

(1985) 01 GUJ CK 0023
In the Gujarat High Court
Case No : First Appeal No. 1081 of 1977

Lalbhai Talsibhai Patel

APPELLANT

Vs

Additional Special Land Acquisition Officer

RESPONDENT

Date of Decision : 21-01-1985

Acts Referred:

Constitution of India, 1950 — Article 254(2)
General Clauses Act, 1897 — Section 6
Land Acquisition (Amendment) Act, 1984 — Section 15, 30(2)
Land Acquisition Act, 1894 — Section 23, 23(2), 28, 54

Citation : AIR 1986 Guj 24 : (1985) 2 GLR 1

Hon'ble Judges : P.S. Poti, C.J.; I.C. Bhatt, J

Bench : Division Bench

Advocate : V.P. Shah, for the Appellant; D.K. Trivedi, Asstt. Govt. Pleader, for the Respondent

Judgement

P.S. Poti, C.J.—The question that arises in this appeal concerns the enhancement of compensation in respect of 4165 sq. mtrs. of land in survey No. 404 bearing Final Plot No. 347 of Town Planning Scheme No. 22 of village Vasna. The acquisition is for the Telephone Exchange Building. Notification under S. 4 Land Acquisition Act, D/- 10-11-1970 was published in Government Gazette on 3-12-1970. The two documents available for the purpose of estimating the value of the acquired land are Ex. 47 D/- 18-10-1969 and Ex. 48 D/- 24-10-1969. These are plots comprised in survey No. 407. The learned Judge has noticed that the documents relating to these lands shows the land value of Rs. 37.44. per sq. metre in one case and Rs. 34.97 per sq. metre in the other case. Even so the Court has adopted Rs. 30/- per sq. metre for the acquired land only for the reason that the acquired land was of much larger area than the land acquired under Exs. 47 and 48. The extent of the area is not the real test. The mere important test is the location of the lands. It is seen from the map Ex. 24 that the land comprised in Final Plot No. 347 is definitely superior in all respects to the land comprised in Final Plot No. 360. The two documents relate to those

parts of the Final Plot. Final Plot No. 347 is situated on the right side of the 100''s wide Sarkhej Road which is a very important road in the Ahmedabad city. The two plots which are the subject matter of Exs. 47 and 48 are plots far inside with no road frontage and they certainly can never have any value near about that of the acquired plot. The fact that the plot is more than an acre need not reduce the value of the plot as in important areas in cities it is difficult to get such extent of land and many people may be on the look-out for such large extent. Therefore, the comparison of extent is not of so much relevance in this case. In these circumstances, Rs. 30/- awarded by the Reference Court is found quite inadequate and Rs. 10/- asked for as an addition is found quite a moderate claim. Though the appellant contended that since the total claim in the appeal is Rs. 55,000/- though made under different heads, even if only Rs. 10/- more has been prayed for in the appeal memorandum, more than that could be granted. When the appellant's claim is only for an additional rate of Rs. 10/- per sq. metre, we do not think that anything more is to be awarded. Hence the claim allowed is limited to Rs. 10/- more per sq. metre.

2. There is some controversy as to the extent of the area, the claimant contending it to be 4565 sq. metres and the State contending that it is only 4165 sq. metres. The controversy is in respect of 400 sq. metres. If any additional extent is taken without authority, it is for the appellant to seek appropriate steps then. The question does not arise in this reference.

3. That there are constructions in the acquired site is evident. This is spoken to by the claimant. The learned Judge of the Court below has also chosen to accept that case. It has been found that there were constructions at the time of acquisition, but on the ground that it was not certain whether these constructions were prior or after S. 4 notification, its value was not awarded. There was no occasion for such a doubt. In the absence of a case by the State that the structures have been constructed after the acquisition, the learned Judge ought not to have posed that question at all. As for the value of the said constructions, the oral evidence of the claimant cannot be relied on as it is naturally bound to be exaggerated. The learned Judge has, based on the measurements shown by the claimant himself, determined the cubic contents of the construction and valued it appropriately, a valuation with which we see no reason to disagree. Hence Rs. 3,000/- found as the value of the construction must be awarded.

4. There is another item and that concerns the claim of Rs. 1,000/- for six trees. The case is that at the time of take over, there was only one tree, a tamarind tree. Certain evidence has been produced by the claimant to show that there were six trees. We are not impressed with the reasoning of the learned Judge relying upon photos but we think that even so a claim of Rs. 360/- would not be adequate even in respect of a big tamarind tree considering its income and Rs. 500/- would be appropriate estimate. So, in place of Rs. 360/-, we award Rs. 500/-.

5. There is some litigation pending inter se between rival claimants for the

property and, therefore, the learned Judge of the Court below made the rights of the claimants subject to the determination under Ss. 30 and 31, Land Acquisition Act. So long as the parties do not agree, the right to the compensation has necessarily to be determined as directed by the learned Judge. It is said by Counsel for the appellant that the compensation already awarded and the compensation now awarded by enhancement may be deposited in a Bank so that the appellant, in the event of success, in regard to the claim may not lose interest. It is of course for the appellant to move in this matter the appropriate Court where the dispute is pending and we see no reason why if the claimants are agreed such direction should not be issued.

6. We, therefore, allow this appeal to the extent of decreeing the claim of Rs. 41,650/- towards additional value of land, Rs. 3,000/- towards value of constructions, Rs. 140/- more towards value of trees. This additional amount will be due along with solatium at 15% and interest on such enhanced amount from the date of taking possession till payment at 41/2%. The respondent shall pay the costs to the appellant and bear its own.

7. In this appeal, the judgment was dictated to the Stenographer in open Court on 15-11-1984. On that day, the provisions of the amendment to the Land Acquisition Act, 1894, by Central Act No. 68 of 1984 were not relied on before the Court and, therefore, the court had no occasion to consider the amendment. The amendment had come into force recently, i.e. on 24-9-1984. Before we signed the judgment, we were moved to repost the case for hearing on the question of solatium and interest payable on the amount awarded by way of enhancement in appeal. Accordingly, we have heard Counsel for the appellant Miss V. P. Shah as well as Government Counsel Shri D. K. Trivedi.

8. The question that has arisen by reason of the recent amendment is the applicability of the provision relating to solatium as well as interest on the amount of enhancement awarded. The Land Acquisition Act, 1894, provides in S. 23(2) for award of 15% on market value as solatium in consideration of the compulsory nature of the acquisition. S. 28, Land Acquisition Act, 1894, as it stood prior to the recent amendment provided for award of interest at 6% per annum on the excess over the sum awarded by the Collector as compensation. The Land Acquisition Act, 1894, applied with local amendments to the State of Gujarat. S. 23(2) which provided for 15% compensation prior to amendment by Act No. 68 of 1984 applied to the Gujarat State also. But S. 28 had been amended earlier by the Land Acquisition (Bombay Amendment) Act, 8 of 1983, which had provided for 4% interest and later by the Land Acquisition (Gujarat Unification and Amendment) Act, 1963, Gujarat Act No. 20 of 1965, to 41/2%. Thus the rate of interest in force in the State of Gujarat was 41/2%.

9. By Amendment Act No. 68 of 1984, S. 23(2) has been amended, so also S. 28. S. 23(2) has been amended to increase the solatium from 15% to 30%. S. 28 has been amended to increase the interest from 6% to 9%. Whether these amended provisions would apply to the case in question is the matter that has

arisen for consideration on the arguments addressed to us by Miss V. P. Shah.

10. The Land Acquisition (Amendment) Act, 1984 in S. 30 enacts the transitional provisions. That reads:

"30. (1) The provisions of sub-section (1A) of S. 23 of the principal Act, as inserted by Clause (a) of S. 15 of this Act, shall apply, and shall be deemed to have applied, also to and in relation to, -

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People), in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.

(2) The provisions of sub-s. (2) of S. 23 and S. 28 of the principal Act, as amended by Clause (b) of S. 15 and S. 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People) and before the commencement of this Act.

(3) The provisions of S. 34 of the principal Act, as amended by S. 20 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th April, 1982 (the date of introduction of the Land Acquisition. (Amendment) Bill, 1982, in the House of the People), and the amount of compensation for such acquisition had not been paid or deposited under S. 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession had been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said S. 31, with effect on and from the date of taking such possession.

" Sub-section (2) of S. 30 makes the amendment operative in relation to any award made by the Collector after the 30th April, 1982 or to any order passed by the High Court or Supreme Court in appeal against any such award after 30th April, 1982 and before the commencement of the Act. Evidently the transitional provision gives retrospectivity of application of these sections to 30th April, 1982, that being the date of introduction of the concerned amendment Bill. But for that provision the section would have been prospective and would have

applied only to awards made after 30th April, 1982. Therefore, in cases where awards had not been passed or where awards are passed but the matter is pending in appeal before the High Court or Supreme Court, it is the amended provision that would apply. The case before us is one such since in the case the award had been passed but the matter had been pending in appeal and the Court had finally heard the appeal only after the amendment Act came into force. In all pending cases, whether they be pending before the reference Court for passing the award or pending before this Court in appeal, the Act would operate to confer the benefit of amended S. 23(2) and S. 28, Land Acquisition Act, 1894.

11. Even so, we have to consider another question before we grant relief under the amended Act.

12. The question with regard to, S. 23, is simple, for S. 23 in the parent Act applies to Gujarat also. Therefore, when S. 23 was amended to enhance solatium to 30% automatically that operates.

13. The controversy arises in regard to S. 28, viz., the rate of interest payable on the enhancement awarded. The Land Acquisition Act, 1894, was applicable in the Bombay State. But by reason of a State amendment, S. 28 operated to award a lesser rate of interest, viz. 4% and that was the provision that applied when the Gujarat State came into force. It was amended by a State enactment to raise interest to 4 1/2%. These amendments were necessarily in exercise of the power under Art. 254(2) of the Constitution. No doubt, the provision with regard to lesser rate of interest would be repugnant to the provision of Parliamentary law with regard to the interest at higher rate and under Art. 254(1) the State law would be void but for the assent of the President to such law. On assent being given by the President, the State amendment prevails in the State. Therefore, on a reading of the provision of Art. 254 of the Constitution, there can be no doubt that the provision which prevailed in Gujarat State on the date of the Central Amendment Act No. 68 of 1984 was S. 28 as amended by Gujarat State reducing the interest to 4 1/2% per annum.

14. The question arises whether Parliament has power to pass a law in order to add to, vary, amend or repeal the State law made under the provision of Art. 254(2) of the Constitution and if there is, whether such a power has been exercised in this case. The proviso to Art. 254(2) reads:

"..... nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

Art. 254 corresponds to S. 107 of the Government of India Act, 1935, with this difference that there is no provision in S. 107 corresponding to the proviso in Art. 254(2) of the Constitution. It is expressly stated by the proviso that notwithstanding the exercise of power by the State of making a law for the State in respect of a matter in the Concurrent List, it is open to the Parliament to add to, amend, vary or repeal the law so made by the State Legislature. The

provision in Art. 254 that on receipt of the assent by the President, the law made by the Legislature of a State shall prevail in the State is subject to the proviso, viz. that it shall prevail only subject to additions, amendments or variations or repeal that may be effected by the Parliament. The power of Parliament is not in any way affected by reason of the fact that within a State the law operates with the assent of the President. The amendment made in regard to the Land Acquisition Act, 1894, by the Gujarat State will prevail in the Gujarat State so long as the Parliament does not choose to add to, amend, vary or repeal that law. The power being thus available to the Parliament, the only question is how such power should be exercised. Whether the Parliamentary law should directly purport to add to, amend, vary or repeal is the question. In this context it may be useful to refer to the decision of the Supreme Court in *T. Barai Vs. Henry Ah Hoe and Another*, .

15. The question which arose in that case was whether a person would be governed by the Central Amendment Act, 1976, when on the date he was said to have committed an act under S. 16(I), Prevention of Food Adulteration Act, 1954, in the State of West Bengal. The Prevention of Food Adulteration Act, 1954, stood amended by the West Bengal Amendment Act of 1973. By subsequent amendment by the Central Amendment Act, 1976, a reduced punishment was liable to be imposed for the offence and the procedure for trial was also materially altered. The question of the operation of the Parliamentary law over the State amendment arose for consideration in that case. Justice A. P. Sen, speaking for the Court referred to the provisions in Art. 254 and after discussion of the scope of Cls. (1) and (2) observed thus :

"In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Art. 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the "same matter". Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g. where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Art. 254(1). That being so, when Parliament stepped in and enacted the Central Amendment Act, it being a later law made by Parliament "with respect to the same matter", the West Bengal Amendment Act

stood impliedly repealed."

16. We may also advert to an earlier decision of the Supreme Court in *Zaverbhai Amaldas Vs. The State of Bombay*, . In that case, the position was a little different. The Bombay Essential Supplies (Temporary Powers) Act provided for a certain penalty in respect of certain offences. The question was whether the penalty prescribed under the Central Act (24 of 1946), Essential Supplies (Temporary Powers) Act, 1946, would operate in respect of such penalty imposed by the State law and to what extent, if any, it would operate. Justice Venkatarama Ayyar speaking for the Court said:

"Now, by the proviso to Art. 254(2) the Constitution has enlarged the powers of Parliament, and under that proviso, Parliament can do what the Central Legislature could not under S. 107(2), Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can acting under the proviso to Art. 254(2), repeal a State law. But where it does not expressly do so, even then, the State law will be void under that provision if it conflicts with a later "law with respect to the same matter" that may be enacted by Parliament."

Again, the Court said:

"The principle embodied in S. 107(2) and Art. 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State."

17. From the observations in *T. Barai Vs. Henry Ah Hoe and Another*, , which we have extracted here, it is evident that the subsequent law made by the Parliament need not expressly repeal the State law. If the subsequent law made by the Parliament is repugnant to the State law which operated as a valid law under Art. 254(2), the State law would not prevail as it would be substituted by the Parliamentary law.

18. In case where there is a Parliamentary law in regard to one of the matters in the Concurrent List, the State cannot make a law except in accordance with Art. 254(2) of the Constitution. That provision is an exception to the rule embodied in Art. 254(1) that the law made by the Parliament would always prevail over the law made by the State in regard to the matter in the Concurrent List. Such a question would arise only when there is inconsistency or repugnancy. If both provisions, i.e. the State law and the Parliamentary law, cannot stand together, there would necessarily be repugnancy and the State law must give way to the law made by the Parliament. The exception to this is when the President examines the law made by the State Legislature and on examination finds that assent could be given. But the Parliament may make a subsequent exercise. Such subsequent exercise may be such as to add to, amend, vary or repeal the law of the State. The legislation by the Parliament would prevail over the State

legislation thereafter. It is not necessary for the Parliament to expressly state that it adds to, varies, amends or repeals the law made by the State. If there is repugnancy between subsequent legislation made by the Parliament and the law operating in the State by virtue of Art. 256(2) of the Constitution, the law by Parliament would prevail to the extent of such repugnancy.

19. If by reason of State legislation in exercise of Art. 254(2) of the Constitution S. 28, Land Acquisition Act, 1894, operated in Gujarat State to award only 41/2% interest on the enhanced amount and if by a subsequent law, the Parliament has amended S. 28 to increase the rate of interest to 9% per annum, the latter provision would be repugnant to the earlier provision enacted by the State amendment and consequently the law made by the Parliament should prevail. The interest operative under S. 28 from 25-9-1984 would, therefore, be 9%. Taking note of these transitional provisions in S. 30, this would operate in regard to all awards made by the Collector or Court subsequent to 30th April, 1982 and also to orders passed by the High Court or Supreme Court in appeal against any such award after the 30th April, 1982. This appeal was pending on the date of commencement of this Act and, therefore, it has necessarily to be decided under the amended provisions.

20. Accordingly, therefore, the solatium of the enhancement compensation would be 30% and not 15% and the interest on the enhanced amount would not be 41/2% but 9% (from) date of taking possession. To that extent, the judgment dictated by us on 15-11-1984 will stand altered and the decree will be made accordingly.

21. Order accordingly.