(2007) 07 GUJ CK 0028

In the Gujarat High Court

Case No : First Appeal No''s. 2671 to 2681 of 2006

Malabhai Harjibhai APPELLANT

Vs

Spl. Laq Officer and Another RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 152, 96
Land Acquisition Act, 1894 — Section 18, 4, 4(1), 54 , 5A(2)

Citation : (2007) 07 GUJ CK 0028

Hon'ble Judges : J.M. Panchal, J;Abhilasha Kumari, J

Bench : Division Bench

Advocate : S.N. Sinha and Devendra Patel, for the Appellant; Pathik Acharya, AGP in FA 2671 to 2674/2006 and J.K. Shah, AGP in FA 2675 to 2681 of 2006, for the Respondent

Judgement

J.M. Panchal, J.—These Appeals for enhancement of compensation filed by the original claimants u/s 54 of the Land Acquisition Act ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated April 20, 2001, rendered by the learned 5th Joint Civil Judge (S.D.), Surendranagar, in Land Reference Case No. 3/1998 to 14/1998 by which they have been awarded additional amount of compensation at the rate of Rs.0.85 ps. per sq.mt. for their acquired irrigated lands over and above the compensation offered to them at the rate of Rs.0.75 ps. per sq.mt. by the Special Land Acquisition Officer vide award dated October 10, 1995.

2. The Executive Engineer, Narmada Yojana, Division 1/1, Surendranagar, proposed to the State Government to acquire certain irrigated lands of village Babajipura, Taluka: Lakhtar, District: Surendranagar, for the purpose of construction of Saurashtra Branch Canal under the Narmada Project. On perusal of the same, the State Government was satisfied that the lands of village Babajipura, mentioned therein, were likely to be needed for the said public purpose. Therefore, a notification u/s 4 of the Act was issued which was published in the Government Gazette on August 20, 1992. Those whose lands

were sought to be acquired were served with notices and an inquiry as contemplated under the Act was conducted. On conclusion of inquiry, the Special Land Acquisition Officer forwarded his report u/s 5A(2) of the Act to the State Government. On consideration of the same, the State Government was satisfied that the lands of village Babajipura mentioned in the notification published u/s 4(1) of the Act in the official Gazette were needed for the public purpose of construction of Saurashtra Branch Canal under the Narmada Project. Therefore, a declaration u/s 6 of the act was made which was published in the official Gazette on February 9, 1993. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 75 per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated October 10, 1995, offered compensation to them at the rate of Rs.0.75 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made to them was totally negligible. Therefore, they submitted applications u/s 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Surendranagar, where they were registered as noticed earlier.

3. On behalf of the claimants, witness Mr. Gebabhai Jalubhai was examined at Ex.15. After giving particulars of the lands acquired, the witness mentioned that the lands acquired were highly fertile as a result of which the claimants were able to raise crops of Millet, Cumin Seeds, Onion, etc. In order to support his claim that the lands acquired were highly fertile, the witness produced copies of Village Form No. 7/12 at Exs.16 to 28. The witness further mentioned that each claimant was able to raise 15 Maunds of Cumin Seeds per Vigha, price of which at the relevant time was Rs. 2,000/- per Maund. The witness also asserted that each claimant was able to raise crop of 150 Maunds of Onion per Vigha price of which at the relevant time was Rs. 60 per Maund. The witness mentioned that the lands acquired had high potential value inasmuch as Viramgam GIDC was situated quite near the lands acquired. What was mentioned by the witness before the Court was that each claimant was able to earn net income of Rs. 50,000/- to Rs. 60,000/- per year per Vigha from the sale of agricultural produces.

4. In his cross-examination by the learned Counsels for the acquiring authorities, the witness admitted that he was not able to produce documentary evidence to support his claim that each claimant was earning net income of Rs. 50,000/- to Rs. 60,000/- per Vigha per year from the sale of agricultural produces. However, in his cross-examination, the witness informed the Court that the claimants were selling their agricultural produces at Viramgam Market for which necessary bills were issued but he was not able to produce the same before the Court at the time when his testimony was being recorded.

5. Yet another witness examined on behalf of the claimants was Mr. Chaturbhai Devabhai Waghela. His testimony was recorded at Ex.32. The witness mentioned before the Court that he was serving as Talati-cum-Mantri at Babajipura and was knowing all the farmers whose lands were acquired in the instant case. The witness mentioned that village Babajipura was situated on Surendranagar-Ahmedabad highway and was at a distance of ten kilometers from Viramgam GIDC. The witness further mentioned that Viramgam GIDC is fully developed where several factories, industries etc. have come up. After mentioning that the lands acquired were highly fertile, the witness informed the Court that the claimants were able to raise different crops such as Cotton, Juwar, Millet, Wheat, Cumin Seeds, etc. thereon.

6. Though this witness was cross-examined by the learned Counsels for the acquiring authorities, nothing substantial could be elicited.

7. The last witness examined on behalf of the claimants was Mr. Ishwarbhai Ajmalbhai. His testimony was recorded at Ex.33. His testimony indicates that he was former member of Taluka Panchayat, Lakhtar and was elected as delegate of villages Vitthalgarh, Bhaskarpara, Jyotipara, Babajipara, Vitthalpara and Kalyanpara. According to this witness, there were about 100 to 150 tube-wells known in common parlance as "Holoya", and therefore water was available in abundance for the purpose of irrigation. The witness asserted before the Court that the claimants, whose lands were acquired in the instant cases, were able to raise crops of Juwar, Millet, Wheat, Cumin Seeds, etc. The witness further stated that the price of Cumin Seeds was Rs. 1500/- per Maund and that the claimants were able to raise 12 to 15 Maunds of Cumin Seeds per Vigha on their lands. According to this witness, after deducting the cost of cultivation, each claimant was able to earn net income of Rs. 40,000/- to Rs. 50,000/- per year per Vigha.

8. As in the cases of other witnesses, this witness was also cross-examined by the learned Counsels for the acquiring authorities but the assertions made by him in his examination-in-chief could not be demonstrated to be untrue.

9. As far as the acquiring authorities are concerned, witness Mr.Rajendra Nanalal Patel was examined at Ex.39. His testimony would indicate that at the time when his deposition was recorded, he was serving as Deputy Engineer in the office of Saurashtra Sub Division Branch of Narmada Nigam. After claiming that he was well conversant with the proceedings initiated for the acquisition of lands in the instant cases, the witness produced map at Ex.40 which indicated that Narmada canal was passing through village Babajipura. What is relevant to notice is that this witness did not give any particulars about quantity of different crops raised by the claimants on the lands acquired nor prices of those agricultural produces prevailing at the relevant time.

10. As usual, this witness was cross-examined by the learned Counsel for the claimants, but no material statements were made in the cross-examination except admitting that the claimants were raising crops of Millet, Paddy, Cotton,

Cumin Seeds, etc. on the lands acquired.

11. In order to enable the reference Court to determine the market value of the lands acquired, the learned Counsel for the claimants had placed on record, written submissions at Ex.60. On appreciation of evidence adduced by the parties, the Reference Court concluded that no evidence was adduced by the claimants to establish that they were raising crops of Onion, Cumin Seeds, etc. but held that it was proved by the claimants that they were raising crops of Juwar, Paddy, Wheat, during the period between 1995-96 to 1999-2000. The Reference Court further noticed that no sale-deeds were produced by the claimants to enable the Court to determine the market value of the lands acquired on the basis of comparable sale instances. The xerox copies of sale-deeds at Exs.42 to 56 were produced by the acquiring authorities for consideration of the Court. The Reference Court noticed the law prevailing then that neither the Vendor nor the Vendee nor the scribe was examined to prove those transactions and therefore, were irrelevant for the purpose of determining the market value of the lands acquired. Ultimately, in paragraph 12 of the Judgment, the Reference Court held that the evidence on record was sufficient to conclude that each claimant was earning net income of Rs. 40,000/- to Rs. 50,000/- per Vigha per year from the sale of agricultural produces. The Reference Court noticed that some exaggerations were made by the witnesses for the claimants and if these embellishments were ignored it was proved by the claimants that the claimants were earning income of Rs. 2 lacs per Hectare per year from the sale of agricultural produces. However, having recorded these findings, the Reference Court committed arithmetical mistake and held that the claimants were entitled to additional amount of compensation at the rate of Rs.0.85 ps. per sq.mt. by the impugned award which has given rise to the abovenumbered Appeals.

12. This Court has heard Mr. S.N. Sinha, learned Senior Advocate with Mr.Devendra Patel, learned Counsel for the claimants as well as Mr. J.K. Shah and Mr. Pathik Acharya, learned Assistant Government Pleaders for the respondents, at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsels for the claimants which includes documentary as well as oral evidence adduced by the parties before the Reference Court.

13. At the outset, this Court notices that no reasons whatsoever have been assigned by the Reference Court while coming to the conclusion that the claimants are entitled to additional compensation only at the rate of Rs.0.85 paise per sq.mt. In view of the findings recorded by the Reference Court in paragraph 12 of the impugned common award, it is evident that the income which each claimant was deriving from the sale of agricultural produces was Rs. 2 lacs per Hectare per year. Therefore, the price per sq.mt. would come to Rs. 20/- and not what is awarded as additional compensation by the Reference Court. The arithmetical mistake committed by the Reference Court will have to be amended as contemplated by Section 152 of the Code of Civil Procedure,

1908. Once arithmetical mistake committed by the Reference Court is corrected, there is no manner of doubt that all the claimants would be entitled to compensation at the rate of Rs. 20/- per sq.mt. and not at the rate of Rs. 1.60 ps. per sq.mt. as held by the Reference Court.

14. It may be mentioned that the findings recorded by the Reference Court in paragraph 12 of the judgment are not challenged by the respondents. Thus, the Appeals filed by the claimants deserve to be partly accepted once arithmetical mistakes committed by the Reference Court are corrected.

15. As noticed earlier, the claimants had neither produced comparable sale instances nor relied upon the previous award of the Reference Court to enable the Reference Court to determine the market value of the lands acquired in the instant cases. This Court notices that xerox copies of certain sale-deeds were produced by the acquiring authorities for consideration of the Reference Court. However, none of the documents was referred to by the two witnesses examined by the acquiring authorities nor it could be established by the acquiring authorities that the lands which were subject matter of those sale-deeds were situated in the vicinity of the lands acquired or were possessing similar advantages and disadvantages as those of the lands acquired. Therefore, the xerox copies of those sale-deeds are of little assistance to the Court in determining the market value of the lands acquired and rightly not considered by the Reference Court while evaluating the market price of the lands acquired. As laid down by Supreme Court in catena of reported decisions, the methods of valuation are; (i) opinion of experts, (ii) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands or of the lands adjacent to those acquired and possessing similar advantages, and (iii) a number of year''s purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years'' purchase should not be resorted to, if there is evidence of comparable sales or other evidence for computation of the market value. Here, in these cases, such evidence was not available and therefore, the Reference Court should have determined the market value of the lands acquired in the instant cases on yield basis.

16. Apart from arithmetical mistake committed by the Reference Court which is noticed earlier, this Court finds that the reliable testimony of three claimants establishes satisfactorily that each claimant was raising different crops on the lands acquired, namely Cotton, Paddy and Wheat. The assertion made by the witnesses for the claimants that the claimants were growing crops of Cotton, Paddy, Wheat etc. on the lands acquired gets complete corroboration from the admission made by the witness examined by the acquiring authorities, which is already referred to earlier. What was asserted by the witness Mr.Gebabhai Jalubhai, who was examined on behalf of the claimants was that each claimant was able to raise 40 Maunds of Wheat per Vigha per year, price of which at the relevant time was Rs. 250/- per Maund. This would indicate that each claimant

was able to earn the net income of Rs. 10,000/- per Vigha per year from the sale of agricultural produce, namely Wheat. It is true that no documentary evidence could be produced by the claimants to substantiate the claim that each claimant was able to earn Rs. 40,000/- to Rs. 50,000/- per Vigha per year from the sale of agricultural produces. However, there is no reason for this Court to disbelieve the assertion made on oath by the witness for the claimants that each claimant was earning income of Rs. 10,000/- per Vigha per year from the sale of Wheat grown. At this stage, it would be advantageous to refer to the decision of Supreme Court in State of Gujarat and others Vs. Rama Rana and others, Therein, neither the claimants nor the Government had taken steps to adduce best evidence. The Government had failed to adduce any evidence relating to comparable sale instances, etc. However, the Supreme Court was of the opinion that that was not ground to reject the oral evidence of the witnesses on that ground alone. After emphasizing that the Court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man, i.e. whether he would be willing to purchase the land at the rates proposed by the Court, the Supreme Court subjected the oral evidence to scrutiny and awarded compensation to the claimants. Therefore, the evidence adduced by the claimants in this case will have to be subjected to close scrutiny and on close scrutiny of the evidence, this Court finds that the assertion made by the witnesses for the claimants that each claimant was able to earn Rs. 10,000/- per Vigha per year from the sale of Wheat deserves to be accepted as the same is reasonable. Even if the claim of the claimants that they were also earning substantial income from the sale of other agricultural produces, namely Millet, Paddy, Cotton, Cumin Seeds, etc. is ignored, this Court is of the opinion that the claimants would be entitled to compensation at the rate of Rs. 20/- per sq.mt. because from the gross agricultural income of Rs. 10,000/- derived from the sale of Wheat, 50% will have to be deducted towards the cost of cultivation which would bring the figure to Rs. 5,000/- per Vigha, which will have to be divided by 2378 in order to find out the price per sq.mt. So calculated, the price comes to Rs. 2.10 ps. per sq.mt. The Supreme Court has laid down in several reported decisions that in order to arrive at market value of the lands acquired on yield basis, multiplier of 10 should be adopted. Once this is done, it becomes evident that the income which was being derived by the claimants from the sale of wheat was Rs. 20/- per sq.mt. Therefore, over and above the correction of arithmetical mistake committed by the Reference Court, this Court is of the opinion that even on merits, the claimants are entitled to compensation at the rate of Rs. 20/- per sq.mt.

17. Further, this Court finds that in the impugned award, the Reference Court has directed that the claimants would be entitled to interest at the rate of 10% p.a. on the additional amount found payable to them. This is quite contrary to the scheme envisaged by the Act. At the best, the claimants would be entitled to interest at the rate of 9% p.a. It is true that no Appeal is filed by the acquiring authorities for the purpose of challenging this direction given by the Reference

Court. However, the mistake committed by the Reference Court can always be corrected by this Court in exercise of powers under Order 41, Rule 33 of the Code of Civil Procedure, 1908, by holding that the claimants would be entitled to interest at the rate of 9% p.a. on the additional amount awarded.

18. For the foregoing reasons, the Appeals partly succeed. The common judgment and award dated April 20, 2001, rendered by the learned 5th Joint Civil Judge (S.D.), Surendranagar, in Land Reference Case No. 3/1998 to 14/1998, awarding compensation in all to the claimants at the rate of Rs. 1.60 ps. per sq.mt. for the lands acquired is hereby modified and it is held that the claimants would be entitled to compensation in all at the rate of Rs. 20/- per sq.mt. for their acquired lands. As the compensation determined payable by this Court is in excess of the sum awarded by the Special Land Acquisition Officer, it is directed that the Special Land Acquisition Officer shall pay interest on such excess amount at the rate of 9% p.a. from the date on which he took possession of the lands acquired till the date of payment of such excess amount. The rest of the statutory benefits which are conferred to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The Appeals stand allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

