

(1968) 07 GUJ CK 0007
In the Gujarat High Court
Case No : Appeal No. 171 of 1964

Maharao Shri Madansinhji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 31-07-1968

Acts Referred:

Evidence Act, 1872 — Section 101, 106, 21, 67
Land Acquisition Act, 1894 — Section 13, 18, 23, 24

Citation : AIR 1969 Guj 270 : (1969) 10 GLR 870

Hon'ble Judges : N.G. Shelat, J;B.R. Sompura, J

Bench : Division Bench

Advocate : K.N. Mankad, for the Appellant; C.N. Desai, Govt. Pleader and J.U. Mehta, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Shelat, J.—In pursuance of a notification as per Ex. 54 dated 8-7-49 Issued u/s 4 of the Land Acquisition Act, hereinafter to be referred to as "the Act", certain lands from the villages of Ravapur, Ugedi, Gaduli, Dayapur, Madh and other villages were acquired for putting up Manjal-Lakhpat Road, Of those lands, the lands which came to be acquired from the villages of Ravapur and Ugedi belonged to His Highness the Maharao of Kutch, The lands from Ravapur admeasured 24 acres 17 gunthas and those of Ugedi admeasured 16 acres 33 gunthas. The claim for compensation in respect of those lands under acquisition was made by His Highness the Maharao of Kutch before the Land Acquisition Officer, Nakhatrana. Those lands were, in the opinion of the Land Acquisition Officer, Kharaba lands in the sense that they were waste lands and that way unfit for any use. He, therefore, allowed compensation at the rate of Rs. 2-25nP. per one acre of land. Feeling dissatisfied with that award, the reference was made by the Land Acquisition Officer at the instance of the claimant u/s 13 of the Act. The claim in that reference was merely confined to the land admeasuring 3 acres 30 gunthas of Ravapur, and 37 gunthas of land from Ugedi which were said to be contiguous to the house sites of those villages respectively. The claim was made

at the rate of Re. 1-12 nP. per one square yard of land from the village of Ravapur. 3 acres and 30 gunthas of land are equal to 18150 square yards of land. In respect of the other land admeasuring 37 gunthas from the Ugedi village, he made a claim at the rate of Re. 00-75 nP. per one square yard of land. 37 gunthas of land are equal to 4477 square yards. That reference was heard by the Court of the Assistant Judge, Kutch at Bhuj. Considering the effect of the evidence adduced by the parties in the case, the learned Judge found that both the lands were Kharaba lands. On that basis he rejected the claim at the rate of Re. 00-75 nP. per square yard for the land of village Ugedi. He, however, felt that much though the land of village Ravapur was Kharaba land, since it had a building potentiality, he awarded compensation at the rate of Rs. 1000/- per one acre of land together with solatium at the rate of 15 per cent on the same. The opponent was further directed to pay interest at 4 per cent on that amount from 8th July, 1951 till payment and also costs to the claimant on Rs. 4,310/-, Feeling dissatisfied with that award passed on 31st December 1963 by Mr. J. D. Desai, Assistant Judge, Kutch, the claimant has come In appeal before this Court.

2-8. That takes us to the other land admeasuring 3 acres 30 gunthas out of the lands under acquisition situated at Ravapur. The claim in respect thereof has been made at the rate of Re. 1/- per one square yard of land as against what he has been awarded viz. Rs. 1000/- per one acre. The contention made out by Mr. Mankad, the learned advocate for the appellant, was that the learned Judge was wrong in treating this land as Kharaba land and In fact the finding in that respect has been in contradiction to what he ultimately holds viz. about the same having a building potentiality and that way awarding compensation at the rate of Rs. 1000/- per one acre of land. His further contention was that the compensation should have been awarded on the basis of certain instances of sale relating to some plots of lands adjacent to the land under acquisition. On that basis, it is his claim that the compensation should be awarded at the rate of at least Re. 1/- per square yard of land.

9. In ascertaining the market value of my land or property under acquisition, the instances of sale serve a good guide provided they are instances both comparable in point of time and quality. As observed in the case of *Ambalal Mansukhram Joshi v. Addl. Special Land Acquisition Officer* AIR 1968 Guj 5, the best method of determination of the true market price of a plot of land is to base it on instances of sale of the same land or a portion of it at about the same time. The next best method is to look for other Instances comparable in time and quality. We have no instances of sale in respect of the same land by about the same time, but the claimant has relied upon certain instances of sale in respect of some plots which were adjacent to the land under acquisition. Those instances are sought to be evidenced in Exs. 37 to 40. While Exs. 37 and 38 are dated 26-10-48, the two other Exs. 39 and 40 are of 30-11-48 and 18-11-48 respectively. The transactions referred to in Exs. 39 and 40, however, appear to have taken place on 25-10-48. It may be mentioned here that when reliance is sought to be placed for determination of the market value on such, instances of

sale of the neighbouring plots having taken place by about the same time when the land in question was sought to be acquired, it would not be necessary to go into other questions relating to the potential value of any such property as likely to be used for building purposes. That has been the settled position of law and if necessary, we may refer to a decision of this Court in the case of Land Acquisition Officer, Surat v. Dalichand Virchand Shroff ILR (1966) Guj 1006. In that case, it has been observed as under:--

"While determining the market value of the land, the potential value of the land has to be taken into consideration. Where, however, the market value is to be determined on the basis of the sale instances of properties in the nearby locality, the potential values of the land should" not be separately assessed because the prices evidenced by the sale instances cover the potential values."

In Raghubans Narain Singh v. The Uttar Pradesh Government, through Collector of Bijnor, AIR 1967 SC 465, it has been observed as follows:--

"Market value on the basis of which compensation is payable u/s 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired."

Thus, while considering the market value of the land under acquisition on the basis of certain instances of sale relied upon by the claimant, such considerations about the potentiality of any such land for building purposes may not arise. That may, however, arise to be considered if the Court does not act upon any such evidence.

10. Now in this regard it was urged by Mr. Desai, the learned Government Pleader, that Exs. 37 to 40 are not in the nature of sale-deeds. They are certain entries made in the rojmal maintained by the claimant. They relate to the transactions which took place in regard to certain plots in the village of Ravapur. The first two entries as per Exs. 37 and 38 relate to the sale of plots each of them admeasuring 1024 Gaj for a particular price mentioned therein to one Kanbi Nanji Naran and Kanbi Manji Kanji of Ravapur respectively. The purchase price per one square yard of land on that basis comes to Rs. 2/-. Both of them are dated 26-10-48. Similarly the other two entries relate to certain plots sold to certain persons, the purchase price whereof similarly comes to Rs. 2/- per one square yard. It was urged by Mr. Desai, the learned Government Pleader, that apart from these entries being not the documents of sale, the claimant has failed to prove not only the contents of those entries, but also has not chosen to prove the necessary ingredients required to be established in respect of such transactions which are sought to be availed of for the purpose of ascertaining the market value of the land under acquisition. According to him, it was essential for the claimant to examine the purchasers as also the vendors of the plots so as to

enable them to speak about the genuine or bona fide character of the transactions, as also about their having paid a proper market price prevailing by about that tune. Such entries cannot establish any such things and that can only be done by examining the parties to any such transactions of sale or any person knowing about the same. In support of this contention, he invited a reference to a decision in the case of Madholal Sindhu Vs. Asian Assurance Co. Ltd. and Others, where it has been laid down as follows:

"Section 67 of the Indian Evidence Act, 1872, only permits the proof of the signature or handwriting of the person signing or writing the document to be given and considers it to be sufficient in those cases where the issue between the parties is whether a document was signed or written wholly or in part by that person. The section does not go so far as to say that even if it was proved that the signature or the handwriting of so much of the document as was alleged to be in the handwriting of the person, was in his handwriting, it would go to prove the contents of that document."

In other words, for proving the contents of the document, it would be essential that a person who has knowledge of the contents thereof must appear before the Court to give evidence in that regard. Another case referred to by him was of Dhusabhai Polabhai and Others Vs. Special Land Acquisition Officer, Ahmedabad, . In that case the question arose whether any mutation entries in the revenue records showing such instances of sale of lands were enough to justify the Court to treat as legal evidence required for acting upon the same in land acquisition proceedings. After referring to a portion of an interlocutory judgment delivered in that matter, whereby the matter was remanded to enable the parties to lead evidence, if they chose, it was observed that once the claimant had moved the civil court, he was asking for a judicial decision on the correctness of his claim, and a judicial finding on the market value of the property must inevitably depend upon legal evidence adduced before the Court. It was further observed that the tests that were to be applied could be applied only when purchasers and vendors stepped into the witness box and stated that the price paid for the respective transactions was the normal market price and submitted to I cross-examination by the opponent. It is essential to point out that the claimants should realise that they were in the position of the plaintiffs and that if they did not lead oral evidence to show that the conclusions recorded in the award given by the Land Acquisition Officer were not proper and that the award offered unsatisfactory compensation, the award has to be confirmed. That onus of proof lay on the claimant for establishing that he was entitled to compensation at a higher rate than what was awarded to him. It would, thus, appear clear that even if any document came to be exhibited by the consent of parties, that would only mean dispensing with the proof of execution thereof unless contents are also admitted by the other side. The claimant, who is in the nature of a plaintiff in any such proceeding, is not absolved from his having to establish by proper evidence the contents of any such document. The proof of any such contents of the deed or about the transaction relating to that property,

can best be offered by examining the parties to that deed or the transaction or any person who knew about the same or brought about the transaction. The importance of such evidence is all the more in cases of this character where not only one is required to prove any such transaction having taken place in regard to land or property at a particular time and at a particular price, but that before it can serve as a good piece of evidence for determination of the market value of the land under acquisition, it must be further shown that that transaction was between a prudent purchaser and a willing vendor and that the price given by the purchaser was the normal market price prevailing then. A reference to any such entries either from account books or from revenue records or even the sale deeds, or putting mere reliance on them would not avail the party concerned. The State would then be able to meet any such instances on which the reliance is placed by the appellant, for, it could test the nature of the transaction by cross-examining those persons who speak about the same. That view finds support from another decision in *Spl. Land Acquisition Officer, The Special Land Acquisition Officer Vs. The Trustees of The Will of A.H. Wadia*, . The pertinent observations made at p. 767 may well be quoted with advantage:--

"But it is clear that the only sales that the claimant can rely upon are genuine sales, sales which indicate a proper market value. A sale may be a forced sale, a sale may be an accommodation sale, a purchaser may be prepared to pay a fancy price for a particular land, there may be an element of speculation in a sale, but the Court has to discard these sales and try and concentrate only on those sales which are effected between a willing purchaser and a willing seller, and in which these extraneous factors are absent. Therefore, in relying on a sale the claimant must rely not only on the factum of the sale, but also on the fact that that particular sale is a genuine sale."

11. Now in the present case, neither the claimant who happened to be the vendor in respect of those plots referred to in those entries Exs. 37 to 40 nor any person who acted on his behalf and that way having knowledge about the same has been examined in the case. The purchasers of those plots have also not been examined. The documents of sale are also not before the Court. The only evidence in that regard consists of witnesses Damji Talati Ex, 42 and the accountant Shivilal Ex. 36. Witness Shivilal was serving as an accountant in the office of His Highness the Maharao of Kutch, the claimant in the case. His evidence shows that the entries were in the hands of one Jayantilal Bechar who was serving as a Talati of Ravapur at that time. It further appears that Jayantilal Bechar is alive and there is no reason shown why he is not examined in the matter. Shivilal has no personal knowledge about these transactions. He has merely produced the entries from the account books maintained by the claimant. These entries are not proved by any other evidence. They are, therefore, wrongly exhibited in the case. Turning then to the evidence of witness Damji, he was in the service of His Highness the Maharao of Kutch during the period from 1948 to 1960. He worked as a Talati for both the villages of Ravapur and Ugedi. In his evidence he has then referred to those instances of sale by saying that he had

himself sold those lands to the persons referred to therein. Now that hardly appears to be so probable or true in the circumstances of the case. He started by saying in his examination-in-chief that he was appointed as Talati of Ravapur in January or February 1948 presumably with a view to show that he could speak about those transactions which took place in October 1948. But he had to admit on being asked to see the books of account, that he was appointed as Talati of Ravapur in December 1948. Not only that, but he has further stated that he took charge from Jayantilal in December 1948 and that he was not at Ravapur before that. It is therefore, obvious that he could not have taken any part in the transactions that took place in about the month of October or November, 1948. His evidence, therefore, cannot help the claimant in that regard. Thus apart from the fact that the entries were wrongly exhibited without any legal and reliable evidence about their proof, the contents of the transactions referred to in Exs. 37 to 40 cannot be taken as established. Even if the contents thereof were taken as proved, in absence of any evidence of the parties to any such transactions of sale, or of any person who knew about those transactions, they can have no value whatever. Any such instances of sale, therefore, even if it was assumed that they had taken place, cannot, therefore, serve as a guide for determining the market value of the property u/s 23 of the Act.

12. It was, however, urged by Mr. Mankad that Mr. Majumdar, the Land Acquisition Officer, has admitted in his evidence about sales of adjacent lands having taken place at certain rates. He has, however, stated that the market value of the land adjacent to the land acquired was Re. 1/- to Rs. 1-12 nP. per square yard before 1948 and that the price of the plots had appreciated on account of Lakhpat-Manjal road from Re. 1/- or Rs. 1-12 nP. per square yard to Rs. 1-25 nP. or Rs. 2/-per square yard. Now this evidence at best may establish the fact about some plots of land in the nearby locality having been sold at certain rates. His evidence in that direction, however, has its basis on such instances of sale referred to in the entries said to have been shown to him by witness Damji Talati. He admits that he had not called any of the purchasers of those plots. Such evidence is thus not based on any direct knowledge about those transactions. Thus it cannot amount to an admission of a party to a proceeding so as to bind the State authority. He has not been able to give, besides, any idea about the nature, situation, size etc. of those plots. He has not, at any rate, admitted about the genuineness of those transactions having taken place between willing vendors and willing purchasers. Unless such an admission is there, as held in the case of *The Special Land Acquisition Officer Vs. The Trustees of The Will of A.H. Wadia*, that part of the evidence cannot help the claimants. In our view, that part of the evidence cannot be enough or such as to hold the market value of adjacent lands for the ascertainment of the value of the property in question, in absence of the sale-deeds or the persons entering into those transactions being examined in the matter.

13. That takes us to the consideration of a question whether there is any material on record to show that (this land had any building potentiality and that

its value has been more than what the learned Judge has awarded at the rate of Rs. 1000/- per one acre. The learned Judge appeared to be in two minds. He tried to say that this was a Kharaba land and at the same time he also accepted the contention of the claimant that it had a building potentiality. In fact on that basis he had chosen to award compensation at the rate of Rs. 1000/- per one acre. Now, as pointed out by Mr. Mankad, all that a Kharaba land would mean is a waste land and unfit for any cultivation. In other words, it is an uncultivable waste land. Now, it is obvious that in view of the finding of the learned Judge, it is not a land which could never be made use of either for building sites or for cultivation. Even if it was a waste land not fit to make use of as agricultural land, it can well be made use of as a building site. It is on that basis that he has awarded compensation in respect of this land at the rate of Rs. 1000/-per acre. What, however, is contended by Mr. Desai was that it is not enough that it should be a land which can be made use of for building purposes. In order to claim additional compensation, the Court has to consider that the land's potentiality must have a present value, and to take into account any remote possibility of its use as & building site would be in the nature of an imaginative venture on the part of the Court, He invited a reference to a decision in *In Re: Sorabji Jamsetji Tata*, , where it was held that although land may possess certain potential ties it does not follow that those potentialities have any present value. In this connection we may as well refer to a decision In the case of *Atmaram Bhagwant Ghadgay V. Collector of Nagpur* 31 BLR 728 : (AIR 1929 PC 92) where it was held that the potential value of the land has to be taken as at the date of notification under which it has been acquired with all its then existing advantages and with all its future possibilities, excluding only any advantage due to the carrying out of the scheme for tile purposes for which the property was being acquired. Some of the observations born the decision in the case of *Yeshwantrao Govindrao Vs. The Collector, Nagpur*, were also relied upon by Mr. Desai and they run thus:--

"If a land has potentiality as building site, the market makes allowance for it, and naturally the market value of the land rises accordingly. The market takes note of any possibilities for building purposes or for Other purposes. Under the Land Acquisition Act the market value has to be determined for purposes of compensation. This market value itself includes estimates by the market of speculative advances in the values of lauds in consequence of improvements already made in the locality or in consequence of potentialities for any purposes. The market, even in villages, takes into account the use already made of similar lands in the locality and the probable most advantageous use similar lands are capable of being put to. It is not for the Court to speculate as to the future potentialities of sites or lands. The Court has only to consider the market value on the relevant date. If the land has future potentialities, the market value includes the value of such future potentialities."

In fact the same decisions were referred to in the case of ILR(1966) Guj 1006 referred to here above and they have been approved of. The emphasis was on

the observation that it is not for the Court to speculate as to the future probabilities of sites or lands. In this regard we may well refer to the decision in the case of AIR 1967 SC 465, where this aspect has been well set out by the Supreme Court as will appear from the observations made in the decision of the Supreme Court dated 30-8-1965 in N. B. Jeejabhoy v. District Collector, Thana, Civil Appeals Nos. 313 to 315 of 1963. We may quote them with advantage as under:--

"A vendor willing to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters market value but the objective factor, namely, whether the said potentiality can be turned to account within a reasonably near future..... The question therefore turns upon the facts of each case. In the contest of building potentiality many questions will have to be asked and answered: whether there is pressure on the land for building activity, whether the acquired land is suitable for building purposes, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put up on lands purchased for building purposes, what is the distance between the built-in-land and the land acquired and similar other questions will have to be answered. It is the overall picture drawn on the said relevant circumstances that affords the solution."

From all this it would, follow that while considering the potential value of any land as is likely to be used for building purposes, one has to consider various facts apart from the question as to whether the acquired land was suitable for building purposes. In our view, ordinarily the evidence in Court led by any claimant for additional compensation on that basis must first establish that the land in question is suitable for building purposes. Then would arise consideration of other such questions as whether there has been any pressure on the land for building activity in any particular area and that the purchasers are easily available. That would depend upon certain factors such as the nearness or otherwise of the land acquired to the village-housing sites, as also about any development or building activity in that or near about area. The size of the plot of land also counts. Now it was urged that in the present case apart from the land being such which can be used for building purposes, it cannot be said that there was any building activity and that too on that side of the land under acquisition. Ravapur is a small village having a population of 1800 persons. One cannot say that there was such a building activity as a result of any such progress having taken place round about the village. But two facts emerge from the evidence and they are that the land under acquisition has been not far away from the house sites of the village. The distance may be at best 300 feet or so as averred by the Land Acquisition Officer himself. We can also take into account that nearby the land under acquisition as many as four transactions had taken place whereby some persons of the village had purchased some small plots from the claimant himself, just before the land came to be acquired. The development

can, therefore, be said to be on that side and that it cannot therefore, be said to be a case where no demand could be made to respect of any such land under acquisition. No doubt one cannot expect any active development in a village of this character as we may find in urban areas. In that view of the matter, it is difficult to say that there could not have been any demand of such plots out of the acquired land in question in the near future. The learned Judge was, therefore, right in talking into account the potential value of the land under acquisition in the sense that it can be used for building purposes.