reliance on S. 11A of the Act which read as under:-

"If the land in respect of which an award is made, u/s 11 is land which according to the terms of its

tenure is not transferable or partible by metes and bounds, without the sanction of the State Government or any other competent officer, then out of the amount of compensation awarded therefore a sum, which would have been payable to the State Government under any law for the time being in force, had the land been otherwise transferred, shall be payable to the State Government and the Collector shall specify in the award the sum so payable, to the State Government",

The learned single Judge took the view that under S. 11A, what was to be deducted from the compensation was any amount which was specified by the Collector as so payable but that would be out of the compensation amount, meaning there by compensation granted under S. 23(1) and not under S. 23(2) which concerned itself with the grant of solatium. Thus, the basis of the aforesaid

judgment of this court in Balubhai Muljibhai's case (1980 21 Guj. L. R. 774) (supra) is that the amount of compensation granted to a claimant would consist of only market value under S. 23(1) and would not take in its sweep the amount of solatium which can be granted for the market value as per the requirement of S. 23(2) of the Act. As such a dichotomy was visualised by the learned single Judge between the concept of computation of market value and the amount of solatium, vis-a-vis the amount of compensation which can be said to have been awarded to the claimant under the provisions of the Act, the learned Judge arrived at the aforesaid conclusion of his. Now, it must be stated that so far as the new tenure lands are concerned. meaning thereby, the lands which are held by a claimant under the restrictive tenure or which are purchased by the claimant as a statutory purchaser under the provisions of the Tenancy Act, one-third amount of compensation as payable to such a claimant on account of land acquisition proceedings, has to be deducted and only two-third of the compensation can be paid to the concerned claimant. This aspect of the matter is now well settle . We may only refer in this connection to two Division Bench judgments of this court. In Spl. Land Acquisition officer, Baroda v. Shushilaben Chhaganlal Thakkar, (1972) 13 Gui. L. R. 688 : (AIR 1972 Gui. 189), M, P. Thakkar, J. speaking for the Division Bench observed (at P. 190):-

"Popularly lands held by erstwhile tenants under the "deemed purchase" provision of the Tenancy Act are known to be held on the new tenure. So far as the new tenure is concerned, the Legislature has engrafted a restriction in the matter of transfer under S. 43(1) of the Tenancy Act. It takes away something from the bundle of rights of ownership in the matter of alienation , In regard to the owner of land held on old tenure, the restriction envisaged by S. 43(1) would not be applicable. And it must be realized that the restriction imposed by Section 43(1) carries with it an obligation, not only to secure the permission of the State Government before - alienation but also to pay to the Government such amount as may be determined by the State Government in this behalf. In other words, the obligation carries with it a money content it is an onerous condition. If the new tenure land is valued at par with old tenure land in fact, one would be awarding to the owner of the new tenure land something more than the money equivalent of his property. This is contrary to the concept of compensation under S. 28 of the Land Acquisition Act. for what is visualized by compensation is making good to the person whose property is acquired money equivalent of what he has lost"

The Division Bench in the aforesaid decision, therefore, upheld grant of only two-third of the market value to the claimant who was holding the acquired land as new tenure land restricted by S, 43 of the Tenancy Act. The same view has been taken by another Division Bench of this court in group of matters viz. First Appeal No. 812 of 1966 and group, decided by T. U. Mehta and B. K, Melita, JJ. on 17-18-19/8/1972. T. U. Mehta , J. speaking for the Division Bench has in terms followed the reasoning of this court in Shushilaben's case (supra) while arriving at the same conclusion. In all fairness to Mr. Vin it must be stated that

he did not dilate on this aspect and stated that one-third amount will have to be deducted from the compensation amount payable to the claimant for the value of S. Nos. 88 and 89 as both of them were restricted tenure lands. But his submission was that while slicing down one-third amount payable to Government. the same be done from the compensation amount as computed under S. 23(1) and the said process of slicing down should not be further extended to the award of 15% solatium under S. 23 (2) and in his aforesaid submission , he is supported by the aforesaid decision of the learned single Judge in Balubhai Muljibhai's case (1980 21 Guj LR 774) (supra). We find that the aforesaid contention of Mr.Vin cannot bear a close scrutiny , It is now well settled by a series of judgment of different courts including this High court that solatium is part of compensation . We may only refer to two Division Bench judgments of this court , In Narandas Bapalal Dandwala Vs. The Land Acquisition Officer, , the divan ,C. J. and T . U. Mehta, J, J.) took the view that the amount of solatium awarded under S. 23(2) formed part and parcel of the compensation payable in acquisition proceedings , Divan ,C . J. speaking for the Division bench , observed : -(at. P 144)

"Looking to the scheme of sec. 23 of the Land Acquisition Act, it is obvious that the total amount of compensation payable in land acquisition proceedings consists of two constituents (1) the market value of the land and (2) 15 per cent solatium; this solatium being 15 per cent of the market value of the land, It is the aggregate of these two constituents which is paid in every case as compensation amount to the owner or owners of land which is acquired under the provisions of the Land Acquisition Act".

The same view is also taken in an earlier judgment of this court in Patel Maganbhi Chaturbhai and Another Vs. The Collector, Mehsana District, . In the aforesaid decision, the Division Bench consisting of N. G. Shelat and A. S. Sarela, JJ. (speaking through Shelat, J.), took the view that solatium was part and parcel of compensation and interest under S. 34 had to run on the aggregate amount. Shelat, J. in this connection observed as under:-

"Under S. 34 of the Land Acquisition Act, 1894, the liability of the Collector to pay the interest on the compensation awarded arises in case the amount of such compensation is not paid or deposited in court. The interest has to be awarded on the amount of such compensation and the term "such compensation" would obviously relate to the words "amount of compensation" referred to in the S. 23 Again the words "the amount awarded with interest thereon make it abundantly clear that what is required to be paid by way of compensation is not only the market value of the land but also the amount by way of solatium contemplated in S. 23(2). It is the combination of benefit that make the compensation to be awarded to the claimants in respect of the lands acquired and therefore, the interest to be paid would be on the entire amount awarded though no doubt from the date when the possession was taken over till the amount is paid or deposited.

For arriving at its aforesaid conclusion the Division Bench placed reliance on the

decision of a Full Bench judgments of Bombay High Court in the case of Nilkantha Ganesh Naik v. Collector of Thana (1893) ILR 22 Bom 802 which had ruled that the expression "amount awarded has been referred to as meaning the amount of compensation awarded for the land along with the statutory allowance as provided in S. 23 M and that it is on the aggregate amount that interest will have to be paid. In that view of the matter, it is now well settled that there is no dichotomy between 15% solatium as computed under S. 23(2) and the Market value as computed under S. 23(1). In fact, both of them form part and parcel of compensation as awarded to the claimant for acquisition of his land. The learned Single Judge who decided the aforesaid case of Balubhai Muljibhai ((1980) 21 Guj LR 774) (supra) does not appear to have the advantage of noticing the aforesaid two division bench decisions of this court as well as the full bench decision of the Bombay High Court which do not appear to have been cited before him, with the result that he came to the conclusion that there is a dichotomy between the computation of compensation on one hand and grant of 15% solatium on the other and that solatium does not form a part of compensation. Consequently, the learned Single Judge came to a conclusion which runs quite contrary to the decisions of the aforesaid two Division Bench judgments of this court and the Full bench judgment of this Bombay High Court the conclusion is inevitable that the amount of compensation as mentioned in S. 11A will cover not only the amount of compensation awarded for the acquired land u/s . 23(1) but also 15% solatium as granted u/s . 23(2) which will form part and parcel of the amount of compensation awarded therefore , meaning for land under acquisition . Under these circumstances , it appears clear to us computed by evaluating the land under acquisition , without considering the restricted nature of tenure on account of CI , thereby as inserted in S. 23(1) and after the entire compensation as awardable can be worked out and it is from that total compensation that S. 11A carves out a portion as specified by the collector for being deducted on account of the restricted nature of the tenure of the land which came to be acquired thus, Sec . 11A comes into operation after the total compensation is computed u/s 23(1) as well as S. 23(2) and the final figure is determined at the question of slicing down from that total compensation arises u/s . 11A only thereafter and not prior thereto as wrongly assumed by the learned trial judge in the present case , and also by the learned Single Judge of this court in Balubhai Muljibhai 's case (supra) . It must , therefore , be held that the aforesaid judgment of the learned Single Judge , with respect , being contrary to the interpretation of the word "compensation " as placed by the aforesaid two division bench judgments of this court and the F.B . judgment of Bom , High Court does not lay down correct law and must be overruled . Before parting with this question , we must note that Mr Vin for the claimant also fairly concerned to this legal situation and stated that in view of the aforesaid Division Bench judgments of this court the view of the learned Single Judge cannot be relied upon by him . Under these circumstances , the second subsidiary submission raised by Mr. Vin must be repelled and it must be held that the learned trial Judge was not justified in not deducting one - third premium from the solatium

amount of compensation which he granted to this claimants and it must be held that slicing down of one-third premium will have to be made from the total additional compensation which can be awardable to the claimant after including therein 15% solatium.

22. Order accordingly.