(2011) 05 GUJ CK 0049

In the Gujarat High Court

Case No : First Appeal No''s. 4562 and 4576 of 2009 and 1780, 1794, 2869, 2888, 3539 and 3543 of 2010 and Cross Objection No''s. 85, 96, 97 and 136 of 2011

Karimkhan Shahidkhan APPELLANT

Vs

Special Land Acquisition Officer and Another RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 23(2), 28

Citation : (2011) 05 GUJ CK 0049

Hon'ble Judges : Jayant Patel, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : Md. Vakil, for the Appellant; Moxa Thakker, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—As in all the matters common question arises for consideration they are being considered by this common judgment.

The short facts of the case can be summarized group-wise in the respective First Appeals as under.

In group of First Appeal Nos. 1780 to 1794 of 2010 with Cross Objection Nos. 116 to 130 of 2011 the facts are that the lands at Village Sedla, Taluka Dasada were acquired under the Land Acquisition Act (hereinafter referred to as ''the Act'') for the project of branch of Narmada Canal. The notification u/s 4 of the Act was published on 16.7.1992 and notification u/s 6 of the Act was published on 9.2.1993. The Special Land Acquisition Officer passed the award u/s 11 of the Act and he granted compensation of Rs. 8,800/- per hector for non-irrigated land and Rs. 13,200/- per hector for irrigated land. Therefore, in effect it would comes to Rs. 0.88 ps. per Sq. Mtr., for non-irrigated land and Rs. 1.32 ps. per Sq. Mtr., for irrigated land. The land owners- original claimants were not satisfied with the compensation. They raised the dispute demanding compensation of Rs. 70/- per

Sq. Mtr u/s 18 of the Act and ultimately the matter was referred to the Reference Court for adjudication. The Reference Court at the conclusion of the evidence and hearing passed the judgment and the award on 26.9.2008 whereby compensation has been awarded at Rs. 9.12 ps. per Sq. Mtr., as additional compensation for non-irrigated land and Rs. 8.68 ps. per Sq. Mtr., as additional compensation for the irrigated land plus statutory benefit u/s 23(1A), 23(2) and 28 of the Act. Under these circumstances, the present group of appeals arising from the judgment and award in Land Reference Case Nos. 500 to 514 of 1999 before this Court.

In group of First Appeal Nos. 2869 to 2888 of 2010 with Cross Objection Nos. 97 to 115 and 136 of 2011 the short facts are that the lands at Village Pipli, Taluka Dasada, District Surendranagar were acquired under the Act for the project of branch of Narmada Canal. The notification u/s 4 of the Act was published on 3.9.1992 and notification u/s 6 of the Act was published on 26.4.1993. The Special Land Acquisition Officer passed the award u/s 11 of the Act whereby compensation of Rs. 5,600/- per hector for non-irrigated land and Rs. 8,400/- per hector for irrigated land. Consequently such amount would come to Rs. 0.56 ps. per Sq. Mtr., for non-irrigated land and Rs. 0.84 ps. per Sq. Mtr., for irrigated land. As the land owners-original claimants were not satisfied with the compensation awarded by the Special Land Acquisition Officer they raised the dispute demanding compensation of Rs. 70/- per Sq. Mtr u/s 18 of the Act and the said matter was referred to the Reference Court for adjudication being Land Reference Case Nos. 445 to 464 of 1999. The Reference Court at the conclusion of the reference awarded the amount of Rs. 9.16 ps. per Sq. Mtr., for irrigated land and Rs. 9.44 ps. per Sq. Mtr., for non-irrigated land. It is under these circumstances, the present Appeals before this Court.

In group of First Appeal Nos. 4562 to 4576 of 2009 with Cross Objection Nos. 85 to 96 of 2011 the short facts are that the lands at Village Sedla, Taluka Dasada, District Surendranagar were acquired under the Act for the project of branch of Narmada Canal. The notification u/s 4 of the Act was published on 16.7.1992 and notification u/s 6 of the Act was published on 9.2.1993. The Special Land Acquisition Officer passed the award u/s 11 of the Act whereby he granted compensation of Rs. 8,800/- per hector for non-irrigated land and Rs. 13,200/- per hector for irrigated land and the said amount accordingly would come to Rs. 0.88 ps. per Sq. Mtr., for non-irrigated land and Rs. 1.32 ps. per Sq. Mtr., for irrigated land. As the land owners-original claimants were not satisfied with the compensation awarded by the Special Land Acquisition Officer they raised the dispute demanding compensation of Rs. 70/- per Sq. Mtr u/s 18 of the Act and the said dispute was referred to the Reference Court for adjudication being Land Reference Case Nos. 515 to 525 of 2009. The Reference Court ultimately passed award dated 26.9.2008 and awarded the compensation at Rs. 8.68 ps. per Sq. Mtr., for irrigated land and Rs. 9.12 ps. per Sq. Mtr., for non-irrigated land. It is under these circumstances, the present Appeals before this Court.

In group of First Appeal Nos. 3539 to 3543 of 2010 with Cross Objection Nos. 131 to 135 of 2011 the short facts are that the lands at Village Sedla, Taluka Dasada, District Surendranagar were acquired under the Act for the project of branch of Narmada Canal. The notification u/s 4 of the Act was published on 16.7.1992 and notification u/s 6 of the Act was published on 9.2.1993. The Special Land Acquisition Officer passed the award u/s 11 of the Act and had awarded compensation of Rs. 13,200/- per hector for irrigated land and Rs. 8,800/- per hector for non-irrigated land and the said amount accordingly would come to Rs. 1.32 ps. per Sq. Mtr., for irrigated land and Rs. 0.88 ps. per Sq. Mtr., for non-irrigated land. As the land owners-original claimants were not satisfied with the compensation awarded by the Special Land Acquisition Officer they raised the dispute demanding compensation of Rs. 70/- per Sq. Mtr u/s 18 of the Act and the said dispute was referred to the Reference Court for adjudication being Land Reference Case Nos. 584 to 585 of 1999. The Reference Court ultimately at the conclusion of the reference awarded compensation at Rs. 8.68 ps. per Sq. Mtr., for irrigated land and Rs. 9.12 ps. per Sq. Mtr., for non-irrigated land. It is under these circumstances, the present Appeals before this Court.

We have heard Ms. Moxa Thakker, learned Assistant Government Pleader for the Appellant in the First Appeals and Mr. M.D. Vakil, learned advocate appearing for all original claimants/opponents herein in the First Appeals. We have also heard Mr. M.D. Vakil, for the original claimants, who have filed cross objections and we have heard learned Assistant Government Pleader appearing for the Special Land Acquisition Officer and Executive Engineer, who are parties in the said Cross Objections.

We have considered the judgment and reasons recorded by the Reference Court and record and proceedings.

The perusal of the judgment and the reasons recorded by the Reference Court shows that on behalf of the claimants/original land owners, the major reliance was placed upon the decision of the Reference Court in the Land Reference Case No. 30 of 1987, whereby the Court of Extra Assistant Judge, Surendranagar had fixed the market price at Rs. 28 per sq. mtrs., for the acquisition of the land at Village Malvan. In the said acquisition of land at Village Malvan, the land was acquired for construction of PWD Spares of the District Panchayat. A copy of the judgment was also produced at Ex.36. However, the Reference Court has recorded in the judgment that the said land was located at Dhangadhra-Ahmedabad Highway Malvan, whereas the land in question, which is acquired in the present acquisition proceedings is situated at a distance of about 2 kms from the said Ahmedabad-Dhangadhra Highway. The evidence of one of the witnesses, Patel Ratilal Maganbhai - Ex.36 was tendered by the affidavit and he was cross-examined. As per the evidence on record, the amount of Rs. 28 per sq. mtrs., for the acquisition of the land at Village Malvan with interest has been received by him and against the said decision no appeal was pending before the High Court or Supreme Court. In the cross-examination of the said witness the said aspect has not been contradicted. Even it is not the case of the Appellant Special Land Acquisition Officer that the decision of the Reference Court for acquisition of the land at Village Malvan was carried before the High Court or before the Apex Court, nor is it the case that the amount of Rs. 28 per sq. mtrs., for the acquisition of the land at Village Malvan was reduced by any higher forum.

Under these circumstances, the situation remains to the extent that for the adjacent land at the distance of about 2 kms, touching to Ahmedabad-Dhangadhra Highway, the acquisition was there at Village Malvan and the Reference Court had assessed the market value at Rs. 28 per sq. mtrs., and on the basis of which the compensation was ordered to be paid and the same has been actually paid.

However, the contention of the learned AGP is that there cannot be comparison of the land at Village Malvan with the present land in question situated at Village Sedla and another land situated at Village Pepli, which is adjacent to Village Sedla, which is also adjacent to malvan and in the submission of the learned AGP, the land at Village Malvan was a merely piece of land and further it was located on the Ahmedabad-Dhangadhra Highway, whereas the lands in question are interior and as found by the Reference Court, it is in any case, 2 kms inside the highway. It was, therefore, submitted that the compensation may not be fixed on the basis of the decision of the Reference Court for acquisition of the land at Village Malvan, whereas the learned Counsel appearing for the original claimants contended that in case of the acquisition at Village Malvan the Notification u/s 4 of the Act was published on 29.11.1986, whereas in the present case it is in the year 1992 and, therefore, not only that the claimants would be entitled for the compensation, keeping in view the price fixed by the Reference Court for acquisition of the land at Village Malvan, but they would additionally be entitled for the appreciation for the time gap between the Notification u/s 4 in the case of acquisition of the land at Village Malvan and the acquisition in the present case, which is in the year 1992.

We may record that on behalf of the claimant, the evidence was also led to claim compensation on the basis of the fertility or the yield method. However, the Reference Court has not accepted the same and has found that the claimant would not be entitled for claiming the amount of compensation at Rs. 70/- per sq. mtrs., on the basis of alleged yield method namely; fertility and income of the crop derived therefrom. The evidence, which has been referred to by the Reference Court read with the record shows that except bare statement there was no authenticated material available namely; of the invoice, etc., and the Reference Court, after considering the evidence on record has rightly negatived the claim of the original land owner for assessing the market value on the basis of the yield method, which was not satisfactorily proved.

However, it does appear that the Reference Court has not recorded the satisfactory reasons for discarding the evidence, which came on record for the fixation of the price pertaining to the acquisition of the land at Village Malvan. As such, it can be said that no specific reasons are recorded by the Reference Court for arriving at the figure of Rs. 10 per sq. mtr., save and except the general statement that the sale deeds have taken place of the land in question at higher price. Therefore, the Reference Court found that the appropriate amount would be Rs. 10/- per sq. mtrs., for the compensation.

It appears to us that if no proper reasons are recorded for arriving at the figure of Rs. 10/- by the Reference Court, such can be said as an error committed by the Reference Court in fixation of the amount of compensation or to assess the market value of the land in question. As observed earlier, we have also considered the record and proceedings of the Reference Court and we have also gone through the decision of the Reference Court for acquisition of the land at Village Malvan. It is by now well settled that if for the purpose of determining the compensation under the Land Acquisition Act, there are decision of the same Court or of any other Court for the land, which are adjacent to or nearby area, the same can be taken into consideration for the purpose of fixation of market price. Therefore, it appears to us that the Reference Court was not right in discarding the evidence, which came on record for the acquisition of the land at Village Malvan and the decision of the another Reference Court for fixation of the price at Rs. 28/- per sq. mtrs. The perusal of the judgment of the Reference Court in respect of the Land Reference Case No. 30/1987 for Village Malvan shows that it was a case of single acquisition, which was the subject matter of only one Land Reference Case No. 30/1987. The Reference Court in the said decision for Village Malvan has taken into consideration the location of the land, but the pertinent aspect is that the Reference Court in that case had taken into consideration that for another non-agricultural land in the same vicinity the Special Land Acquisition Officer, in respect of other acquisition had assessed the value at Rs. 25 per sq. mtrs., in a case where the award was passed on 12.3.1984. The Reference Court in the said matter of Village Malvan, thereafter had taken into consideration the appreciation and other aspects and ultimately has arrived at the conclusion for the assessment of the compensation at Rs. 28/- per sq. mtrs. In our view the said decision for the acquisition of the land at Village Malvan is one of the vital evidence on record, which could not have been discarded by the Reference Court while deciding the Land Reference Cases in the present matter. But at the same time it does appear that the acquisition for the land at Village Malvan was a small portion of the land of an acquisition in respect of two survey numbers only, whereas the acquisition in the present case is of a much large area comprising of various survey numbers. Further, the aspect of distance between the land at Village Malvan, which is located on the highway and the land in question, which is located at the distance of about 2 kms inside the highway is also required to be taken into consideration. This Court had an occasion to consider similar question for the purpose of assessment of the market price of the land in case of State of Gujarat through Special Land Acquisition Officer and Anr. v. Amaji Mohanji Thakore, reported in 2010 (3) GLH 447 and in the said decision at paragraph 16, inter alia, observed as under:

16. The aforesaid shows two aspects; one is that the sale instance or the price at which the Government has allotted the land can be taken into consideration by the Reference Court at the time of assessing the market value for the purpose of awarding compensation under the Act, and the second is the deduction to be made keeping in view the size of the plot allotted by the Government and the land under acquisition, the nature of use, the locality and other factors namely; that agricultural use, non-agricultural use and others. It is true that in the said case, this Court found it proper to deduct 40% of the amount from the price at which the Government had allotted the land to the said Trust, but it appears that certain aspects, which did not arise for consideration in the said matter, do arise for consideration in the present group of matters, which shall be dealt with hereinafter.

Thereafter, it was inter alia observed at paragraph 30, relevant of which reads as under:

30. ... If any agricultural land is to be converted for non-agricultural purpose, there will be about 25% deduction in the area itself and further the conversion charges of agricultural land will have to be paid for non-agricultural use and such expenses for conversion would also be roughly 5%, by way of a burden upon the agricultural land. Therefore, it appears to us that if the aforesaid two circumstances are taken into consideration, the difference between the market price of the agricultural land and the market price of the non-agricultural land shall be minimum 30%. To say in other words, the agricultural land shall be less by 30% as against the price of the non-agricultural land.

The aforesaid shows two aspects; one is that for the comparison of acquisition of small area while considering the price of the land of a smaller area in comparison to the price of the land of a larger area by two separate acquisitions, there would be roughly 40% difference; and another is that if the distinction is to be made for the purpose of assessment of the price between the agricultural land and non-agricultural land, there would be difference of 30% in the price of the agricultural land in comparison to the non-agricultural land inasmuch as the price of the non-agricultural land will be 30% more in comparison to the price of the agricultural land. Since, we are only concerned with the former part namely; the difference in the price of the land for an acquisition of a smaller area, the later portion would not be of any much relevant for the present group of matters. We may also record that in another matter in the case of Special Land Acquisition Officer v. Laxmanbhai Nathalal Patel and Ors., in First Appeal No. 1675 of 2010 to 1680 of 2010 decided on 31.3.2011 for the acquisition of the land at Village Gagraj, this Court had also an occasion to consider the difference of the valuation for the market price of the land located in the Municipal Area in comparison to the land, which is located in the village area though boundary of the village area may be touching to the boundary of the municipal area. Since it was a case where the valuation was made by the valuation department of the Government, same for the land of the Municipal area, this Court found that in the land at village area the same would be at least 50% less in comparison to the price of the valuation of the land at Municipal area. It is true that in the present case Malvan and village Sedla as well as Village Pepli are located in the village area, but the most distinguishing aspect for the assessment of the price of the land at Village Malvan is that it is located of Dhangadhra-Ahmedabad highway and the land in question are interior at the distance of about two kms from the highway. Therefore, it appears that the difference in the price of the land would not be less than the difference, which may be available between the price of the land located at Municipal area and the land located at village area since the development would be altogether different. Even in the present case also the development of the land located at highway is bound to be altogether different in comparison to the land, which is located at the interior of about 2 kms. Therefore, it appears that minimum 50% the deduction is required to be made for the land in question even if the market value assessed for the village Malvan by the Reference Court in the earlier decision is to be taken into consideration. Consequently the net amount would come to Rs. 14/- per sq. mtrs., to be considered as the market value of the land in question at par with Village Malvan. But the distinguishing circumstances in the present case additionally is that the acquisition for the land at Village Malvan had taken place vide Notification u/s 4 of the Act on 29.11.1986, whereas the acquisition for the land in question has taken place in the year 1992 and, therefore, roughly there is a difference of about six years between both the cases. As such in normal circumstances, the appreciation would be of 10% for the land situated in any District of Gujarat, which has average development or one can say a normal development. The land in the present case is located in Surendranagar District, where at the relevant point of time there was acute shortage of water and, therefore, it could be said that the development and more particularly of the interior area of the land would not be at par with the normal development to be considered for 10% by way of appreciation.

Keeping in view the aforesaid peculiar circumstances read with the observations made by the Apex Court in the case of General Manager, ONGC v. Ramesh J.P., reported in (2008) 14 SCC 745 (paragraph 17), it appears to us that the appreciation can be considered at the rate of 7% per annum for the period of six years from 1986 to 1992. If the said appreciation is considered on the principal amount of Rs. 14/- per sq. mtrs., in the year 1986, the appreciation would come to Rs. 5.88 plus Rs. 14/-, hence, the total of Rs. 19.88 per sq. mtrs., would be the market price of the land in the year 1992, i.e. the date on which the Notification u/s 4 of the Act was published in the present cases. Such would be the market price for the non-irrigated land. Since out of the amount of Rs. 19.88 per sq. mtrs., Re.0.88 per sq. mtrs., has already been awarded as compensation by the Special Land Acquisition Officer, the land owners/original claimants would be entitled for the additional compensation at Rs. 19/- per sq. mtrs., for the non-irrigated land.

However, so far the irrigated land is concerned, it is by now well settled that the price of the irrigated land would be higher at least 25% in comparison to the price of the non-irrigated land and the reason would be its fertility and the income derived therefrom. The reference may be made to the decision of the Apex Court in the case of Kantaben Manibhai Amin and Another Vs. Special Land Acquisition Officer, Baroda, Therefore, if 25% is calculated on the amount of Rs. 19.88, it would come to Rs. 4.97. If the said figure is added to the amount of Rs. 19.88, such amount would come to Rs. 24.85 per sq. mtrs. As against the same, the compensation paid is of Rs. 1.32 per sq. mtrs. as per the award of the Special Land Acquisition Officer. Hence, the additional amount would come to Rs. 23.53 and if the said figure is rounded off, it would come to Rs. 23.50 per sq. mtrs. being the additional amount of compensation for the irrigated land.

The aforesaid shall be the position for the acquisition of the land at Village Sedla, but such will not be the situation for the land located at Village Pepli. If the distinction of the land is taken into consideration as considered by the Special Land Acquisition Officer it does appear that for the acquisition of the land at Village Pepli, the market price assessed is Rs. 0.56 per sq. mtrs., for non-irrigated land and Rs. 0.84 per sq. mtrs., for irrigated land, as against the price fixed of Rs. 1.32 for the irrigated land and Rs. 0.88 for the non-irrigated land at Village Sedla. If the said distinction is kept in mind and thereafter the basis of the market price is assessed of the land at Village Sedla is taken into consideration, the consequential effect would be that the market price for the irrigated land at Village Pipli would come to Rs. 15.88, whereas for non-irrigated land, it would come to Rs. 12.65. Out of the said amount for irrigated land, if the amount of Rs. 0.84 is deducted, being the compensation already paid, the net amount would come to Rs. 15.04 and if rounded off, it would come to Rs. 15.05 for the irrigated land. Whereas for non-irrigated land, if the price fixed by the Special Land Acquisition Officer is considered in comparison to the price fixed for the land of Village Sedla and assessed by us at Rs. 19.88, such amount of Rs. 12.65 being the market price of the land at Village Pipli, out of which, Rs. 0.56 is already paid as the compensation and, therefore, the additional amount would come to Rs. 12.09 and if rounded off, it would come to Rs. 12.10 per sq. mtrs., being the additional compensation.

So far as the other part of the judgment and the award of the Reference Court is concerned, they pertain to the statutory benefits under Sections 23(1-A), 23(2) and 28 of the Act and the same are not required to be interfered with, save and except to the extent on account of the increase in the principal amount of compensation, such amount shall proportionately get enhanced.

In view of the aforesaid observations and discussions, it is held that for the acquisition of the land at Village Sedla, the concerned owner/original claimant would be entitled for the additional compensation at Rs. 19/- per sq. mtrs., for the non-irrigated land and Rs. 23.50 for the irrigated land. It is further held that the land owners/original claimants for the acquisition of the land at Village Pipli would be entitled for an additional compensation of Rs. 12.10 per sq. mtrs for the non-irrigated land and Rs. 14.55 per sq. mtrs., for the irrigated land. Additionally the claimants would also be entitled to statutory benefits of increase in the price u/s 23(1-A), solatium u/s 23(2) of the Act and interest u/s 28 of the Act.

All the First Appeals preferred by the Appellants shall stand dismissed with no order as to costs. All the cross-objections preferred by the original-claimants shall stand allowed to the aforesaid extent with costs. Decree accordingly. Additional amount of compensation shall be deposited with the Reference Court within a period of eight weeks from the date of receipt of the order. Record and proceedings be returned to the Reference Court.

