(2001) 10 GUJ CK 0023

In the Gujarat High Court

Case No : First Appeal No''s. 3415 to 3418, 3420 to 3422, 3424, 3425, 3427 to 3434, 3436 to 3450, 3452 to 3458 of 2000, Cross Objection Nos.168 to 170, 172 to 174, 176, 177, 179 to 185, 187 to 202, 204 to 210 and 211 of 2001

Indian Oil Corporation APPELLANT

Vs

Patel Khushalbhai Joitram RESPONDENT

Date of Decision : 23-10-2001

Acts Referred:

Citation : (2002) 22 GLH 423

Hon'ble Judges : Sharad D. Dave, J;B.C. Patel, J

Bench : Division Bench

Advocate : G.N. Shah, for the Appellant; B.S. Patel and A.D. Oza, Government Pleader for Respondent No. 2 in First Appeal Nos. 3415 to 3418, 3420 to 3422, 3424 to 3425 and 3427 to 3434 all of 2000 with Cross Objections B.S. Patel and R.C. Kodekar, Government Pleader for Respondent No. 2 in First Appeal Nos. 3436 to 3450 and 3452 to 3458 of 2000 with Cross Objections, for the Respondent

Final Decision : Allowed

Judgement

B.C. Patel

1. These group of appeals are preferred under Sec. 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) read with Sec. 96 of the Civil Procedure Code, 1908 by the Indian Oil Corporation Ltd. against the judgment and order made by the Reference Court (Asst.Judge, Mehsana) on 29.2.00 in L.A.R.Case Nos. 1207/94 to 1229/94 and 1231/94 to 1252/94.

2. Cross-objections have been preferred by some of the claimants being Cross-objections No. 168/01 to 211/01 making grievance that the amount of compensation awarded by the Reference Court is not adequate and is required to be enhanced.

3. For public purpose, the lands were to be acquired and hence the notification

under Sec. 4 of the Act was published on or about 26.4.89 in L.A.R. Case Nos. 10/88, 11/88 and 12/88. After following the procedure laid down in the Act, the notification under Sec. 6 of the Act was published on or about 8.7.89. By an award, the Special Land Acquisition officer offered Rs.8.75ps. Rs.8.00, Rs.7.25ps., Rs.7.00 and Rs.6.00 per sq. mtr. to the claimants. The claimants were not agreeable and were of the view that the amount of compensation offered is not adequate, hence sought references under Sec. 18 of the Act. Under these circumstances, the Reference Court was required to determine the market price of the lands in question.

4. The lands are situated in the sim of village Rajpura, Taluka : Siddhpur. The lands are adjacent to village Sujanpur. The lands of village Sujanpur and the acquired lands have common boundary.

5. The award made by the Special Land Acquisition Officer is produced on record from pages 152 to 170. The Chief Engineer, Indian Oil Corporation submitted a proposal for acquisition of land for establishment of storage depot for petroleum products. The dates on which notification under Sec. 4 and 6 were published are indicated in the award. So far as the location is concerned, the Special Land Acquisition Officer has pointed out that the lands sought to be acquired are outside Siddhpur municipal limit. The lands are even and fertile. On eastern side, there is Mehsana-Palanpur National Highway while on the western side, there is railway track leading to Delhi from Mehsana. He has specifically pointed out that the lands acquired are touching survey numbers of village Sujanpur. He has further pointed out that there are agricultural lands adjoining to the lands in question. He has taken into consideration the demand of the occupiers of the lands.

6. It was claimed by the claimants that the lands are situated within the city limits of Siddhpur and on the National Highway. It was specifically contended that the lands are situated nearby the area covered under the Town Planning Scheme and therefore the price of the nearby lands are much higher. It was also contended before the Special Land Acquisition officer that the lands have nonagricultural potentiality. It was contended before the Special Land Acquisition Officer that in the neighbourhood of the lands, there was industrial development and therefore the price of the lands would be nearly Rs.125/- per sq. mtr. It was further emphasized that the lands sought to be acquired are situated within Siddhpur Municipal limit and/or near the limit and as the Siddhpur town is developing, the price is much higher. The instances produced before the Special Land Acquisition Officer were considered by him. Some instances which were relied upon were for the lands situated within the municipal limits and were nonagricultural lands and therefore the Special Land Acquisition officer was of the view that the same cannot be taken into consideration. He was of the opinion that instance of survey no. 359/1, which can be said to be nearer to the lands in question in the southern direction, can be taken into consideration. The transaction was @ Rs.6.76 per sq. mtr. and the documents were executed on

12.12.85. He has taken into consideration other instances for the purpose of offer and observed in para 10 that the lands to be acquired are situated at a distance of about 2 km. from Siddhpur on Siddhpur-Palanpur Highway. The lands are agricultural and near about the lands there are only agricultural lands. Ultimately, the Special Land Acquisition Officer determined the market price as indicated earlier. The Reference Court, on appreciation of evidence, determined the market price @ Rs.70/- per sq. mtr. for the lands situated adjacent to the National Highway and for remaining lands @ Rs.65/- per sq. mtr.

7. On behalf of the appellant-Indian Oil Corporation, it was contended by the learned counsel Mr. Shah that the Reference court has committed error in awarding higher compensation without keeping in mind that the lands in question were purely and simply agricultural lands. He further submitted that there is no question of building potentiality or future development as there was nothing to indicate that the lands situated in nearby areas were used as nonagricultural lands. There was no evidence to show existence of factories or buildings. There was no evidence of activities other than agricultural activities being carried on in or near by the Survey numbers to be acquired. On behalf of the claimants Mr. Patel learned counsel contended that considering the fact that the lands are situated near Siddhpur town and as the cities are developing very fast, the court was required to keep that aspect in mind while considering the instances which were produced on the record of the case. The court was required to determine the market price after evaluating several instances.

8. We may consider the evidence of claimants first. Tulsibhai Lalbhai Patel deposed before the Court vide exh. 12 on behalf of the claimants. He stated that the lands are agricultural. Agriculturists used to take 3 crops in a year. They used to take crops of Millet, Guvar, Wheat, Raido, Isabgul, Juvar etc. He specifically stated that after deducting the agricultural expenditure, they used to earn about Rs.8,000 to Rs.10,000/- every year.

9. He pointed out that the facility is provided for irrigation. He further pointed out that the lands are situated on the northern side from Siddhpur and on the way to Kakoshi at a distance of about 1 km. He further deposed that from the market centre, the lands are situated at a distance of about 1.5 km. He stated that the lands are just touching the municipal limits. According to the witness, Siddhpur is a taluka town where various facilities are available such as college, hospitals, government offices etc. He further stated that there are units engaged in Isabgul, oil, tobacco etc. He further stated that there is solvent plant. Facilities such as hotels and market yard are available at Siddhpur.

10. According to the witness, near the acquired lands in survey no. 392 there is Gokul Mill, in survey no. 247 there is Isabgul factory, there is one Gangotri hotel nearby the factory and just opposite to the said hotel, there is Gujarat hotel. He stated that they could have converted the lands as nonagricultural lands and could have constructed residential houses.

11. This witness has been cross-examined in detail. He has admitted that the lands covered by the document dated 20.5.89 mark exh. 11/1 and the lands acquired are similar in nature. Mark 11/2 is the document with regard to the lands of Siddhpur town. The lands covered by both the documents are nonagricultural lands. Document mark 11/3 refers to the lands situated in the village limit of village Sujanpur. He further deposed that the lands are similar in nature.

12. In the further cross-examination, he has pointed out that after the limits of Siddhpur Nagarpalika, after leaving about 10 to 15 fields, the lands in question are situated. He has admitted in cross-examination that the lands are situated outside Siddhpur Nagarpalika limits. He has admitted that the boundaries of Sujanpur and this village are common. He was put a question about survey no. 359/1 and he admitted that survey no. 359/1 is nearer to the town. He has shown his ignorance about the purchase of land by Satpal Mangaldas in the year 1985. He has shown his ignorance about survey no. 572 which was transferred in the year 1984 in favour of Hargovandas. He has also shown his ignorance about the transfer of land bearing survey no. 369/4 in favour of Satpal Mangaldas by Rameshbhai Patel in the year 1988. However, he has stated that he has seen the lands and the lands are similar but he has denied the suggestion that the transaction took place @ Rs.9.16ps. per sq. mtr.

13. The witness fairly stated that he has no document to show the price which he was claiming. He was put a question about other villages. He was also asked about Unjha town which is situated at 14 km. from Siddhpur on the Highway. He has admitted that Unjha marketing yard is certainly larger than the Siddhpur marketing yard. He has admitted that commercial activities are certainly more in Unjha than Siddhpur. However, he denied the suggestion that Unjha is larger than Siddhpur. He has pleaded ignorance about the lands being costlier at Unjha than at Siddhpur. He was asked about Tundav and Upera. He has denied the suggestion that the lands of Siddhpur and near about areas are similar in nature.

14. In support of the contention, other witnesses are examined. Patel Bhaktibhai Hargovandas exh. 15 was shown exh. 11/1. He stated that out of survey no. 91, land admeasuring 105 sq. mtr. was purchased by him. He has produced exh. 16 & 17 for the purpose of substantiating his say that the documents were executed. These documents are xerox copies of original documents. What is required to be noted is that in the cross-examination, the witness has admitted that the lands were nonagricultural lands and the lands were within the limits of Siddhpur. He admitted that even before the transaction of these lands, these lands were nonagricultural lands. He has admitted that he purchased the lands because the parcels of lands were at a prime locality. However, he stated that when he purchased the land near about the lands, there were no other nonagricultural lands.

15. On behalf of the claimants, Natvarlal Balchanddas Patel was examined who has stated before the Court that he purchased plot no. 1 admeasuring 44.20 sq.

mtr. on 3.7.93, i.e., much after the award made by Land Acquisition Officer. Considering the date of notification, this sale instance being of a subsequent period cannot be taken into consideration for determining the market price. The document regarding sale instances of proximate in time are placed on record vide exh. 22. He has admitted that the plot which he purchased was nonagricultural. He has admitted that there were agricultural lands near about the lands. He has admitted that he has not carried out any construction over the lands which he purchased. He has stated that after the limits of village Sujanpur, there are lands of village Rajpur, Gaglasan and thereafter the limits of Siddhpur begins. Thus, the claimant is relying on the sale instance of 1993. The evidence reveals that there was no development even in 1993. Witness, Natwarlal, has specifically stated about this. He pointed out that nearabout land, lands were agricultural lands. This aspect is required to be kept in mind while determining the market price.

16. On behalf of the State, Amratlal Ravjibhai Vyas was examined vide exh. 26. He has deposed that after following the procedure awards were made on 4.1.93. He has specifically stated in the cross-examination that the lands are situated outside Siddhpur municipal limits and the lands were agricultural lands. He has further stated that near about the lands, all the lands were used as agricultural lands. He has emphasized that the lands were agricultural lands and sale instances were taken into consideration while determining the market price. He has also stated that the frontage i.e. the lands which are situated on the road has been taken into consideration and accordingly compensation has been awarded. This witness has stated in further cross-examination that the lands which were acquired were just after the limits of Siddhpur municipality. However, this cannot be accepted in view of sufficient evidence on the record to indicate that the lands are situated at a distance of 2kms. from Siddhpur and the witness never visited the site.

17. As it was emphasized that the documents ought to have been considered by the Court, we also examined the documents which are placed on the record. Natwarlal Patel vide exh. 21 produced document vide exh. 22, the document with regard to survey no. 342/1. The witness has stated that the said agricultural field was purchased by the owners of the land for the purpose of using the same as godown and permission was granted to use the land as nonagricultural lands by competent authority much earlier. In the appendix to the document, there is specific reference again about the survey no. 342/2 and that the land is nonagricultural land admeasuring 44.20 sq. mtr only. As pointed out earlier, notification under Sec. 4 of the Act was published on 26.4.89, therefore, this transaction (dated 03/07/1993) cannot be taken into consideration. There is another document placed on record for transfer of property which took place on 20.5.89. The lands situated at Siddhpur itself came to be transferred in favour of Patel Bhaktibhai Hargovandas and others by Babubhai and others. The description given in the document clearly reveals that it was a very small parcel of land admeasuring 146.88 sq. mtr. and situated within the limits of Siddhpur.

There is another document executed on 18.10.88 for transfer of property between the same parties referred to hereinabove for land admeasuring 110.84 sq. mtr. What is required to be noted is that reading the document it is clear that it has reference to survey no. 91 and the same survey number was converted for the use of nonagricultural land by order bearing no. ND/NAP/SR/252/87, (Collector Office, Mehsana dated 16.3.88). The claimants have, thus, before the Reference Court placed reliance on the 3 sale instances, one of 1988, another of 1989 and third one of 1993. The earlier document of 1988 & 89 pertains to lands situated within the limits of Siddhpur itself and were at a distance of more than 2kms. from the agricultural lands acquired and the parcels were permitted to be used as nonagricultural land much earlier. So far as the third instance is concerned, we had pointed out above that it is pertaining to a transaction which took place in 1993 for land admeasuring 44.20 sq.mtr only and that too for nonagricultural lands. Therefore, it would be difficult to place reliance on the sale instances indicated or relied upon by the claimants before the Reference Court.

18. Mr. Patel, learned counsel appearing for the claimants stated that considering the development, the Court was required to appreciate the matter and therefore we anxiously scrutinized the evidence to find out whether there was development or not. Strong reliance was placed by the claimants on a decision of the Reference Court (District Judge Mehsana) in L.A.R. Case nos. 23/85 to 29/85, 2/86 to 7/86, 39 and 40/86 on 20.4.94. The notification under Sec. 4 of the Act was published on 24.10.74 with regard to the lands covered by these references. The Reference Court awarded @ Rs.100/- per sq. mtr. by way of additional compensation and in 2 cases @ Rs.96/- per sq. mtr. while in one case @ Rs.104/- per sq. mtr. The learned counsel submitted that considering the date of notification, the benefit should be given. In that case, it appears that the lands were acquired for widening of the existing road in the Siddhpur town itself. The lands were situated within the limits of Siddhpur municipality. Very small parcels of lands belonging to different individuals were acquired. It may be noted that the road in existence was required to be widened and therefore on both the sides of the road, the lands were acquired. Considering the fact that the lands acquired were within the limits of the Siddhpur town itself, the reference court while determining the market price considered the amount required to be paid by way of consideration to take the property even on rent. Before the Reference Court it was contended that near by the lands which were acquired higher consideration was required to be paid. The main road (National Highway no. 8) was passing through the Siddhpur town which was required to be widened and obviously people who were carrying on business on the road side were required to be compensated and these aspects certainly were required to be taken into consideration. Therefore, in our opinion, it is difficult to place reliance to compensate the present claimants at that rate.

19. Mr. Patel submitted that just at a distance of about 2 km. from the lands/site acquired for widening the road, the lands in question are situated. Therefore, considering the fact that the acquired lands are nearer to Siddhpur town, the

amount of compensation must be awarded. We have indicated earlier as to what witness Tulsibhai exh. 12 has deposed about the yield. Even if his evidence is accepted about yearly income of Rs.8,000/- to Rs.10,000/-, the witness has not referred the income per Bigha or per hectare or per Guntha or per Are. The evidence being vague is difficult to accept in toto. He refers the income of Rs.8,000/- to Rs.10,000/which cultivators were getting. Considering the fact that he was deposing on behalf of cultivator, each one was getting net income of Rs.8,000/- to Rs.10,000/-. There may be some variation in the size of the field and therefore there may be variation in income, even may be less than Rs.8,000/- in view of smaller field. Though there is cross-examination there is nothing to indicate that the cultivators were not getting in all Rs.8,000/- to Rs.10,000/- per year. In the cross-examination, witness denied the suggestion that he has stated falsely that per bigha out of the lands acquired there is net income of Rs.8,000/to Rs.10,000/-. Ordinarily in villages, fields are measured in terms of bigha, and, income is referred to bigha.

20. On the record, the awards of the Reference Court (Asst. Judge, Mehsana) in reference Cases nos. 1120/92 to 1122/92 dated 1.12.98 for the lands acquired at village Upera, Taluka : Siddhpur, District: Mehsana for Dharoi canal project have been placed. In that case, the notification was published under Sec. 4 of the Act on 8.3.89. Ultimately, the Reference Court considering the evidence held that the claimants are entitled to Rs.10/per sq.mtr. There is another award of the same Court in Reference Nos. 858/93 to 864/93 dated 5.8.99 for Dharoi Canal Project where the lands situated in the sim of village Mahervada were acquired and ultimately by an award dated 5.8.89, the Reference Court awarded Rs.10/ per sq.mtr. There is another award of the same court in L.A.R. Case no. 2093/92 to 2100/92 dated 3.5.97. In that case, the notification under Sec. 4 of the Act was published on 28.6.91 for the lands situated in sim of village Shekhpur, Taluka : Kheralu for Dharoi canal scheme. Ultimately the reference court ordered to pay additional compensation @ Rs.8.20ps. per sq.mtr. Considering the amount awarded by the Land acquisition officer, amount comes to Rs.10/- per sq. mtr. There is an award on record in L.A.R. Case no. 148/90 to 161/90 for the lands situated at village Tudar, Taluka : Siddhpur for which notification under sec. 4 of the Act was published on 4.10.87. Ultimately by an award dated 16.1.97, the Reference Court awarded Rs.10/- per sq.mtr for the lands situated in the sim of village Tudar. There is an award placed on record for the lands situated in the sim of village Bhankiar, Taluka : Siddhpur District : Mehsana for which notification was published under sec. 4 of the Act on 28.12.89. The lands were acquired for Sipu project. Ultimately, the reference court on 16.1.98 held that the claimants are entitled to get additional compensation @ Rs.8.80ps. per sq. mtr. over and above the compensation awarded by the Land Acquisition officer at Rs.1.20/- per sq. mtr. There is an award placed on record for the lands situated at Bhankar in reference cases no. 1889/93 to 1910/93 etc. (73 cases). The lands were acquired for construction of Dharoi canal. Notification under sec. 4 of the Act was published on or about 2.3.89 and ultimately reference court on 16.9.99 held that

the claimants are entitled to get the market price @ Rs.10/- per sq. mtr.

21. Thus, two sets of awards are placed on record one for agricultural lands and one for lands situated in Siddhpur city itself for widening the road. On behalf of the appellat-I.O.C. it was submitted that the lands are agricultural and therefore considering the yield, price is required to be determined.

22. Sec. 23 of the Act is the relevant provision for determining the amount of compensation. Section mandates to take into consideration the aspects mentioned therein. Section points out that for determining the market value of the land, the date of publication of the notification under sec. 4 sub-sec 1 is relevant date. It also provides for the damage if any sustained by the person interested at the time of the Collector''s taking possession of land by reason of taking away standing crops and trees as the land, severing such land from his other land, injunction effect of the acquisition on other movable or immovable properties, or earning and the damages if any, bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Sec. 6 and the time of the Collector''s taking possession of the land. It further provides that if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses if any incidental to such change are to be considered. We are not required to consider as to in addition to market value of the land, what is required to be given as it is already indicated in the award and there is no grievance about that. Under the circumstances, the court will require to bear in mind the aforesaid aspects.

23. In the case of The Collector, Raigarh Vs. Harisingh Thakur and Another, , the Apex court pointed out that the market value is to be determined with reference to the nature of the lands. The Special land Acquisition officer rejected the contentions of potential building sites but on reference the Additional District Judge awarded the higher compensation on the basis of his finding that the lands had potential building sites which according to him was further supported by the fact that the lands though acquired for doubling railway lines, it has been used for constructing staff quarters. There was evidence that Raigarh is a growing town, that buildings are coming up in the neighbourhood and also that instead of doubling railway track, the Railway has actually built staff quarters Theron. Thus, it is clear that the lands were within the municipal limits. The plot did have potential value as the building site and the facts were supported in view of use of the property by the railway authorities itself. The Court also pointed out features of a comparable sale; (i) it must be within a reasonable time of the date of notification under sec. 4(1) of the Act; (ii) it should be of a bona fide transaction; (iii) it should be a sale of the land acquired or its adjacent land ; and (iv) it should possess similar advantages. The Apex Court pointed out that in absence of comparable sales, only other alternative to adopt is capitalised value.

24. The case of N.B.JIJABHOY V/S DISTRICT COLLECTOR, THANA was referred by the Apex Court in the case of Collector Raigarh (Supra). The Apex Court for

the purpose of building potentiality reproduced observations in para 23 as under :

"the question therefore turns upon the facts of each case. In the context of building potentiality many questions will have to be asked and answered: whether there is pressure on the land for building activity, whether the acquired land is suitable for building purpose, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put up on the lands purchased for building purposes, what is the distance between the built in land and the land acquired and similar other questions will have to be answered. It is the overall picture drawn on the said relevant circumstances that affords the solution."

25. In our opinion, there must be some evidence to suggest that near the lands acquired there is pressure on the land and that too for building activity. In the instant case what is required to be noted is that the lands are nonagricultural lands and therefore can be used only for agricultural purposes. The provisions contained in Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the `Tenancy Act'') would apply to the lands in question. In view of restriction imposed under the Tenancy Act, transfer to non-agriculturists would be barred in view of Sec. 63 of the Tenancy Act. For sale of agricultural lands one has to follow the procedure laid down in Sec. 64. In view of Sec. 63 of the Tenancy Act, sale, gift, exchange or lease of any land or interest therein, or mortgage of any land or interest therein in which possession of mortgaged property is delivered to the mortgagee or an agreement for sale, gift, exchange, lease or mortgage of any land or interest therein shall not be valid in favour of a person who is not an agriculturist. Therefore, transfer or agreement for transfer as contemplated under Sec. 64 of the Tenancy Act is restricted to class of persons and is permissible only after following the procedure as laid down in the Tenancy Act. Therefore, it is clear that these lands could not have been used for any other purpose except cultivation. Thus, the nonagricultural use is restricted.

26. It is also required to be noted that claimant has not deposed about the development of the lands near by the area. Except the development in 2 or 3 survey numbers which are at a distance from the lands acquired, nothing has been pointed out. The witness has referred to survey no. 392 where Gokul Oil Mill is situated. He has referred to survey no. 242 where Sarvodaya Isabgul Factory is situated. From the map, it is not possible to say that these survey numbers are nearabout the lands acquired. Mr. Patel, learned counsel for the claimant, with a view of indicate the nature of the development of the Siddhpur town placed before us the development plan of Siddhpur. We find that in the said plan, municipal limit is also indicated. This plan was sanctioned under Government Notification Panchayat and Health Department GH/P/1720/ DVp/2367/4982/P dated 6.10.69 which was subject to the modifications enumerated therein. No doubt the development can be seen in Gamtal area of Siddhpur. It is not in dispute by the State Government or by I.O.C. about the

development which has taken place in Siddhpur municipal limits. From the map we find survey no. 242 is in municipal limits where Sarvoday Isabgul Factory is situated, as per say of claimant. The development indicated is in Siddhpur Gamtal and we find no development even within the municipal limits, near National Highway. No development is pointed out beyond the municipal limits and within the limits as per development plan, beyond the limits of Municipality there is limit of Development Area. In fact there is no evidence of the claimant worth the name that there was development upto the limits of Siddhpur Municipality. Suffice it to say that there is no evidence that there was development after the limits of Siddhpur Municipality towards the lands in question. Therefore, in the absence of any development activities towards the site acquired, or in the absence of anything on record to suggest that there was progress, it cannot be said in all probabilities the nearby survey number of these lands in question would be developed. In fact, it is observed by the Special Land Acquisition officer that all the lands were agricultural lands and claimant has not produced on record any evidence to indicate that there was progress towards the lands acquired.

27. In the absence of any evidence about the potential value as the building site, it would be difficult to determine the market price on the basis of award for acquiring the lands for the purpose of widening the road in the Siddhpur town itself i.e. within the municipal limits. The Apex Court in case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, has pointed out that :

"Market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged u/s 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged u/s 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged u/s 4(1) of the LA Act, ought to necessarily include, that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged u/s 23(1) of the LA Act."

28. In case of AHMEDABAD MUNICIPAL CORPORATION AND OTHERS V/S SHARDABEN AND OTHERS REPORTED IN 1996(8) S.C.C. PAGE 93, the Apex Court pointed about the duty of Court to scrutinise the evidence and apply test of

prudent and willing purchaser. The Court pointed out that:

"the burden is always on the claimants to prove by adducing reliable evidence that the compensation offered by the Land Acquisition officer is inadequate and the lands are capable of fetching higher market value. It is the duty of the court to closely scrutinize the evidence and apply the test of prudent and willing purchaser i.e., whether he would be willing to purchase in open and normal market conditions of the acquired lands and then determine just and adequate compensation."

29. In the instant case what is found is that the acquired lands are at a distance of 2 km. from the limits of Siddhpur municipality but there is nothing to indicate about the commercial, industrial or any other kind of development that might have taken place at the relevant time. The lands being agricultural lands, in view of the Tenancy Act, it cannot be used without permission for other than agricultural purpose and therefore the question of putting up the building for residential, commercial or industrial does not arise. The statutory impediments which restrict the use of land for other purposes is required to be borne in mind. At the same time in the instant case, the lands are abutting on the highway but is away from the municipal limits and in the absence of development, the market value is to be determined as agricultural lands as suggested by Mr. Shah, learned counsel appearing for the appellants. No evidence has been placed on record that outside the municipal limit there was demand of lands for the building purposes. In the absence of any evidence with regard to building potentiality, the matter is required to be judged as contended by learned counsel for the appellants that the lands are agricultural lands only. On the other side, Mr. Patel submitted that notification was issued for the purpose of development of plots for Gujarat Industrial Development Corporation and that too, in the nearby area. According to his submission, after the development of G.I.D.C. estate certainly the lands in question would fetch more price. No material has been placed before the court whether at the time of acquisition or even at the time of recording evidence, whether there was development of G.I.D.C. or not so as to suggest that the lands had some building potentiality. However, it is a fact that the lands which were acquired were at some distance from the land which were acquired for G.I.D.C. From the map, it was pointed out that after leaving 10 fields from the municipal limits of Siddhpur, lands were acquired. The State Government issued the notification for acquisition of lands for G.I.D.C. In the award, the Special Land Acquisition officer has referred the notification issued under sec. 4 of the act on 28.4.87 in this case and the Special Land Acquisition officer has also noted subsequent notification under sec. 4 of the Act published on 19.8.88 for acquisition of land for G.I.D.C. He has specifically stated that these lands are situated nearer to the municipal limits in comparison to the lands in question. He has indicated survey no. 330 and 340/1 for the industrial estate. In view of the fact that the lands were acquired for G.I.D.C. naturally there would be development and some advantage would go to the claimants if the lands were not acquired earlier. Mr. Patel submitted that in view of the acquisition for

G.I.D.C. they would have used the land for different purpose after taking permission from the competent authority but before any steps could be taken, these lands were acquired and therefore the amount should be awarded considering that these lands had some building potentiality. It is to be noted that for the lands in question, notification was issued on 28.4.87 and therefore at that time there was no question of use of lands for other purpose as for G.I.D.C. notification was issued on 19.8.88. At the relevant time, what was the value was required to be determined.

30. We have indicated that in view of the restrictions imposed under the Tenancy Act, the lands could not have been used for any other purpose and ordinarily even could not have been transferred. In view of this, the development could not have been free as it is permissible for the lands other than agricultural lands. There are restrictions and considering these restrictions coupled with the fact that there was no development nearby the lands the amount of compensation is required to be awarded. Till today, no award has been made by the reference court with regard to the lands acquired for G.I.D.C. That apart, the court will have to examine the matter independently on the basis of evidence which is placed on the record.

31. In view of what we have stated hereinabove, we are of the view that for determining the market price of the agricultural lands, the court is required to consider the use of land, restriction imposed by other provisions to put it to a different use and the development that has already taken place at the time when the notification was issued. The development, if it was at the relevant time in progress, was required to be considered. But in absence of any evidence pointing out development nearby the lands at the relevant time, the court will have to determine the market price of agricultural lands on the yield basis. The reference court has awarded compensation @ Rs.70/- per sq. mtr. and Rs.65/- per sq.mtr. In our view, even considering the yield and the likely development, the price is determined, it cannot be at the rate at which the price is determined by the Reference Court. Following aspects were required to be taken into consideration :

1) The lands were outside the limits of Siddhpur Municipality and at a distance of 2 km. on the national highway. Some parcels were near the railway track.

2) The lands were used as agricultural lands.

3) In view of the provisions contained in the Tenancy Act, the use was restricted.

4) There is no evidence of any development nearabout the lands acquired. Witness, Natwarlal, was examined by the claimants to indicate higher price and to prove document executed in 1993. From his evidence, it is clear that even in 1993 there was no development.

5) The awards relied upon cannot be taken into consideration as the lands in those awards were acquired much before and situated within the limits of Siddhpur for widening the road.

There is no evidence indicating any development whatsoever adjoining to the lands in question which were acquired or within the vicinity of 2 km. Even within the Siddhpur limit, there is nothing to indicate that there was development near the city limits. The evidence of the claimant reveals that the claimants were getting net profit of Rs.8,000/- to Rs.10,000/-.

32. The agricultural lands situated nearby the villages were acquired and the claimants were awarded compensation @ Rs.10/- per sq. mtr.

33. The sale instances which are for the lands situated within the limits of Siddhpur municipality is at a distance of more than 2kms. and the lands were nonagricultural. The other instance given is for a very small parcel of land admeasuring 44.20 sq. mtr., and it cannot be taken into consideration.

34. However, at the same time, in view of the evidence, following aspects are required to be borne in mind :

a) Nearby the lands, G.I.D.C. acquired huge parcels of land for development of industrial estate, therefore, there were all possibilities for development of these lands by obtaining proper permission from the authorities.

b) Some of the parcels were situated on the national highway.

c) There is fast development of cities and towns in Gujarat.

35. In the instant case, there is evidence for the purpose of development outside Siddhpur limits. G.I.D.C. has acquired vast area for industrial development. Therefore, in our view, considering the yield and likely development, the amount is required to be determined. Considering the evidence, the claimants stated that they used to earn Rs.10,000/per year but in view of vague statement it would be difficult to put absolute reliance on the income aspect but at the same time it is required to be borne in mind that the State Government has not produced any evidence. The witness Tulsibhai in his evidence has not given any indication about the amount required to be spent for the purpose of cultivation etc. The Apex Court has pointed out in STATE OF GUJARAT & OTHERS V/S RAMA RANA & OTHERS REPORTED IN 1997(3)G.L.R. 1954 that:

"The Reference court also found that the witnesses exaggerated the yield. On that basis, it determined the market value after deducting 1/3rd towards prices @ Rs.325 per Acre. It would be common knowledge that expenditure would be involved in raising and harvesting the crops and that, therefore, on an average 50% of the value of the crop realised would go toward cultivation expenses. Therefore, deduction of 1/3rd was not correct in determining the compensation of the lands on the basis of the yield."

The Apex Court further pointed out that:

"normally, they should have produced the statistics from the Agricultural Department as to the nature of the crops and the prices prevailing at that time. But unfortunately, neither claimants nor the Government took any steps to adduce the best evidence. It is a fact that the Government has failed to adduce any evidence in that behalf. However, we cannot reject the oral evidence of the witnesses on that ground alone. The court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man, i.e., whether he would be willing to purchase the land at the rates proposed by the Court. On the touch-stone of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on compensation."

36. Thus, in absence of any evidence, the court pointed out that 50% of the amount is required to be deducted towards the expenditure and multiplier of 10 is required to be given. Reading the said principle, even if we read the evidence suggesting that the claimant was earning Rs.8,000/- to Rs.10,000/- net per year, it is difficult to place reliance on that figure as no reliable evidence is produced and evidence is vague. The witness has not given the details about the market price with respect to the crops indicated in his evidence or price offered by the Agricultural Produce Market Committee in this behalf. The claimants could have produced evidence in this behalf by examining a person from the Agriculture Produce Market Committee established under the Agriculture Produce Market Act. The witness has not stated about the seeds, labour charges, electricity charges or anything and thus, vague evidence is given and in view of this, we would be justified in deducting 50% from the sum of Rs.10,000/-. The net income would be Rs.5,000/- per bigha. Considering the fact that one bigha is equal to 1600 sq. mtr., as stated by the learned A.G.P., net profit per sq. mtr. would be Rs.3.125ps. to which multiplier of 10 is required to be applied and the price would be Rs.31.25ps. These claimants would be getting on the basis of yield.

37. The learned advocate for the appellant was not in a position that while determining the market price its earning is not required to be taken into consideration. Considering this, we are of the opinion that the market price of the lands is required to be determined. We are of the view that if Rs.32/- in addition to what the Special Land Acquisition Officer has awarded would be the approximate market price of the lands acquired. As we have indicated, the future development etc. is also required to be taken into consideration. The Land Acquisition Officer in his award, apart from other factors, has discussed and also taken into consideration the factors of the acquisition of nearby lands by GIDC, its proximity to the Highway and town limit etc. As we are awarding amount over and above the amount awarded by the Land Acquisition Officer, we do not find any reasons to award any additional amount for these factors. In our opinion, as we are awarding Rs.32/- per sq. mtr. in addition to the amount awarded by the Land Acquisition Officer, the ends of justice would be served by considering the total compensation qua award for factors of the acquisition of nearby lands by GIDC, its proximity to the Highway and town limit etc.

38. Under the circumstances, the appeals preferred by the appellants are required to be allowed. The order made by the Reference Court is quashed and set aside. The claimants are held entitled to claim Rs.32/per sq. mtr. in addition

to the amount awarded by the Special Land Acquisition officer under the award.

39. Consequently, the Cross-Objections preferred by the claimants are required to be rejected.

