

(2023) 07 GUJ CK 0020

In the Gujarat High Court

Case No : R/Special Civil Application No. 11427 Of 2023

Mali Nanjibhai Somabhai

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 07-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 300A
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 19, 24(1)(a)

Citation : (2023) 07 GUJ CK 0020

Hon'ble Judges : A.J.Desai, J;Biren Vaishnav, J

Bench : Division Bench

Advocate : Rakesh R Patel, Kanva M. Antani

Final Decision : Allowed

Judgement

A.J.Desai, J

1. Though the matter is listed for admission hearing, with the consent of learned advocates appearing for the respective parties, the same is taken up for final disposal. Rule returnable forthwith. Mr. Antani, learned AGP waives service of notice of rule on behalf of respondent State.

2. We have heard learned counsel appearing for petitioners and learned AGP for respondent State.

3. Grievance of the petitioners in the petition is to the effect that they are owners of the land which was the subject matter of acquisition for the purpose of construction of canal and possession of the said lands have been taken in the years 2010/2011 itself and at which point of time, a lump sum advance compensation was given to petitioners, but authorities have not determined the final compensation payable to the petitioners for the acquired land till date though long lapse of time. It is also their contention that repeated representations given to the authorities, have not been considered and as such

they have prayed for a direction to the respondent authorities to complete the acquisition proceedings in respect of the lands owned by the petitioners, which have since been acquired for the purpose of establishing Narmada Canal. They have also sought for payment of approximately 80% of the compensation to the petitioners as provided under the provisions of the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 2013') during the pendency of finalizing the acquisition proceedings.

4. Learned AGP, upon instructions, submits that acquisition proceedings would be concluded and taken to its logical end as expeditiously as possible.

5. Mr.Rakesh Patel relies upon a decision of this Court dated 03.05.2023 rendered in Special Civil Application No.5494 of 2023 and allied matter and states that the said decision squarely applies in this matter too.

6. Having heard the learned advocates appearing for the respective parties and having regard to the fact that possession of lands of the petitioners having been taken over by the respondent authorities without initiating acquisition proceedings would be in utter violation of Article 300-A of the Constitution of India. Neither the acquisition proceedings have been initiated or even if initiated in some cases, it is not taken to its logical end. In Special Civil Application No. 1420 of 2020 and allied matters, the Coordinate Bench by common order dated 03.03.2020 directed the respondents to complete the acquisition proceedings within a period of four months from the date of service of order. The direction which came to be issued, reads :-

"5. Although, Shri Shah, learned Assistant Government Pleader has requested that the Court may only observe that the said exercise may be completed as early as possible, but we are not inclined to accept the said request and we direct the respondents to complete the acquisition proceedings and ensure payment of compensation to the petitioners within a period of 4 months from the date of service of this order on the respondents No.1 and 2."

7. The said direction was issued in respect of acquisition proceedings relating to Dharoi Canal and the present acquisition proceedings related to Narmada Canal and possession of the lands having taken over from petitioners in the years 2010/2011 itself. Even after 12 years of being deprived of their lands, acquisition proceedings have not come to its logical end. Learned AGP would submit that in identical circumstances, Government has come out with a policy whereunder the sale deeds are being obtained by the State by paying considering amount towards the value of the land/s in order to give a quietus to the dispute. If such sale deed is executed by the owner of the land in favour of the State, it would be a matter where parties would at ad-idem or in other words consensus regarding price of the land would be arrived at by virtue of offer and acceptance culminating in a concluded contract. Thus, it would be open for the State to enter into such contract, necessarily subject to land owners agreeing for the sale

consideration. This Court would refrain from expressing any opinion in that regard. In the event of such transaction not taking place immediately, the respondent – State would be required to conclude the acquisition proceedings. Clause (a) of sub-section 1 of Section 24 of 2013 Act would be applicable in the event of award being passed. In the instant case, undisputedly there is no award which has been passed though the acquisition proceedings were initiated under Land Acquisition Act, 1894 and award having not been passed under the said Act.

8. In that view of the matter, we proceed to pass following order:

(i) Special Civil Application is allowed in part.

(ii) A direction is issued to the respondents to conclude the acquisition proceedings under Act 2013 within one year from the date of receipt of copy of this order including publication of the declaration under section 19. (iii) However, it would not come in the way of State entering into a sale deed with the respective petitioners – land owners and subject to the said land owners agreeing for executing sale deed in favour of the State and if so, the direction issued hereinabove would not be required to be complied by the respondents State.

(iv) No order as to costs. Rule is made absolute.