
(2011) 04 GUJ CK 0098

In the Gujarat High Court

Case No : First Appeal No"s. 4575 to 4595 of 1997

Harijan Dudabhai Bhanabhai

APPELLANT

Vs

Harijan Dudabhai Bhanabhai

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 4

Citation : (2011) 04 GUJ CK 0098

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : Satyen B Rawal, for the Appellant; Shachi Mathur, Asst. Government Pleader for Defendants 1 and 2 and H.S. Munshaw, for Defendant 3, for the Respondent

Final Decision : Allowed

Judgement

J.C. Upadhyaya, J.—All these appeals arise out of common impugned judgment and award dated 30.8.1997 rendered by learned Extra Asst. Judge, Surendranagar in land reference cases No. 59 to 76 of 1994 whereby the reference Court dismissed all those land reference cases. In the result, the original claimants preferred these appeals.

2. Certain agricultural lands owned by the Appellants - claimants situated in the outskirts of village Gedi, Tal. Limbdi, Dist. Surendranagar were proposed to be acquired for irrigation purpose and the notification u/s 4 of the Land Acquisition Act ("the Act", for short) came to be published on 13.4.1991. The Special Land Acquisition Officer conducted inquiry to determine the just and fair amount of compensation and declare award u/s 11 of the Act dated 11.7.1994, whereby the Special Land Acquisition Officer offered compensation at the rate of Rs. 8750/- per hectare (87 ps. per sq.mtr.). The Appellants - claimants felt that the amount awarded by way of compensation to them was quite meager and insufficient and, therefore, applied for references and claimed compensation @ Rs. 10000/- per one acre.

3. Before the reference Court, oral and documentary evidence was recorded. The reference Court examining the revenue extract, though observed that the lands were new tenure lands and further observed that so far as some of the claimants, namely, Reva Vala etc. used to cultivate crops in their lands, but came to the conclusion that except producing price-list, no evidence came to be produced to show that how much crops the claimants used to cultivate and what was the sale proceeds. Ultimately, the reference Court dismissed all these reference cases. This has given rise to these appeals, so far as the original claimants are concerned.

4. Mr.AB Gateshaniya, Id.advocate for Mr. SB Raval, Id.advocate for the Appellants - claimants submitted that the impugned judgment and award rendered by the reference Court is contrary to law and facts on record. It is submitted that the reference Court observed that these lands were new tenure lands and at the same time except the lands of claimants, namely Reva Vala etc., the reference Court observed that the other lands were not used for any cultivation and were waste lands. Mr. Gateshaniya, Id.advocate submitted that in case of new tenure land, if it is not used for cultivation, then the competent authority can confiscate those lands, but in the instant case, no such confiscation order was passed, which shows that all the claimants used to cultivate lands and used to sell their crops and used to earn income. It is submitted that the reference Court came to the conclusion that no just and sufficient evidence was produced by the claimants to substantiate their case. However, Mr. Gateshaniya, Id.advocate submitted that as a matter of fact, no sufficient opportunity was given to the claimants to adduce proper evidence and the reference Court observed that the claimants kept their lands as waste lands and were not cultivating these lands. Mr. Gateshaniya, Id.advocate for the Appellants, therefore, submitted that so far as these appeals are concerned, the impugned judgment and award rendered by the reference Court may be set-aside and the land reference cases may be remanded to the reference Court with necessary direction to afford reasonable opportunity to the claimants to adduce just and sufficient evidence.

5. Per contra, Ms. Shachi Mathur, Id.AGP for the Respondents No. 1 and 2 and Mr. HS Munshaw, Id.advocate for Respondent No. 3 vehemently opposed these appeals and submitted that the reference Court rightly came to the conclusion that all those reference cases deserved dismissal. That the claimants did not adduce sufficient evidence to show any income derived by them from these lands and for want of evidence, there was no option left to the reference Court, but to dismiss those cases. However, it is submitted that the reference Court came to the conclusion that the lands were new tenure lands and at the same time, the reference Court observed that barring the lands of one of the claimants, namely, Reva Vala, the remaining lands were waste lands, as the other claimants did not cultivate those lands and there is no dispute that till those lands were acquired, no confiscation orders were passed. In the aforesaid background, it is submitted that if the Appellants - claimants feel that they were deprived of from adducing

just and sufficient evidence, and if this Court feels that considering the nature of such litigation, sufficient opportunity should be given to the Appellants - claimants to adduce evidence, then necessary orders may be passed.

6. Having considered the submissions advanced on behalf of both the sides, so also considering the impugned judgment and award rendered by the reference Court, it clearly transpires that the reference Court dismissed all the reference cases solely on the ground that the claimants did not adduce just and sufficient evidence to show their income, which they used to derive from the acquired lands. The reference Court also observed that those lands were new tenure lands and there is no dispute that no confiscation orders came to be passed despite the fact that as per the observation of the reference Court, some of the lands were kept as waste lands. It is further pertinent to note that the reference Court took into consideration some of the revenue extracts and observed that claimants, Reva Vala etc. used to cultivate their lands. When such is the situation, the bare perusal of the impugned judgment and award reveals that the claimants intended to rely upon the method of capitalisation for claiming compensation, but just and proper opportunity to adduce evidence has not been given to them by the reference Court. Without entering deep into the merits, since this Court feels that the matter should be remanded, it would be in the interest of justice, if after remanding the matter, necessary direction is issued to the reference Court to afford opportunity to both the sides to adduce evidence and to dispose of the cases within a stipulated period.

7. It is hereby made clear that no merits have been examined in this judgment and whatever discussion is made, the same was made only with a view to consider the submission advanced on behalf of the Appellant, requesting the remand of the matter.

8. For the foregoing reasons, all these appeals are partly allowed and the impugned judgment and award dated 30.8.1997 rendered by learned Extra Asst. Judge, Surendranagar in land reference cases No. 59 to 76 of 1994 is quashed and set-aside. The land reference cases are ordered to be remanded to the concerned reference Court with a direction to give just and sufficient opportunity to the Appellants - claimants to adduce further evidence. If the Appellants - claimants adduce further evidence, the Respondents herein shall be at liberty to meet with the evidence that may be adduced by the Appellants - claimants. The reference Court shall dispose of all these reference cases in accordance with law and in accordance with the evidence that may be adduced before it, preferably within 5 months from the date of receipt of the writ of this order. There shall be no order as costs.