

(2011) 04 GUJ CK 0116
In the Gujarat High Court

Case No : First Appeal No"s. 3744 to 3745 of 2005

Jayantibhai Lakhubhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 23(1A), 23(2), 28, 4

Citation : (2011) 2 GLH 1467

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

Bench : Single Bench

Advocate : Priyanka Japee, for J.V. Japee, for the Appellant; Shachi Mathur, AGP, for the Respondent

Judgement

J.C. Upadhyaya, J.—Both these appeals arise out of common impugned judgment and award dated 16.09.2005 rendered by the learned 3rd Additional Senior Civil Judge, Sabarkantha at Himmatnagar in Land Reference Cases No. 70 of 1997 and 71 of 1997 (L.A.R. No. 70 of 1997 as main case) whereby the Reference Court determined the market value of the acquired lands of the Appellants - claimants at the rate of Rs. 1,000 per R.A. (Rs. 10 per sqs. mtr.). The Reference Court also awarded statutory additions namely 12% per annum interest as provided u/s 23(1A) of the Land Acquisition Act ("the Act" for short) and solecism as provided u/s 23(2) of the Act. The Reference Court granted interest as contemplated u/s 28 of the Act.

2. Certain agricultural lands situated in the outskirts of Village: Hadiyol, Taluka - District: Himmatnagar proposed to be acquired for the public purpose of Himmatnagar to Dhansura Road. The Notification u/s 4 of the Act came to be published on 30.07.1992. The Notification u/s 6 of the Act came to be published on 11.01.1994. The Special Land Acquisition Officer conducted inquiry in L.A.Q. Case No. 98 of 1992 to determine the fair and reasonable amount of compensation. The Special Land Acquisition Officer at the end of the inquiry offered compensation to the Appellants - claimants at the rate of Rs. 225 per

R.A. (Rs. 2.25 paise per sq.mtr.). The Appellants - claimants felt that the amount of compensation offered to them was quite inadequate and meager and, therefore, applied for References and claimed that they should have been paid compensation at the rate of Rs. 50 per sq.mtr. Their References were numbered and registered as Land Reference Cases No. 70 of 1997 and 71 of 1997.

3. Both the Reference Cases came to be consolidated and common evidence was recorded by the Reference Court. The claimant Ramabhai Lakhubhai Patel came to be examined at Ex.15. The claimants produced relevant documentary evidence including the certified copy of the previous award at Ex.18 which came to be passed in L.A.R. Nos. 4274 to 4295 of 1989 on 11.11.1998 by the same Reference Court. The claimants also produced at Ex.19 the copy of the order dated 17.01.2001 passed by this Court in Civil Application No. 10143 of 2000 in First Appeal (Stamp) No. 2645 of 2000 whereby this Court dismissed the said Civil Application No. 10143 of 2000 preferred by the State for condonation of delay and accordingly, First Appeal (Stamp) No. 2645 of 2000 intended to be preferred by the State challenging the previous award at Ex.18 dated 11.11.1998 came to be dismissed. On behalf of the opponents, the Special Land Acquisition Officer Dr. Bhallar came to be examined at Ex.32. The Reference Court, after examining and evaluating the evidence on record, came to the conclusion that the previous award at Ex.18 cannot be considered as this Court did not decide the aforesaid appeal on merits, but the said appeal came to be dismissed as the delay was not condoned by this Court. Moreover, the Reference Court held that the Appellants - claimants did not produce any evidence to show that the lands for which the earlier award at Ex.18 came to be passed was similar in nature to the acquired lands of the Appellants - claimants. However, considering paragraph No. 14 in the impugned judgment and award, the Reference Court discarded the evidence in the nature of previous award of the lands of the same village i.e. Hadiyol, by observing that the claimants failed to produce any evidence to show that any lands situated in said village fetched Rs. 300 per R.A. as market price, but it appears that thereafter, without assigning any reason, the Reference Court came to the conclusion that the claimants were entitled to recover compensation at the rate of Rs. 1,000 per R.A (Rs. 10 per sq.mtr.).

3.1. Before the Reference Court on behalf of the Respondent - State, a contention was raised that the claimants had applied for References after the period of limitation was over and, therefore, issue regarding the limitation came to be raised. The Reference Court, while replying the issue regarding the limitation came to the conclusion that the References were applied for within the prescribed period of limitation and, therefore, came to the conclusion that the References were filed within the prescribed period and replied issue No. 2 in the affirmative.

4. The claimants felt that the amount awarded by way of compensation to them by the Reference Court was inadequate and insufficient and further felt that the approach of the Reference Court in completely discarding the previous award at

Ex.18 was faulty and, therefore, preferred these appeals for enhancement of amount of compensation. It seems that the Respondent - State has not preferred any appeal challenging the findings arrived at by the Reference Court in the impugned judgment and award.

5. Ms. Priyanka Japee, learned Counsel for Mr. J. V. Japee, learned Counsel for the Appellants - claimants submitted that the impugned judgment and award passed by the Reference Court is contrary to law and facts on record. It is submitted that before the Reference Court, the claimants produced at Ex.18 a copy of previous award passed by the same Reference Court in L.A.R. Nos. 4274 to 4295 of 1989 whereby the Reference Court vide judgment and award dated 11.11.1998 fixed the market price of the acquired lands in the said case at the rate of Rs. 3000 per R.A (Rs. 30 per sq.mtr.). It is submitted that considering the previous award at Ex.18, it clearly transpires that certain lands situated in the outskirts of the same village i.e. Village: Hadiyol came to be acquired for identical public purpose and in the said case, the Notification u/s 4 of the Act was published on 21.01.1988. It is, therefore, submitted that in every respect, the previous award at Ex.18 was comparable award. It is submitted that in the instant case, the Notification u/s 4 of the Act came to be published on 30.01.1992 i.e. after about 4 years from the publication of the said Notification in the previous award at Ex.18 and, therefore, considering the formula of 10% increase per year in the value of the land, in the instant case, the Reference Court should have awarded appropriate award of compensation taking the comparable award at Ex.18 as base. It is submitted that the Reference Court adopting a very hyper technical approach, observed that since this Court did not condone delay caused in preferring the said appeal and accordingly, dismissed First Appeal (Stamp) No. 2645 of 2000 and, therefore, it was not safe to rely upon the comparable award at Ex.18. Ms. Japee, learned Counsel for the Appellants submitted that against previous award at Ex.18, the State preferred aforesaid appeal, but there was delay in filing the said appeal and, therefore, the State filed delay condonation application which came to be dismissed by this Court vide order dated 17.01.2009. It is submitted that accordingly, the proposed appeal was not admitted and came to be dismissed. Thus, the comparable award at Ex.18 attained finality as nothing transpires that the order dated 17.01.2001 at Ex.19 passed by this Court came to be challenged by the State before the Higher Forum. It is, therefore, submitted that the Reference Court erred in adopting hyper technical approach.

5.1. Ms. Japee, learned Counsel for the Appellants - claimants submitted that the second ground for which the Reference Court discarded the comparable award at Ex.18 is that the Appellants did not produce any evidence to show that the lands mentioned in the earlier award at Ex.18 were identically similar in fertility and in potentiality to the acquired lands of the claimants. It is submitted that considering the evidence of the claimant Ramanbhai Lakhubhai Patel at Ex.15, in his examination-in-chief, he has produced and proved the comparable award at Ex.18. He categorically deposed that considering the dates of publication of

Notification u/s 4, there was a time gap of 4 years and 4 months and, therefore, the claimants were entitled to claim more amount of compensation than what was awarded earlier by the Reference Court in the previous award at Ex.18. It is further submitted that on behalf of the State, this claimant was cross-examined at length, but nothing emerges that whatever he stated regarding the comparable award at Ex.18 was falsehood or untruth. Even no suggestion appears to have been put in the cross-examination of the claimants that the award at Ex.18 was not comparable award. It is further submitted that Special Land Acquisition Officer came to be examined at Ex.32 on behalf of the Respondent - State and in her entire deposition nowhere it is stated that the claimants were not entitled to recover compensation on the basis of the comparable award at Ex.18. It is further submitted that the claimants before Reference Court relied upon a case of The State of Madras Vs. A.M. Nanjan and Another, and relied upon the case of Dy. General Manager, O.N.G.C. Vs. Chaturji Lalaji and Others, It is submitted that in the impugned judgment and award, the Reference Court did not at all take into consideration these two decisions.

5.2. In the result, it is submitted that both these appeals may be allowed and appropriate amount by way of compensation may be enhanced.

6. Per-contra, Ms. Shachi Mathur, learned AGP for the Respondents supported the impugned judgment and award rendered by the Reference Court and submitted that the Reference Court did not commit any error in not considering the previous award at Ex.18 as comparable award. It is submitted that it is true that earlier award came to be passed by the Reference Court in connection with certain lands of the same village namely Hadiyol and in connection with same public purpose, but the claimants failed to produce any evidence to show that their lands were identical and similar in fertility and in potentiality to the lands earlier acquired contained in the award at Ex.18. That the claimants whose evidence was recorded before the Reference Court, even orally did not say that both the lands were identical and similar. It is, therefore, submitted that the Reference Court rightly discarded the award at Ex.18. Learned AGP for the Respondents submitted that the issue regarding limitation is question of law and it is true that the Reference Court came to the conclusion that the References were presented within the period of limitation and said finding is not challenged by the State by preferring any separate appeal, but the contentions regarding the law can be raised by the Respondent - State in these appeals filed by original claimants and submitted that the Reference Court erred in coming to the conclusion that the Reference was presented by the claimants within time limit. It is, therefore, submitted that the appeals may be dismissed.

7. I have examined the Record and Proceedings in context with the submissions made by rival side.

8. Examining oral as well as documentary evidence produced before the Reference Court, it clearly transpires that the entire controversy centers round the evidence in the form of previous award at Ex.18. Considering the copy of the

previous award at Ex.18 from the record of the Reference Court, it transpires that certain agricultural lands situated in the same village i.e. Village: Hadiyol came to be acquired vide Notification u/s 4 of the Act dated 21.01.1988 for the identical public purpose of public road between Himmatnagar to Dhansura. It further transpires that in the said case, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs. 70 per R.A. (70 paise per sq.mtr.) for irrigated land and Rs. 50 per R.A. (50 paise per sq.mtr.) for non-irrigated land. The Reference Court in the impugned judgment and award dated 11.11.1998 fixed the market value of the acquired lands at the rate of Rs. 3,000 per R.A. (Rs. 30 per sq.mtr.). It further transpires that in the said matter, the Respondent - State and the concerned Special Land Acquisition Officer felt that the amount awarded by way of compensation to those claimants was on higher side and, therefore, challenged the said award before this Court. However, the proposed appeal being First Appeal (Stamp) No. 2645 of 2000 was filed after the period of limitation was over and, therefore, the State filed delay condonation application being Civil Application No. 10143 of 2000. Before the Reference Court at Ex.19, the claimants produced copy of the order dated 17.01.2001 passed by this Court in Civil Application No. 10143 of 2000 in First Appeal (Stamp) No. 2645 of 2000. It transpires that this Court did not condone the delay caused in filing the appeal and the delay condonation application came to be dismissed and accordingly, First Appeal (Stamp) No. 2645 of 2000 was not admitted and stood dismissed.

9. The Reference Court in paragraph No. 14 in the impugned judgment and award dealt with the previous award at Ex.18 and the copy of the order passed by this Court in delay condonation application produced at Ex.19. The Reference Court came to the conclusion that this Court did not decide on merits the appeal preferred by the State, but simply this Court did not condone the delay and, therefore, the said appeal was not admitted and was dismissed. Therefore, the Reference Court observed that the previous award at Ex.18 cannot be considered. This Court is of the opinion that while discarding the previous award at Ex.18, the Reference Court appears to have adopted a very hyper technical approach. It is true that the previous award at Ex.18 came to be challenged by the State before this Court. There is no dispute that there was delay in filing the said appeal and the State filed delay condonation application which came to be dismissed by order dated 17.01.2001 and resultantly, the appeal was not admitted and stood dismissed. When such is the situation, the fact remains that the previous award at Ex.18 attained finality. Over-and-above this, neither before the Reference Court nor before this Court any material is placed to show that the order dated 17.01.2001, passed by this Court dismissing the delay condonation application of the Respondent - State, had been challenged by the State before Higher forum and the said order dated 17.01.2001 was set aside. Thus, in every respect, the previous award at Ex.18 attained finality and the Reference Court committed serious error in discarding the said previous award on such hyper technical ground.

10. The second ground for which the Reference Court discarded previous award at Ex.18 is that according to the Reference Court the claimants failed to show that the lands regarding which the previous award at Ex.18 was passed, were identically similar in potentiality and in fertility to the lands acquired of the claimants. In this respect, considering oral evidence of one of the claimants namely Ramanbhai Lakhubhai Patel examined before the Reference Court at Ex.15, in his examination-in-chief, he has categorically stated that earlier award at Ex.18 was passed regarding the lands of his village and the claimants were entitled to recover the compensation on the basis of the said award at Ex.18. He further stated that there was a time gap for more than 4 years between the dates of Notification u/s 4 of the Act and, therefore, they were entitled to recover more amount of compensation than what was awarded in the previous award at Ex.18. This claimant Ramanbhai Lakhubhai Patel appears to have been cross-examined at length on behalf of the Respondent - State, but nothing emerges that any challenge or any suggestion was put in his cross-examination by the Respondent - State that the claimants were not entitled to recover compensation on the basis of the comparable award at Ex.18 or that those lands were superior in quality in every respect than the lands of the claimants. Even considering the evidence of the Special Land Acquisition Officer Ms. Bhallar at Ex.32, in her evidence, nothing emerges that the lands involved in the previous award at Ex.18 were in any respect superior to the acquired lands of the claimants. In this respect, considering the case of *State of Madras v. A. M. Nanjan* (Supra), it transpires that in the said case, an award pertaining to the lands which were situated at the distance of 10 miles from the acquired lands, was considered to be the comparable award and the land was considered to be comparable land in the reasonable proximity of the distance. The Hon'ble Apex Court in paragraph No. 7 in the said decision held that rates found in comparable award would be a reliable material to afford a basis to work upon the determination of the compensation on a later date. Moreover, considering the case of *Deputy General Manager, ONGC v. Chaturji Lalji* (Supra), in the said case before this Court, earlier award passed regarding the lands of the same village came to be relied upon. This Court in paragraph No. 8 in the said decision observed that the comparable award was regarding the land of the same village and, therefore, the same can be taken as guide. It was further observed that in the comparable award, the Notification u/s 4 of the Act was published in the month of March, 1983 whereas in the case before this Court, the Notification u/s 4 of the Act was published on 01.08.1990 and thus, there was a time gap of about 9 years and this Court observed that formula of appreciation in the value of land at the rate of 10% p.a was required to be adopted. Accordingly, this Court determined the amount of compensation.

11. In the above view of the matter, this Court is of the opinion, that the claimants have adduced cogent evidence regarding the comparable award at Ex.18. The comparable award at Ex.18 pertains to the lands of the same village i.e. Village: Hadiyol, which came to be acquired for the same public purpose.

Under such circumstances, the Reference Court erred in completely discarding the previous comparable award at Ex.18.

12. The next question would be as to what should be the just and fair amount of compensation which the Appellants are entitled to receive. As stated above in the previous award at Ex.18, the Reference Court fixed the market rate of the acquired land at Rs. 3,000 per R.A. (Rs. 30 per sq.mtr.). In the said case, the Notification u/s 4 of the Act was published on 21.01.1988 whereas in the instant case, the Notification u/s 4 of the Act was published on 30.07.1992. Thus, there is a gap of 4 years and 6 months between two dates, rounded off at about 4 years. Applying the formula of 10% p.a appreciation in the value of the land and considering the time gap of 4 years in the instant case, 10% p.a appreciation would come to Rs. 300 per annum (Rs. 3 per sq.mtr.). Since there is a time gap of 4 years, the total would come to Rs. 300 multiplied by 4, which comes to Rs. 1,200 (Rs. 12 per sq.mtr.). Adding Rs. 1,200 to Rs. 3,000 per R.A. awarded earlier by the Reference Court in the award at Ex.18, the total would come to Rs. 4,200, meaning thereby that in the instant case, market value of the acquired lands of the Appellants - claimants can be determined to be at the rate of Rs. 4,200 per R.A. (Rs. 42 per sq.mtr.). In the instant case, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs. 2.25 paise per sq.mtr. and deducting Rs. 2.25 paise per sq.mtr from Rs. 42 per sq.mtr, the Appellants are entitled to recover additional amount of compensation at the rate of Rs. 39.75 per sq.mtr.

13. Last but not the least, in these appeals on behalf of the State during the course of arguments, the submission is advanced that the Reference Court erred in holding that the References were filed within time. However, considering the impugned judgment and award rendered by the Reference Court, it transpires that issue regarding the limitation was raised at issue No. 2 and the Reference Court dealing with issue regarding limitation observed that no evidence was adduced by the Respondent - State to show that as to on which date the notice as contemplated u/s 12(2) of the Act came to be issued to the claimants and came to be received by the claimants. The Reference Court, therefore, came to the conclusion that the References were applied for within time. In this connection, in the first place, the State by preferring any separate appeal did not challenge the findings arrived at by the Reference Court that the References were applied for within the period of limitation. Moreover, considering the observations and the reasons assigned by the Reference Court, while replying in affirmative the issue of limitation, nothing transpires that the Reference Court committed any error or any illegality which warrants interference by this Court. In the result, the findings arrived at by the Reference Court regarding the issue about the limitation does not require any interference.

14. In the result, both these appeals deserve to be allowed in part.

15. For the foregoing reasons, both the appeals are partly allowed. The impugned judgment and award dated 16.09.2005 rendered by the learned 3rd

Additional Senior Civil Judge, Sabarkantha at Himmatnagar in Land Reference Cases No. 70 of 1997 and 71 of 1997 is hereby modified and it is hereby directed that the Appellants - claimants are entitled to recover additional amount of compensation at the rate of Rs. 39.75 paise per sq.mtr. The statutory additional amount awarded by the Reference Court in the impugned judgment and award u/s 23(1A) of the Act and the solecism u/s 23(2) of the Act and the interest as contemplated u/s 28 of the Act is not interfered with, but it is directed that the said statutory increases shall be granted to the Appellants - claimants on the enhanced rate of compensation determined by this Court. There shall be no order as to costs.