
(1990) 12 GUJ CK 0004
In the Gujarat High Court

Kantaben and Others

APPELLANT

Vs

Additional Special Land Acquisition Officer

RESPONDENT

Date of Decision : 27-12-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 6, 9

Citation : (1991) 1 GLR 567

Hon'ble Judges : Sharad D. Dave, J;S.M. Soni, J

Bench : Division Bench

Judgement

S.D. Soni, J.—The appellants-original claimants have filed this appeal against the Judgment and Award dt. 3-2-1979 passed by learned City Civil Judge (Court No. 10) in Compensation Case No. 2 of 1977. The claimants are the owners of land bearing Survey No. 361 of village Rakhial, Taluka City Ahmedabad. Part of the land admeasuring 3650 sq. mtrs. was sought to be acquired for circular road for National Highway. Notification u/s 4 of the Land Acquisition Act ("Act" for short) was published on 31-10-1971. The Notification u/s 6 of the Act was published on 1-3-1973. Notices u/s 9 were served on the concerned parties and after considering the evidence the Land Acquisition Officer passed an award on 13-8-1976 whereby he awarded compensation at the rate of Rs. 5-50 per sq. mtr. The claimants being dissatisfied with the said Award requested the Land Acquisition Officer to make reference u/s 18 of the Act. The Land Acquisition Officer made reference before the City Civil Court, Ahmedabad which was registered as Compensation Case No. 2 of 1977. The claimants had claimed Rs. 22/- per sq. mtr. before the Land Acquisition Officer. However, they were awarded Rs. 5-50 per sq. mtr. In the Reference u/s 18 the claimants have claimed Rs. 22/- per sq. mtr. To support their claim for the compensation the parties have led necessary documentary evidence. No oral evidence is led by either of the claimants or the Government. The learned City Civil Judge after considering the evidence on record awarded Rs. 14/- per sq. mtr.

2. Before the City Civil Court, the claimants have relied on evidence led in

Compensation Case No. 26 of 1973 which pertains to acquisition and compensation of Survey No. 346/1/1 and 346/1/2, 367, 369, 370/1 and 370/ 2 of the very village Rakhial. They also relied on the judgment in that Compensation Case being Ex. 49 on record. The claimants also produced map Ex. 58 showing the situation of land under acquisition. The State produced document Ex. 52 a sale deed dtd. 19-1-1970 of Survey No. 376/ 1 whereby the land thereunder was sold at the rate of Rs. 15/-per sq. yds. The agreement to sell for that Survey No. 376/1 was entered into by the parties on 2-7-1969.

3. The learned Advocate for the claimants had contended before the City Civil Court that lands under acquisition in Compensation Case No. 26 of 1973 are most comparable in site situation, size and location to the land under acquisition. He had also contended before that Court that land under acquisition has equal building potentiality as that of land under Compensation Case No. 26 of 1973. He has also contended that simply because the land under acquisition was within the agricultural zone it has not lost its building potentiality. He has also contended there that simply because the land under Compensation Case No. 26 of 1973 was reserved for Housing Board it has not acquired for any additional building potentiality then the land under acquisition. It was argued that land in both the cases are identical except they are reserved for different purpose.

4. The learned Advocate for the State had argued that in view of the absolute restriction on the land under acquisition for building purpose it has no building potentiality. He has further argued that land Survey No. 376 of Rakhial village which is in the near vicinity of the land under acquisition and which is not under any reservation is sold at the rate of Rs. 15/- per sq. yd., and therefore, instant of the land S. No. 376 though sold at a later date then the land involved in Compensation Case No. 26 of 1973 should be taken into consideration. It was also contended that because the land under acquisition has no building potentiality in view of the fact of being reserved for agricultural zone it should be discounted to not only Survey No. 376, but also to Survey Numbers covered in Compensation Case No. 26 of 1973.

5. The learned City Civil Judge after considering the arguments of the learned Advocate came to the conclusion that land under acquisition must be discounted in view of the absolute restriction on its user imposed under the Bombay Town Planning Act. The only question required to be considered by him was extent of discount or depreciation in the value. According to him the value of the land should be fixed as the value of the land covered under Compensation Case No. 26 of 1973, and the value of the land of Survey No. 376 should not be taken into consideration as the same has already been taken into consideration while fixing the price of Survey Numbers involved in Compensation Case No. 26 of 1973. He also held that land under acquisition and the land in Compensation Case No. 26 of 1973 suffers from different type disability under the provisions of Bombay Town Planning Act inasmuch as one is reserved for agricultural use while other is reserved for a local authority, i.e., Housing Board. He also considered that land

reserved for Housing Board have admittedly building potentiality while the land reserved for agricultural zone has absolute restriction from carrying out building thereon. He also observed that the land under acquisition have no building potentiality. However, he held that the price fixed by the Land Acquisition Officer at the rate of Rs. 5-50 per sq. mtr. is too low. He also held that the price fixed for land is too low as the land under acquisition is in proximity to the Metropolitan city like Ahmedabad, particularly because agricultural use in the vicinity of Metropolitan city like Ahmedabad can be put to more profitable use in horticulture, poultry or dairy, catering to the daily needs of Metropolitan town. Considering these aspects he held that the price should be fixed above Rs. 5-50 per sq. mtr. and below Rs. 21/- per sq. mtr. Then considering that the land under acquisition having absolute restriction in view of it being reserved in the agricultural zone under the provision of Bombay Town Planning Act, the value is required to be discounted and he has discounted it to the extent of 33% roughly and has awarded Rs. 14% per sq. mtr. This order of fixing of Rs. 14/- per sq. mtr. as market value of the land under acquisition is under challenge in this Appeal.

6. Heard the learned Advocate Mr. Parikh for the appellant, and Mr. D.K. Trivedi, learned In-charge Government Pleader for the State.

7. The learned Advocate Mr. Parikh for the appellant has challenged this order on two grounds namely that the learned City Civil Judge has committed an error in holding that the land in agricultural zone which is known as "Green belt" cannot have building potentiality and is therefore, to be valued at discount. Mr. Parikh contended that the land in green belt would be more advantageous than the other reserved land, and therefore the deduction or discount at the rate of 33% is bad. The learned I/c. Government Pleader Mr. D.K. Trivedi has contended before this Court that the order passed by the City Civil Court is just and proper. He also contended before this Court that the City Civil Court ought to have relied on the instant Ex. 56 of Survey No. 376 wherein the sale price is at the rate of Rs. 15/- per sq. yd.

8. There is no dispute of the fact that the land under acquisition is situated within the eastern extremity of city limit of Ahmedabad Municipal Corporation since 13-8-1958 much before the Notification u/s 4 of the Act, i.e., 31-10-1971. The land under acquisition is also in Town Planning Scheme No. 11 which is already finalized since long. Under the Development plan under the Town Planning Act broad net work of roads, zoning of land used in the city limits, regulation for the control of development within the said limits are provided. Accordingly the land under acquisition is put for agricultural zone, while the lands covered under Compensation Case No. 26 of 1973 are put under reservation for Housing of Gujarat Housing Board. Mr. Parikh contended that this reservation is to remain in force for 10 years under the Town Planning Act. May be that it may be further extended by the Authority but the initial time limit is 10 years. Mr. Parikh contended before us that the reservation under the Town Planning Act are

initially and normally for 10 years subject to further extension by the Authority. Mr. Parikh also contended that these reservations may also be lifted over in future considering the exigency and the requirement of the land. Mr. Parikh, therefore, contended that simply because any land is reserved for Housing Board, does not acquire by itself building potentiality and land reserved for agricultural zone by itself does not lose building potentiality. Mr. Parikh contended that these reservations are restriction and they are identical in its effect and nature. Mr. Parikh therefore, contended before us that the learned City Civil Judge has erred in considering the fact that the lands covered under Compensation Case No. 26 of 1973 had building potentiality and that the land under acquisition has no building potentiality. Mr. Parikh, therefore, contended before us that in view of the fact that the reservation put either for housing or for agricultural zone has no effect on the building potentiality, if any. And therefore, the potentiality of the land is required to be considered de hors such reservation. Mr. Parikh to quote as an example stated before us that earlier it was held by the Gujarat High Court that if land was reserved for agricultural zone, no construction could be carried thereon, and therefore, it was considered to be not vacant land under the provisions of Urban Land (Ceiling and Regulations) Act. However, that finding of the High Court is reversed by the Honourable Supreme Court and the Supreme Court has held that if anybody can construct over a land may be that the owner may not be entitled to in view of the restriction under the Urban Land (Ceiling & Regulation) Act than that land is a vacant land. Mr. Parikh by this observation of the Supreme Court wanted to convey that simply because there is reservation and the land under acquisition is reserved in the agricultural zone, it cannot be said that it has lost building potentiality. It is true that when the land is reserved for Housing Board then the construction over that land without the permission of the Competent Authority cannot be carried out and the Competent Authority in the circumstance of the case and particularly in view of the reservation will not give permission for carrying out construction. So far as the land reserved in agricultural zone is concerned, if permission is sought to carry out construction, the same also may not be given by the Competent Authority, if that construction is not for the purpose of agricultural use. We do not think that the authority can refuse the permission to construct for the agricultural use. Therefore, it cannot be said that the land within the agricultural zone has lost its building potentiality at all. It is true that as the land is put under restriction by putting it in a different zones, the transferability is restricted to certain extent, but is not lost. A land covered under the reservation for Housing Board, is anticipated to be acquired by the concerned Authority for building purpose. This by itself does not mean that the said land cannot be transferred by the owner to a person having knowledge of restrictions under the reservation zone. There is no prohibition to transfer this land. At the most the purchaser may not be entitled to compensation on the basis of his purchase price in case of land being acquired as he very well knew that the land is already under reservation for housing and it is anticipated to be acquired for housing scheme. There is no prohibition to sell the land under agricultural zone. There is no dispute of the fact that any agricultural land can be

sold subject to the provision of Tenancy Act. The land in agricultural zone can be sold by the owner to another person who is eligible to purchase agricultural land under prevailing agrarian laws. The land under reservation for housing has more restricted transferability than the land reserved under the agricultural zone. The land reserved under agricultural zone can also be sold to a Co-operative Housing Society and that sale has nothing to do with its price if in future that land is acquired for any other purpose than the agricultural. Therefore, in our opinion the land covered under agricultural zone i.e., green belt will stand on a better footing and if not on better footing that at least on equal footing with the land reserved for housing purpose.

9. Mr. Parikh has referred to the relevant observation of the judgment in the Compensation Case No. 26 of 1973 where the learned Judge has fixed the price of concerned Survey Numbers. Before we refer to this observation it will be proper and relevant to refer the key plan of entire area of village Rakhial for proper appreciation of the situation of the land under comparison. In the map Ex. 60, on the east of S. No. 361, S. Nos. 346, 367, 369 and 370 are shown adjoining to each other from North to South S. Nos. 367, 369 and 370 are adjoining S. No. 363 on the East. On the East of S. Nos. 369 and 370, S. No. 361 is situated. Survey No. 361 has an access on the road on the West-south portion. On the North-east portion there is S. No. 501. West side portion admeasuring 3650 sq. mtrs. of S. No. 361 touching the road is sought to be acquired for circular road of the National Highway. Keeping this position of Survey Numbers in mind, we will look into, as desired by the learned Advocate Mr. Parikh, the observation of the learned City civil Judge in Compensation Case No. 26 of 1973 pertaining to S. Nos. 346, 367, 369 and 370. It is clear from this observation as well the map Ex. that S. Nos. 346, 367, 369 and 370 situated on the respective south of each other have no direct access on the road. They have access to the road from and through respective Survey Numbers from South to North and all have access in the last through S. Nos. 344 and 345. None of these Survey Number owners have access on the road on the East, through S. No. 361. They have access, thought not directly to the road on the North. They have no right of way through S. No. 361 for going to the road situated on the East of Survey No. 361.

10. Therefore, it is clear from this to topography and location that S. No. 361 stands and is located in a better position than S. Nos. 346, 346, 369 and 370. Therefore, if the price for these survey numbers is fixed ranging from rs. 20/- to 21/- for acquisition u/s 4 dated 27-6-1968, then the price for S. No. 361 must stand higher on 27-6-1968 and if not higher than at least equal when it is sought to be acquired under notification u/s 4 dated 31-10-1971 which is practically 3 years and 4 months later. Therefore, in our opinion if the price of me land under acquisition is fixed at Rs. 21/- it would be just and proper. As discussed earlier this land under acquisition, simply because is reserved for agricultural zone - green belt does not deserve any discount.

11. It is not the case of either party, i.e., claimant or the Acquiring Authority that prices have either gone high or have fallen during the period of 3 years of the year 1968 to 1971. Neither party has lead any evidence for the same. It, thefore, should be presumed mat me market of land price has remained stagnant during mis period. We do not find any difficulty to accept mis proposition in absence of any allegation otherwise. Therefore, the price of the land of comparable survey numbers covered under Compensation Case No. 26 of 1973 as fixed ranging from Rs. 20/- to Rs. 21/- in June, 1968 can be said or held to remain stagment in October, 1971 or so. Thereafter, if me price of the land under acquisition is fixed at Rs. 21/-, it is just and proper.

12. Apart from mis in our opinion the market value will come to Rs. 21/- even if it is considered on the basis of the incident relied on by the learned Advocate for the State. Mr. Trivedi for the State has relied on me instant of sale of Survey No. 376 for which an agreement to sell was entered in between the parties on 2-7-1969 and me sale deed was executed on 19-1-1970 (Ex. 56). It is in evidence and not challenged that the land under S. No. 376/1 and pits of above 4 to 5 ft. and it was not a levelled land. Most of the land had pits in it. It is also in evidence that it will be required to fill up those pits to make it usable and the cost to fill up that pits would be Rs. 5/- per sq. yd. Therefore, the price of the land which is Rs. 15/- per sq. yd/ initially would be Rs. 20/- per sq. yd. on its being levelled and made usable, and the price of that land would be Rs. 24/-per sq. mtr. Therefore, instant on which the learned Government Pleader wants to rely has also market value of Rs. 24/- per sq. mtr. The learned City Civil Judge has also come to the conclusion that a notional value of the land under acquisition would be Rs. 21/- per sq. yds. however, he had deducted 1/3rd of the amount towards discount and awarded Rs. 14/- per sq. mtr. Therefore, even relying on the instant Ex. 56, the market value of the land under acquisition would be Rs. 21/- per sq. mtr. The learned Judge has erred in discounting the value by 1/3. Therefore, in our opinion the market price of the land would be Rs. 21/- per sq. mtr.

13. In the result, the appeal is allowed. The opponent shall pay additional compensation of Rs. 7I- per sq. mtr. and a solatium at the rate of 15% on that additional amount with 41/2% interest from the date of award till payment. The respondent shall pay the cost of this appeal and bear their own. Order accordingly.