

(2011) 03 GUJ CK 0110

In the Gujarat High Court

Case No : Special Civil Application No. 1876 of 2011

Harijan Mafabhai Sadabhai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, 28(A)

Citation : (2011) 03 GUJ CK 0110

Hon'ble Judges : K.A. Puj, J;D.H. Waghela, J

Bench : Division Bench

Advocate : Amit C. Nanavati, for the Appellant; Monali Bhatt, Assistant Government Pleader for Respondents 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The Petitioner has filed this petition under Article-226 of the Constitution of India praying for quashing and setting aside communication dated 7.9.2010 refusing to award compensation u/s 28A of the Land Acquisition Act with regard to the Petitioner's land bearing Survey No. 313 situated in Village: Tejpura, Taluka and District: Mehsana. The Petitioner has also prayed for direction to the Respondents to award compensation u/s 28A of the Act to the Petitioner with respect to the above land.

2. This Court has issued notice for final disposal on 17.2.2011. Pursuant to the notice, an affidavit-in-reply is filed by the Special Land Acquisition Officer (Narmada Project) Unit No. 1, Mehsana.

3. The brief facts giving rise to the present petition are that the Petitioner is the owner of the land bearing Survey Nos. 363 and 313 admeasuring about 11,331 Sq. Mtrs., situated at Village: Tejpura, Taluka and District: Mehsana, which came to be acquired alongwith land of others for the purpose of Narmada Canal Project. Section 4 Notification was issued on 10.2.1995 whereas Section 6 Notification was issued on 20.6.1995. The award was declared on 1.11.1996 in

Land Acquisition Case No. 3 of 1995 awarding Rs. 1.10 and Rs. 1.65 per Sq. Mtr., for irrigated, non-irrigated land respectively. At the relevant point of time the Petitioner had not made any reference u/s 18 of the Act. However, the other claimants filed LAR Case Nos. 1105 to 1109 of 1997 claiming Rs. 30 per Sq. Mtr. The Reference Court has awarded Rs. 15.40 Sq. Mtr., as additional compensation over and above the amount of compensation awarded by the Special Land Acquisition Officer together with all statutory benefits to the claimants on 15.12.2001.

4. Based on the above award, the Petitioner, therefore, filed an application for redetermination of the amount of compensation u/s 28A of the Act. The said application came to be rejected by the Special Land Acquisition Officer on 19.7.2005 on the ground that certified copy of the judgment and award rendered by the Reference Court was not produced.

5. Being aggrieved by the said order, the Petitioner filed Special Civil Application No. 23810 of 2005 alongwith other Petitioners before this Court. This Court has allowed the said petition on 16.1.2005 and after setting aside the order passed by the Special Land Acquisition Officer, remanded the matter back to him for its consideration on merits, with a direction to examine all the issues involved in the application including limitation and further directed to render decision within three months from the date of receipt of writ of the Court.

6. At the time of hearing of the application before the Special Land Acquisition Officer, the Petitioner pointed out that he is having two lands bearing Survey Nos. 313 and 363 and, therefore, he may be given compensation u/s 28A of the Act for both the lands. However, the Special Land Acquisition Officer had allowed the said application of the Petitioner partly with other claimants and declared additional award u/s 28A of the Act on 16.7.2010. He has passed the award only in relation to land bearing Survey No. 363 and not in relation to land bearing Survey No. 313. The Petitioner, therefore, again approached the Special Land Acquisition Officer to make the award with regard to Survey No. 313 as it has already been acquired and the same was also referred to in the original award as well as application u/s 28A of the Act and also referred to in the writ petition filed before this Court. The Petitioner has, however, received the reply from the Special land Acquisition Officer on 7.9.2010 stating therein that the Petitioner is not entitled to the compensation in relation to the land bearing Survey No. 313 as the said survey number was not mentioned in the judgment and order passed by this Court in Special Civil Application No. 23810 of 2005.

7. It is this communication issued by the Special Land Acquisition Officer which is under challenge in the present petition.

8. Mr. Amit Nanavati, learned advocate appearing for the Petitioner has submitted that there is no dispute about the fact that the Petitioner is the owner of the land bearing Survey Nos. 313 and 363. There is also no dispute about the fact that both these parcels of land were acquired by the Special Land Acquisition

Officer. It is also an admitted position that the notice was issued by the Special Land Acquisition Officer in relation to both the survey numbers. The Petitioner while filing the petition before this Court has also averred in para-2 of the petition that the Petitioner's land admeasuring 11,331 Sq. Mtrs., bearing Survey Nos. 363 and 313 of Village: Tejpura, Taluka and District: Mehsana, came to be acquired alongwith the lands of other claimants for a public purpose of Narmada Canal Project. This Court, however, while disposing of the said petition vide its order dated 16.12.2005 inadvertently omitted the land bearing Survey No. 313 in para-2 of its judgment. The Court, however, directed the Special Land Acquisition Officer to examine all the issues involved in the application including the one of limitation. The application filed by the Petitioner specifically refers to the land bearing Survey Nos. 313 and 363. Despite this fact the Special Land Acquisition Officer has not awarded any compensation in respect of the land bearing Survey No. 313. Even this fact was pointed out by the Petitioner vide letter dated 9.8.2010 that his claim for additional compensation was rejected only on the ground that there was no reference of Survey No. 313 in the judgment of this Court dated 16.12.2005 in Special Civil Application No. 23810 of 2005. He has, therefore, submitted that simply because there is an inadvertent omission in the order of this Court the Petitioner cannot be denied his legitimate right of claiming additional compensation in relation to the land bearing Survey No. 313.

9. Ms. Monali Bhatt, learned Assistant Government Pleader appearing for the Respondent, on the other hand, has submitted that the Petitioner has filed application dated 18.1.2002 u/s 28A of the Act to redetermine the amount of compensation of land bearing Survey Nos. 363 and 313 on the basis of award of Reference Court dated 15.12.2001 in Land Reference Cases No. 1105 to 1109 of 1997, by the Court of Extra Assistant Judge, Mehsana. The said application came to be rejected only on the ground that the Petitioner has not submitted certified copy of the award dated 15.12.2001. Thereafter on petition being filed before this Court and directions issued by this Court, the Special Land Acquisition Officer has considered the said application and redetermined the amount of compensation in relation to the land bearing Survey No. 363, 355, 317, 353 and 364 and directed to pay an amount of Rs. 13,55,841/- to the claimants/landholders of the said five survey numbers by order dated 16.5.2010. Since there was no reference of the land of Survey No. 313 of the Petitioner in the judgment of this Court the Petitioner is not entitled to redetermination of the amount of compensation for the acquired land of Survey No. 313. She has further submitted that the Petitioner has accepted the said judgment of this Court and after delay of about 5 years the Petitioner has made representation on 9.8.2010 to the Special Land Acquisition Officer to make award u/s 28A and hence the said application is rightly rejected by the Special Land Acquisition Officer. She has, therefore, submitted that there is no substance in the present petition and no relief as prayed for should be granted to the Petitioner.

10. Having heard the learned Counsel appearing for the parties and having gone

through their rival submissions, the Court is of the view that the Respondents are not justified in denying the compensation for the land bearing Survey No. 313. The Respondents cannot take benefit of an inadvertent omission found in the court's order. Once having accepted that the land bearing Survey No. 313 is also acquired and initial compensation was paid there is no reason not to entertain the application in relation to the land bearing Survey No. 313. The Respondents have acquired the land admeasuring about 11,331 Sq. Mtrs., whereas additional compensation is given only in relation to 4,249 Sq. Mtrs. The remaining land bearing Survey No. 313 is not at all considered by the Special Land Acquisition Officer for the purpose of awarding additional compensation. The reason given by the Special Land Acquisition Officer for not awarding the additional compensation is only to the effect that there was no reference of Survey No. 313 in the judgment of this Court dated 16.12.2005 in Special Civil Application No. 23810 of 2005. The Special Land Acquisition Officer has, however, not considered the fact that there is specific reference of Survey No. 313 in the petition and even notice issued by him on 7.7.2008 also refers both the survey numbers and the area mentioned in the said notice is 11,331 Sq. Mtrs. The action of the Respondent is, therefore, not justified on any count. It is the duty and obligation of the Respondents to award legitimate compensation to the person, whose land is acquired for public purpose. The Court, therefore, directs the Special Land Acquisition Officer to award the additional compensation forthwith in relation to the land bearing Survey No. 313 of the Petitioner on the same line as indicated in his award dated 16.7.2010 with the modification that 15% interest must be awarded on the amount from 1.1.1997 till the date of payment. It is directed that if the total amount due is not paid within 45 days from today, the officer concerned causing further delay after 2nd May, 2011 shall be liable to pay by way of cost Rs. 15,000/- to the Petitioner.

11. With the above directions and observations, the petition is allowed. Rule is made absolute accordingly. Direct service permitted.