
(2005) 02 GUJ CK 0069
In the Gujarat High Court

Case No : Special Civil Application No's. 15947 to 15983 of 2004

Indian Oil Corporation Ltd.

APPELLANT

Vs

Patel Kishorbhai Punjiram

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Bombay Town Planning Act, 1954 — Section 53
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 30, 115
Constitution of India, 1950 — Article 227
Gujarat High Court Rules, 1998 — Rule 138
Land Acquisition Act, 1894 — Section 11, 23(1A), 23(2), 28, 4

Citation : (2005) 02 GUJ CK 0069

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : Nanavati Associates, for the Appellant;

Final Decision : Dismissed

Judgement

C.K. Buch, J.—At the request of the learned counsel appearing for the parties, and on their consent the present group of petitions are taken up for final disposal at the admission stage.

2. Heard the learned Senior Counsel, Mr K.S. Nanavati, for Nanavati Associates on behalf of the petitioners and Mr A.J. Patel, learned Senior Advocate, for the respondent in each of the petitions.

3. The petitioner-Indian Oil Corporation Limited (hereinafter referred to as "IOC") has moved this group of petitions under Article 227 of the Constitution and has challenged the order dated 9th November 2004 passed by the learned Assistant Judge, Mehsana, below application exh.1 in Execution Petitions filed by the original land owners. These petitions arise out of a common order passed by this Court in First Appeal Nos. 3415 of 2000 to 3458 of 2000.

4. To appreciate the say of the petitioners, it is necessary to state the facts in brief leading to the present petition. The petitioner-IOC, for the purpose of

establishment of a storage depot of its petroleum product, requested the Government of Gujarat to acquire certain parcels of land admeasuring 2,92,294 sq. meters in village Rajpur, Taluka Sidhpur, and ultimately the State Government for acquiring the land issued the notification u/s 4 and 6 of the Land Acquisition Act. The notification u/s 4 of the said Act was issued on 26th April, 1989 and the notification u/s 6 of the said Act was issued on 18th July, 1989. The possession of the land undisputedly was taken over on or about 4th April, 1989, the day on which Section 4 of the notification came to be published. After following the due procedure of law the Special Land Acquisition Officer passed the award u/s 11 of the Act on 4th January, 1993 and awarded compensation to the original land owners at the rate of Rs.8.73 per sq. meter for the land located near the State Highway and at the rate of Rs.8 per sq. meter in respect of other lands, which were having approach road from the main road. Some land owners are awarded the compensation at the rate of Rs.7.25 ps. per sq. meter and the land owners having no such entrance have been compensated at the rate of Rs.7 and Rs.6 per sq. meter. As per the scheme of the statute i.e. Land Acquisition Act, the Land Acquisition Officer awarded solatium, additional compensation and interest on the said amount to the land losers. The petitioner-company, ultimately, in the capacity of acquiring body deposited the entire amount as per the award drawn by the Land Acquisition Officer.

5. According to Special Land Acquisition Officer the amount of compensation is paid determining the market value of the land as observed and contended in the award u/s 11 of the Act. But, as the land losers were not satisfied with the decision of the Land Acquisition Officer qua market value of the land, which was acquired, they have filed 44 different reference cases and ultimately the reference cases came to be transferred to the Court of the District Judge, Mehsana, and all these reference cases came to be decided by the Assistant Judge, Mehsana, by a common judgment and order on 29th February 2000. The learned Assistant Judge held that the market value determined by the Land Acquisition Officer is inadequate and he fixed the market value of the land acquired at the rate of Rs.70 per sq. meter for the land adjoining the National Highway and Rs.65 per sq. meter for the remaining parcel of land. The opponents, including the IOC, was directed to pay compensation u/s 23(1A) of the Land Acquisition Act along with solatium and interest. The IOC aggrieved and dissatisfied with the market value determined by the Assistant Judge, Mehsana, in spite of judgment and award passed by the Reference Court preferred 44 different first appeal before this Court. All these appeals came to be registered as First Appeals Nos. 3415 to 3458 of 2000. After hearing all 39 appeals the Division Bench ultimately held that the claimants are entitled to claim Rs.32 per sq.m. in addition to the amount awarded by the Land Acquisition Officer in the award. the cross objections preferred by the land losers came to be rejected by the very judgment.

6. It is contended by the petitioner-IOC that in accordance with the order passed by this Court in First Appeals the IOC has deposited the entire amount with the

reference court, and even then, the claimants preferred execution petitions on the ground that the amount of solatium required to be deposited has not been paid to them and the interest amount is also not paid to them. The executing court, accepting the say of the land-losers, held that the petitioners are entitled to the amount of solatium and interest also on the additional amount of Rs.32 per sq. meter granted by this Court. The gist of the contention of the learned Senior Advocate Mr K.S. Nanavati is that though it is settled legal position that the executing court cannot go beyond the decree and has to execute the decree as it is, the executing court has tried to recover an amount, which cannot be said to be a decretal amount. No Court, according to Mr Nanavati, can execute a decree beyond its scope and none of the parties can be permitted to travel beyond the decree. According to Mr Nanavati, while disposing of the first appeals this Court has neither awarded the solatium at the rate of 30% on the additional amount of Rs.32 or any other amount u/s 23(1A) of the Land Acquisition Act. The executing court therefore has interpreted the decree by reading the same between the lines, which is beyond the scope and jurisdiction vested with the executing court. For the sake of convenience, I would like to quote the relevant part of the order under challenge:-

"(2) It transpires that my learned predecessor Judge was pleased to partly allowed the Land Acquisition Reference with interest. The Hon'ble High Court of Gujarat has also allowed the appeal and also pleased to held that the claimants are entitled to claim Rs.32/= per sq.mtr. in additional to the amount awarded by the Special Land Acquisition Officer under the award. I am also of the opinion that the claimants are entitled to solatium 30% interest at enhanced rate. Hence, I pass the following final order.

ORDER

Issue attachment warrant under Order-21, Rule-30 of CPC against the opponent on payment of process fee."

7. In this petition the petitioner-IOC has prayed that the above order below exh.1 passed by the learned Assistant Judge, Mehsana, in execution petition should be quashed and it should be held that the order under challenge is not executable and the execution petition also deserves to be dismissed.

8. When this matter was listed for admission hearing, this Court (Coram: A.L. Dave, J.) issued the notice and granted ad-interim relief in terms of paragraph 10(B) has been granted on condition that, "the petitioner shall deposit the amount ordered by the executing court with the executing court before the returnable date." I am told by learned Senior Counsel Mr Nanavati that the entire amount in compliance with the order passed by this Court has now been deposited.

9. According to learned Senior Advocate, Mr Nanavati, no formal decree or award has been drawn after the decision rendered in the first appeals by this Court. Therefore, there was no scope to exclude the decree as prayed for in the

execution petition and it should be appreciated that as per Rule 138 of the Gujarat High Court Rules, 1998 unless the decree is drawn by the High Court as per the judgment and decree passed in the first appeal, respondent No. 1-land loser is not entitled to execute the decree. As per the instructions received by Mr Nanavati, only Farad, operative portion of the judgment, has been communicated to the Reference Court along with the bill of costs.

10. One of the submissions of Mr Nanavati is that as per the provisions of the CPC in absence of a formal decree, no proceedings for execution of a decree, in view of the provisions of Order 21 Rule 10, would lie before the trial court and the executing court ought to have rejected the execution application holding that the same is not maintainable. It is further argued that the judgment and order passed by this Court does not speak about the award of solatium and of interest as per Section 23(1A) and 23(2) of the Land Acquisition Act. Though the High Court has not issued such a specific direction or passed any order either by oversight or through mistake, and the reference court has tried to execute the decree and while executing the judgment and award it has substituted its own direction. This is apparent error of law as well as jurisdiction. It is submitted that the proper course would be not in execution proceedings but in appropriate proceedings for review of the High Court's judgment and/or order. The land losers also could have preferred the appeal before the higher forum in absence of such directions. In nutshell, the submission is that in absence of a specific direction by this Court while disposing of the first appeals in accordance with Section 23(1)(a) and 23(2) the executing court should not have ordered for issuance of execution warrant and especially in absence of formal decree drawn in pursuance of the High Court judgment, the trial court in execution proceedings cannot go beyond the High Court's order or decree.

11. In support of his submission, Mr K.S. Nanavati, learned senior advocate, has placed reliance in the case of BAI SHAKRIBEN V. SPECIAL LAND ACQUISITION OFFICER reported in AIR 1996 SC 2233 and argued that the decree allowed to become final cannot be amended by the executing court or reference court by exercising the powers under Order 47 Rule 1 and Section 151 of the Civil Procedure Code. After referring to different decisions of the Apex Court it is held that the omission to award additional amount u/s 23(1A) the enhanced interest u/s 28 and solatium u/s 23(2) are not clerical or arithmetical mistakes crept in the award passed by the reference court. Under those circumstances, the reference court was in clear error in entertaining the application for amendment of the decree and is devoid of powers and jurisdiction to award amount u/s 23(2), 23(1A) and 28 of the Land Acquisition Act. In the said decision the petitioners therein have attempted to see that the award is corrected and therefore a formal amendment application was moved before the reference court. The amount of compensation was determined on 19th May 1980 and the reference court u/s 18 of the Act enhanced the amount of compensation by its award and decree u/s 26 on August 20, 1983. The petitioners had prayed that they are entitled to get the amount at enhanced rate because, by that time, the High Court, by its judgment

dated 21st August, 1994, dismissed the appeal of the State Government preferred against the judgment and award passed by the reference court. It was prayed that in view of the amendment by the Central Act 68 of 1984 the claim should be awarded amount as per enhanced rate. So, such amendment was considered to be an attempt of correction of decree under an award u/s 151 read with Order 47 Rule 1 of the Civil Procedure Code. The ratio of this decision would not help the present petitioner as in the present case the land-losers have not made any attempt to get the decree amended or corrected. The case of the land-losers is that on determination of the market value by the High Court it is simply substituted in the award drawn by the Land Acquisition Officer and thereby the judgment and award drawn by the Reference Court can be said to have been substituted by figure 32 instead of figure decided by the reference court.

12. The second decision cited by Mr Nanavati is in case of Rameshwar Das Gupta Vs. State of U.P. and Another, In the said decision the executing court has attempted to travel beyond the decree under execution. In paragraph 4 the Apex Court has observed as under:-

"It is well settled legal position that an executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21, CPC. In view of the fact that it is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the Court having decided the entitlement of the decree-holder in a sum of Rs.1,97,000/= and odd, the question that arises is whether the executing Court should step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution? In our view, the executing Court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It is true that the High Court normally exercises its revisional jurisdiction u/s 115, CPC but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same."

13. On fact, the Supreme Court in the said decision, found that the High Court has not committed any error because the executing court was supposed to compute, in a money claim, the arrears of salary, gratuity and pension after computation of his promotional benefit in accordance with service law. The question placed before the Court was that after calculating this amount whether the executing court could set out and grant a decree for interest, which was not part of decree for execution on the ground of delay in payment or for unreasonable stand taken in execution. In the present case the facts are materially different than the cited decision. It is true that the award is a money decree and is a decree of the type where other consequential reliefs flow from the statute i.e. Land Acquisition Act and the land-loser is made entitled under a statute i.e. as per the scheme of Section 23 etc. being a proceeding of

compulsory land acquisition. The duty of the Land Acquisition Officer is to decide only market value of the land acquired. In the present case the Land Acquisition Officer undisputedly, has awarded the amount of solatium and interest as per the scheme of the Land Acquisition Act. So, the market value of the land decided by the Land Acquisition Officer therefore for the purpose of execution ought to have been calculated as under:-

(a) the market value decided by the Land Acquisition Officer qua the location of the land in question; + (b) Rs.32 the enhanced by the High Court plus the statutory amount that is required to be awarded to all land-losers and awarded by the Land Acquisition Officer, which was not disturbed by the reference court.

14 It is true that the order of reference court merges with the order passed by the first appellate court but it would be wrong to interpret that it was not the intention of any of the Courts that the amount of solatium and interest as per the scheme of Section 23(1A) and 23(2) of the Land Acquisition Act was not awarded. Therefore, this decision also would not help the present petitioners.

15 The third decision cited by learned Senior Advocate, Mr Nanavati, deals with the practice and procedure i.e. regulations to be followed in cases where the award drawn under Land Acquisition Act is placed for execution as a decree [Karnal Improvement Trust v. Ram Prakash and Ors. reported in JT 1996 (4) 89]. In the said decision the Supreme Court had remanded the matter for determination of the compensation. The respondent, pending determination, had filed execution application. The objection of the appellant-trust was overruled by the High Court. The Apex Court has held that the respondent, land-losers, could not execute the decree until a fresh award is passed in accordance with law and on the date of the execution there was no award in existence. It is true that in the present case no formal award is drawn by this Court after the decision in the first appeals and the operative portion of the order was sent to the reference court. The operative portion of the order reads as under:-

"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."

Undisputedly, before the execution, the entire judgment was available with the parties and in the reference court. Though it is a repetition, it would be convenient to reproduce the order portion that was conveyed to the reference court by the registry, which reads as under:-

"For the reasons recorded in accompanying the oral jt. the Court has ordered that 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. meter in addition to the amount awarded by the Spl. Land Acq. Officer under the award.

Consequently, the Cross-Objs. preferred by the claimants are required to be rejected."

16. I have considered the form Appendix-D in which there are 24 forms including form for decree in original suit and decree in money suit i.e. simple money decree (Section 24). The operative portion accompanied with the memo of cost is nothing but a part of original/appellate decree in a given claim. Therefore, it has an effect of decree that can be executed. Therefore, the Court is not in agreement with the argument of Mr Nanavati that in the present fact situation a fresh formal decree by a first appellate court was required to be drawn. This Court, while dealing with first appeal, has not disturbed or otherwise altered the finding recorded by the Land Acquisition Officer except the figure of market value decided by the Land Acquisition Officer and thereafter enhanced by the reference court.

17. It is relevant to note that there was no dispute as to the measurement of the land or location of the land decided by the Land Acquisition Officer and only the market value of the land compulsorily acquired was under serious dispute and that dispute ultimately came to be resolved by the first appeal. Without challenging the market value decided by this Court the petitioner has deposited the amount in accordance with the judgment and award passed by this Court in conformity with the judgment of the first appellate court. Therefore, the figures in the original award passed by the Land Acquisition Officer should be read accordingly. It was firstly corrected by the reference court and again came to be corrected by the appellate court. The executing court was supposed to consider the effect of the addition in the amount i.e. fresh determination of market value. The question that is required to be answered by this Court is whether it is necessary to mention that statutory obligation of the acquiring body or machinery also should be fulfilled in accordance with the scheme of the statute when it was not disputed by the acquiring body before any forum. Hence, it is necessary to quote Section 23(1), 23(1-A) and 23(2) of the Land Acquisition Act.

"23. Matters to be considered in determining compensation -- (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration --

first, xxx xxx

(1-A) In addition to market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Sec.4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation: In computing the period referred to in this sub-section any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value in consideration of the compulsory nature of acquisition."

The scheme of compulsory acquisition of land is complete and unless the amount equal to the market value determined under the scheme of the Land Acquisition Act is paid with statutorily required additional amount, I am afraid, the property under acquisition would carry the charge till the amount as per law determined by the Land Acquisition Officer or by the reference court or by the last highest forum is paid. The IOC may not be absolutely a government owned company but when Union of India has more than 51% stake in its shares and it being an instrumentality of a State, it was obligatory on the part of the IOC to pay the amount payable to the land-losers under the statute.

18. The learned senior advocate, Mr A.J. Patel, appearing for the land-losers has rightly placed reliance on the ratio of the decision in the case of NAGPUR IMPROVEMENT TRUST V. VASANT RAO reported in 2003(1) GLH 140 wherein the Apex Court has observed in paragraph 40 of the said decision as under:-

"40. It may be noticed that in U.P. Avas Evam Vikas Parishad v. Jainul Islam and Anr. (supra) this Court highlighted the fact that though under the Land Acquisition Act as amended in its application to the state of U.P. there was no provision for grant of solatium, by the U.P. Act such solatium was provided for. The intention of the legislature was apparent that it wanted to confer the benefit of solatium by modifying Section 23(2), which benefit was not available under the provisions of the Land Acquisition Act as it was applicable in the state of U.P. at the time of enactment of the U.P. Act. So far as the Punjab Act and the Nagpur Act are concerned, the schedules do not modify the provisions of Section 23(2) of the Land Acquisition Act which provides for payment of solatium. However, a proviso was added to the effect that sub-section (2) shall not apply to any land acquired under the state Act in question. The added proviso is identical in both the state Acts. This clearly implies that where acquisition was made under the provisions of the Land Acquisition Act, as modified the legislature did not intend to deprive the claimants of solatium as provided under the Land Acquisition Act. But solatium was not payable in cases of acquisition under the state Acts. There are provisions in both the state Acts which permit the state to acquire lands for the purposes of the schemes without resorting to the provisions of the Land Acquisition Act such as acquisition by purchase, lease, exchange, or otherwise, or acquisitions contemplated under deferred street scheme, development scheme and expansion scheme. In respect of such acquisitions solatium is not payable. Such cases are similar to the acquisitions u/s 53 of the Bombay Town Planning Act which was considered by this Court in Prakash Amichand Shah v. State of Gujarat and Ors. (Supra). In these circumstances with a view to save the law

from the vice of arbitrary and hostile discrimination, the provisions must be construed to mean, in the absence of anything to the contrary, that the provisions of the Land Acquisition Act as amended by the 1984 Act relating to determination and payment of compensation would apply to acquisition of land for the purposes of the state Act. It must, therefore, be held that while incorporating the provisions of the Land Acquisition Act in the state Acts, the intention of the legislature was that amendments in the Land Acquisition Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the state Acts. Consequently the claimants are entitled to the benefits conferred by Section 23(1-A), if applicable, and Sections 23(2) and 28 of the Land Acquisition Act as amended by the 1984 Act for acquisition of the land for the purposes of the state Acts u/s 59 of both the Nagpur and the Punjab Acts."

19. This decision clearly states that the claimants are entitled to the benefit conferred by Section 23(1A) of the Act and Sections 23(2) and 28 of the Act, if applicable. It is not the say of the petitioners before this Court that the scheme of these sections was not applicable in the present case even then, the executing court has decided to issue the jangam warrant. It is stated by the Apex Court in the case of VIJAY COTTON MILLS LIMITED v. STATE OF GUJARAT that as per the scheme of Section 28, 34 and 18 the interest on the amount of compensation can be claimed at any stage of the proceedings and the claimants need not file separate appeal or cross objections in the High Court. This decision straightway would not help the land-losers because the same is based on different set of facts. Here, there is no dispute as to whether the amount of interest is awarded or not but the Court finds that there is no substance in the say of the petitioner that the amount of interest on the market value decided by the Appellate Court was not awarded. It is a statutory entitlement and it follows the market value. However, the Court is inclined to quote the relevant paragraph 9 of the said decision because the same deals with the interpretation of scheme of Section 23(1), 23(2), 26 and 18 of the Land Acquisition Act with other provisions. Paragraph 9 reads as under:-

"9. While answering the above quoted questions, the High Court, on the interpretation of Ss.23(1), 26, 27 and 28, came to the conclusion that the interest, payable to the claimants under the Act, has to be part of the award-decree along with the compensation amount and as such is subject to rules of procedure and limitation. In this respect High Court observed as under:

"In our view, much though interest can be treated as not a part of compensation as such u/s 23(1) of the Act, it has to be made a part of the award to be passed under S.26 of the Act. It is that award which includes the order relating to costs and interest contemplated under Ss.27 and 28 respectively along with the amount of compensation awarded under S.23(1) of the Act that makes a complete award. It is that award or a part of that award which becomes appealable as the case may be under S.54 of the Act as that award is deemed to

be a decree under S.2, Clause (2) and S.2, Clause (9) respectively of the Civil Procedure Code." 20 It is rightly submitted by Mr Patel that the solatium awarded u/s 23(2) of the Land Acquisition Act is nothing but a money decree and this amount is to be paid to a land-loser who is compelled to give up his title and possession of the land against his will and wish. Therefore, this amount is nothing but a solace given in addition to the market value of the land decided by the statutory authority and not by the real owner of the land. In the case of *Desaibhai Somabhai v. Executive Engineer, Narmada Main Canal Division No. 1, Ahmedabad* the Division Bench of this Court observed as under:- "if there were cogent reasons existing, they would have certainly found place in the judgment. However, the fact remains that they do not exist and therefore also it can be safely inferred that this Court never meant to deprive the applicants of their valuable statutory right to receive solatium and"

In the present case the Court is of the view that the appellate court while disposing the first appeal had never touched the issue of payment of solatium or interest. The facts in the case of *Desaibhai (supra)* are materially different. In the said decision, the applicants had approached by moving Misc.Civil Application in the first appeal so that they can be specifically held entitled to have the amount statutorily awardable in case of compulsorily acquired land under the Land Acquisition Act. Having considered all the three operative orders in the present case i.e. award drawn by the Land Acquisition Officer, the order of the reference court determining the market value afresh on the strength of the evidence led before it and the last order in the first appeal whereby the appellate court decided that each claimant is entitled to additional amount of Rs.32 over and above the amount awarded by the Land Acquisition Officer.

21. This Court is not supposed to interpret the judgment and order in first appeal but by reading the same, it can be opined that the executing court has not made any attempt to travel beyond decree. The dispute before the appellate court was only qua the determination of the market value of the land acquired and the rest of the award was not under any debate or controverted.

22. The Court is not able to accept the argument indirectly placed before the High Court or the Supreme Court while interfering with the orders of the subordinate courts qua the determination of the market value is supposed to say afresh that the land-losers are entitled to the amount, both solatium and interest in accordance with the scheme of Section 23(1A), 23(2) and 26 of the Land Acquisition Act.

23. The Court is of the opinion that such objection normally should not be taken by the acquiring body especially when it has some different socioeconomic status and image in the business field. There is, therefore, no merit in the petition and the same is dismissed accordingly. Notice is discharged.