

(2013) 12 GUJ CK 0082

In the Gujarat High Court

Case No : Special Civil Application No. 16410 of 2013 with Special Civil Application No. 16411 of 2013

Hasam Khamisha and 49

APPELLANT

Vs

State of Gujarat and 2

RESPONDENT

Date of Decision : 26-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0082

Hon'ble Judges : Ravi R. Tripathi, J;R.D. Kothari, J

Bench : Division Bench

Advocate : P.M. Bhatt, for the Appellant; P.R. Nanavati, Advocate for the Respondent No. 2, for the Respondent

Judgement

Ravi R. Tripathi, J.—The Court after hearing the learned advocate for the petitioners issued "Rule" on 24.10.2013 making it returnable on 27.11.2013. Despite, the "Rule" being returnable on 27.11.2013 till 26.12.2013, no affidavit-in-reply is filed either by the Acquiring Body or by the Government. Learned advocate, Mr. P.R. Nanavati, appearing for the Acquiring body submitted that taking into consideration the fact that the facts are similar, the Acquiring body deemed it proper not to file affidavit-in-reply. Learned advocate, Mr. P.M. Bhatt, for the petitioners invited the attention of the Court to a decision of this Court in Special Civil Application No. 9599 of 2008 and other allied matters, a copy of which is produced at Annexure-A, page No. 23. The relevant part/operative part of which is at page Nos. 41 and 42, the same reads as under:

9. Therefore, in the facts and for the reasons discussed hereinabove, all the petitions are partly allowed with the direction that the acquisition of land of the petitioners and notices dated 21.02.2008, 11.03.2008 and 03.04.2008 issued to them pursuant to the land acquisition proceeding are set aside in cases of all the petitioners who have not accepted the amount of compensation due to them under the respective awards which also are hereby quashed as for such petitioners. However, petitioners who have been paid the amount of

compensation shall have to refund within three months that amount with 9% interest p.a. for the period from the date of payment to them till the date of repayment by them to respondent concerned; and on that condition being fulfilled the award and notices issued to them u/s 12 as well as the land acquisition proceeding shall stand set aside. This order shall not affect the acquisition of lands in respect of which petition is not filed and the original holder of land has not come out to challenge the acquisition. With that clarification and subject to the condition as aforesaid, the petitions are allowed and rule is made absolute in each of the petitions with no order as to costs.

2. Learned advocate, Mr. P.M. Bhatt, then invited the attention of the Court to the fact that said decision of this Division Bench was challenged before the Hon'ble the Apex Court being Special Leave to Appeal (Civil) No. 10833 of 2013, dated 22.3.2013, a copy of which is produced at Annexure-D, at page No. 58. The relevant part of which reads as under:

The Division Bench then referred to the judgment of the co-ordinate Bench in Bhanuben Durlabhbai Patel and Others Vs. State of Gujarat and Others, and held that the acquisition proceedings are liable to be quashed because the compensation was offered to the land owners after a long time gap of seven years. In our view, the reasons assigned by the High Court for holding that the acquisition proceedings stand vitiated are correct and the impugned order does not call for interference under Article 136 of the Constitution.

It needs no reiteration that after getting the price of the acquired land pegged with reference to the date on which notification u/s 4(1) is issued, the acquiring authority cannot indefinitely delay the payment of compensation to the landowners and thereby deprive them of their property without the sanction of law.

With the above observations, the special leave petitions are dismissed.

3. The learned advocate then invited the attention of the Court to yet another decision of the Division Bench of this Court in Special Civil Application No. 16902 of 2012, dated 4.7.2013. The relevant part of which is produced at page No. 56 and 57 vide paragraphs No. 5 to 7, which reads as under:

5. The Division Bench judgment dated 6th November 2012 has been affirmed by the Apex Court in SLP (Civil) No. 10833 of 2013, which has been decided along with other cognate matters. The facts of the present writ petition and the facts of the writ petitions decided earlier by this Court, as affirmed by the Honourable Apex Court are similar. The only difference between the two writ petitions is that in the judgment of the earlier writ petitions it was observed by the Division Bench that the said judgment shall not affect the acquisition of land in respect of which the petition has not been filed and the landlord has not come to challenge the acquisition. On the basis of this observation, Ms Dilbar Contractor, learned counsel for Respondent No. 2 submits that the petitioners are not entitled to any relief.

6. Having heard the learned counsel for the parties, we are of the opinion that since the entire land acquisition proceedings have been quashed and since the petitioners' land has been acquired by the same Notification u/s 4 and 6 of the Land Acquisition Act, the petitioners are entitled to the same relief and the petitioners cannot be non-suited on the ground that earlier the petitioners have not moved this Court by filing writ petition.

7. For the aforesaid reasons, the petition succeeds and is allowed with the direction that the acquisition of land of the petitioners and notices dated 21.02.2008, 11.03.2008 and 03.04.2008 issued to them pursuant to the land acquisition proceedings are set aside in cases of all the petitioners who have not accepted the amount of compensation due to them under the respective awards which also are hereby quashed as for such petitioners. However, petitioners who have been paid the amount of compensation shall have to refund within three months that amount with 9% interest per annum for the period from the date of payment to them till the date of repayment by them to respondent concerned and that condition being fulfilled the award and notices issued to them u/s 12 as well as the land acquisition proceeding shall stand set aside. Rule is made absolute with no order as to costs.

4. In view of the aforesaid facts and situation, this Court is of the opinion that these petitions are required to be allowed, the same are accordingly allowed for the reasons which are recorded in earlier two decisions of the Division Bench which are referred to herein above. Rule made absolute.

5. In the result, notices dated 21.2.2008, 11.3.2008 and 3.4.2008 issued to them pursuant to the land acquisition proceedings are set aside in cases of all the petitioners who have not accepted the amount of compensation due to them under the respective awards which also are hereby quashed as for such petitioners. However, petitioners who have been paid the amount of compensation shall have to refund within three months that amount with 9% interest per annum for the period from the date of payment to them till the date of repayment by them to respondent concerned and that condition being fulfilled the award and notices issued to them u/s 12 as well as the land acquisition proceeding shall stand set aside.