
(1991) 03 GUJ CK 0040
In the Gujarat High Court
Case No : F.A. No's. 1144 to 1150 of 1981

Natwarbhai Sakarabhai and Others

APPELLANT

Vs

Additional Special Land Acquisition Officer

RESPONDENT

Date of Decision : 13-03-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : AIR 1992 Guj 63

Hon'ble Judges : M.S. Parikh, J;C.V. Rane, J

Bench : Division Bench

Advocate : Ketty A. Mehta, M.I. Patel, for the Appellant; D.K. Trivedi, Incharge Govt. Pleader, for the Respondent

Judgement

C.V. Jani, J.—These seven appeals under S. 54 of the Land Acquisition Act, 1894, hereinafter referred to as the "Act", arise out of a common judgment and different awards made by the learned Judge, Court No. 17, City Civil Court, Ahmedabad, in Land Reference Cases Nos.50/79, 43/79, 44/79, 49/79, 51/79, 53/79 and 57/79 respectively.

2. The lands under acquisition situated in Vadej were acquired for construction of houses by the Gujarat Housing Board. The notification under S. 4 of the Act dated 17-8-71 was published in the Gujarat Government Gazette on 2-9-1971. It may be noted here that some other lands had already been acquired for this, very purpose under another notification under S. 4 of the Act published on 29-1-1970, but the lands involved in the present appeals had been left out. Notification under S. 6 was published in the Gazette on 25-7-1971. After issuing notices to the interested- persons and after hearing them under the relevant provisions of the Act, the Additional Special. Land Acquisition Officer, declared his Award on 22-5-79. As against the average claim of the claimants at the rate of Land Acquisition Rs. 115 per sq. mtr. the Land Acquisition Officer awarded compensation at different rates ranging from Rs. 13 -to Rs.35/ per sq. mtr. Hence the dissatisfied claimants moved the authority to intake reference to the

City Civil Court 13 references were made and by consent, of Advocates they were orders to be consolidated.

3. It is a curious feature of this group of cases - that the claimants as well as the Acquiring Body and the Government chose not to lead any oral evidence. Reliance was placed only on the map Exh.11 and a judgment of the City Civil Court in Land Acquisition Case No. 55/75, Exh. 12. The parties submitted written Pursis Exhs. 15, 16, 17, 18, 21 and 22 declaring that they did not want to lead any oral evidence whatsoever. The judgment in the Land Acquisition Case No. 55/75 was delivered by the City Civil Court in respect of lands, which were acquired for the same purpose, under the earlier notification dated 29-1-70. An attempt was made by the claimants' advocate to compare different pieces of acquired lands with the lands which were valued in the Land Acquisition Case No. 55/75 order that compensation at the -same enhanced rate may be awarded to them also. The learned Judge, therefore, followed this line of comparing the acquired lands with certain instances of lands acquired in the previous acquisition without there being any evidence - oral or otherwise except the map itself, which would show that the comparison could be made on any particular basis. In each case the learned Judge enhanced the compensation by making such comparison.

4. Out of 13 Land Acquisition Cases, only the claimants in 7 Land Acquisition Cases have come in appeal. It cannot be overlooked that the Land Acquisition authorities have not challenged the awards of the City Civil Court by filing any appeal or cross objections.

5. It appears that the awards made by the City Civil Court in the group of matters arising from the acquisition under the notification dated 29-1-70 became the subject matter of a group of appeals under S. 54 of the Act and these appeals came to be decided on 21-8-89. In these First Appeals No.s 934 to 950/78 with First Appeals Nos.634 to, 668/ 79 the Division Bench of this was concerned with the question -Whether, the City Civil Court had committed an error in valuing the lands at less than the rate reflected in the various sale deeds, simply on the ground that the sale instances had been brought into existence by intervening confirming parties who had been found to be society organisers. The Division Bench did not accept the approach of the City Civil Court in reducing Rs. 5/- per sq. mtr. in each sale instance in order to fix the market rate of the lands under acquisition, and enhance the compensation at the. rate of Rs. 4/- per sq. mtr. The Division Bench did not go into the question whether the sale instances cited in those cases were comparable or not. By relying on -the Division, Bench judgment in these appeals Mr. M., 1. Patel, learned advocate appearing for the appellants urged that compensation should be enhanced at a similar rate in these seven appeals also. As against this submission, Mr. D. K. Trivedi, learned In-charge Govt. Pleader appearing for the respondent Land Acquisition Officer, urged that even though the City Civil Court had committed an error in enhancing the compensation in some cases, he was not able to assail the awards in view of the fact that the respondent had not filed any appeal or cross objections. He,

however, submitted that the value as placed by the City Civil Court in the present group of 7 Land Reference Cases should not be enhanced any further.

6. Before we consider each case separately, we will deal with the request made by Mr. M. 1. Patel, appearing for the appellants, for remanding the matters to the trial court in view of the paucity of evidence in respect of comparable sale instance. Mr. Patel was very much conscious about the fact that though the only document brought on record for deciding the compensation cases, was the Map Exh. 11, no attempt had been made on behalf of the claimants to produce the relevant sale instance and also oral evidence to show how such sale instance would be comparable and relevant for deciding the market value of the different pieces of land, which were acquired. He was also conscious of the fact that mere production of such a Map along with the judgment of the City Civil Court in another group of Land Acquisition cases would not by itself be sufficient to enable the Court to find out the comparable instances or to evaluate the land on a particular basis. He, therefore, submitted that all the matters should be remanded to the City Civil Court for enabling the parties to lead proper evidence in order that complete justice may be done. We were not persuaded to accept this request in view of the pursuit filed in unequivocal terms by the parties before the City Civil Court declaring that they did not want to lead any oral evidence or any additional evidence. Therefore, we will have to proceed on the basis of documents on record and we will have to find out whether the City Civil Court had awarded compensation at lesser rate in any case than what was justified. No doubt, there is going to be some guess work in evaluating the lands and that was actually done by the City Civil Court in the 13 Land Reference Cases; but it would be too presumptuous to enhance the value of the acquired lands by Rs. 4/- per Sq. Mtr. simply because, such an increase was made by another Division Bench in respect of the previous acquisition of different lands because of certain reasons which are not reflected in the present group of matters. We, therefore, take each case separately in order to decide whether additional compensation can be awarded as submitted by Mr. Patel, over and above the compensation awarded by the City Civil Court.

6.1 First Appeal No. 1144 of 1981 is in respect of Land bearing survey No. 197/1 admeasuring 4895 sq. mtrs. The City Civil Court valued it at Rs. 24-50 per sq. mtr. in view of its proximity to the adjacent survey No. 198. It had been valued at Rs. 25/- per sq. mtr. particularly in view of the fact that survey No. 197/1 was of a bigger size. The learned City Civil Judge, therefore, increased the compensation awarded by the learned Land Acquisition Officer by Re. 1/- per Sq. Mtr. No error seems to have been committed by the learned City Civil Judge in not increasing the compensation any further.

6.2 First Appeal No. 1145/81 is in respect of the lands bearing survey No. 198/1 admeasuring 4316 Sq. Mtrs. and survey No. 136/1 admeasuring 132 Sq. Mtrs. The learned Judge valued survey No. 198/1 at Rs. 25/- per Sq. Mtr. as against Rs. 24/- per Sq. Mtr. fixed by the Land Acquisition Officer as survey No. 198/1

and 198 were identically situated and they were parts of the same larger piece of land. So far as survey No. 136/1 was, concerned, the learned Judge held that it was comparable with survey No. 154, but it being a small piece of plot of land admeasuring about 132 Sq. Mtrs. only which was incapable of being used for residential or commercial purpose, its value could not be determined at more than Rs. 18 / - per sq-mtr. It appears from the map that survey No. 154 is not near to survey No. 136/1 as found by the City Civil Court, though it is correctly described as a peg shaped portion under -acquisition. Survey No. 154 cannot be said to be a comparable instance so far as this land is concerned and that the market value of survey No. 154 cannot be made the basis of valuing survey No. 136/ 1. Hence it is not necessary to interfere with the valuation placed by the City Civil Court in respect of this land.

13-3-1991.

6.3 First Appeal No. 1146/81 relates to the land bearing survey No. 198/2 a plot admeasuring 1170 Sq. Mtrs. Naturally the learned Judge found that the value of the survey Nos. 198 and 198/1 would also determine the value of survey No. 198/2. So the market value of survey No. 198/2 would be Rs. 25/- per Sq. Mtr. However, the learned Judge has awarded Rs. 26/- per Sq. Mtr. and this value is not challenged by filing cross objections.

6.4 First Appeal No. 1147/81 relates to land bearing survey No. 174 admeasuring 463 Sq. Mtrs. The learned Judge has compared the situation of survey No. 174 with that of survey No. 166 which does not abut on any road. This survey No. 166 was valued at Rs. 30/ - per sq. mtr. by the City Civil Court in the earlier acquisition. The learned Judge, however determined the value of survey No. 174 at Rs. 18/-per sq. mtr. on the ground that it was smaller in size. The size of survey No. 174 cannot be said to be so small as to justify such reduction. Quite a reasonably big bungalow can be constructed on 463 sq. mtrs. of land. Moreover, considering the passage of about 1 1/2 years after the acquisition of survey No. 166 valued at Rs. 30/ - per Sq. Mtr., it can be said that the land bearing survey No. 174 would not have been valued below Rs. 30/per sq. Mtr. So, the appellant-claimant in First Appeal No. 1147/81 would be entitled to get Rs. 5556/- by way of additional compensation.

6.5. First Appeal No. 1148/81 relates to the land bearing survey No. 197/2 which is adjacent to survey No. 198. On considering its size and proximity to survey No. 198/1 the learned Judge valued survey No. 197/2 at Rs. 24/- per Sq. Mtr. No submission was made on the ground of its proximity in respect of survey No. 198 and so we do not propose to interfere with the valuation made by the learned Judge on survey No. 197/2.

6.6. First Appeal No. 1149/81 relates to the land bearing survey No. 284 which is compared by the learned Judge with survey No. 248. Considering the size and shape of survey No. 284 and its distance from the sub-road the learned Judge placed its valuation at Rs. 38/- per Sq. Mtr. The learned Judge did not err in

valuing survey No. 284.

6.7. First Appeal No. 1150/81 relates to the land bearing survey No. 632 touching the Railway track. The learned Judge compared this land with survey No. 418 which was touching the Railway track with an additional advantage of touching a sub-road, and placed the value of survey No. 632 at Rs. 28 / -per Sq. Mtr. The land bearing survey No. 418 which was the subject matter of earlier acquisition was valued at Rs. 33/- per Sq. Mtr. by the City Civil Court. The value of survey No. 418 was increased in appeal by the High Court to Rs. 37/- per Sq. Mtr. Hence on comparison the value of survey No. 632 has also to be increased by Rs. 4/- per Sq. Mtr. So an additional amount of Rs. 11,268/- will have to be awarded for 2817 Sq. Mtrs. of survey No. 632.

7. Mr. M. 1. Patel, learned Advocate appearing for the appellants in all these appeals submitted that the lands involved in First Appeals No. 1144, 1145, 1146, 1147 and 1148/81 should be compared with the land bearing survey No. 194 which was the subject matter of earlier acquisition and which was valued at Rs. 32/- by the High Court in appeal. He also submitted that the land bearing survey No. 284 involved in First Appeal No. 1149/81 should be compared with the lands bearing survey Nos. 151 and 152 which were the subject matter of the earlier acquisition and which were valued at Rs. 44/ per Sq. Mtr. by the High Court in appeal.

8. This submission of Mr. Patel cannot be accepted for the simple reason that no basis for such comparison is made out by the appellants in their evidence. The submission is made on the basis of the map Exh. 11. The contents of the map have not been proved by leading evidence. No witness is examined to show how a particular piece of land can be compared with another piece of land as being similarly situated and as to what are the advantages and disadvantages of a particular piece of land. There is big tract of land irregular in shape and marked in green colour, regarding which no explanation is furnished in the map. We do not know whether this portion was reserved as green belt. No explanation comes forth regarding the irregular size and shape of lands like survey No. 136/ 1 and no witness is examined to show that the remaining part of such lands had been acquired earlier, leaving the parties concerned to claim compensation for injurious affection. Hence in absence of substantive evidence produced by the claimants, it would be simply adding to the guess work already indulged in by the Civil Court if the lands which are the subject matter of appeals are compared with certain survey Numbers which were valued at a particular rate by the High Court in other appeals. We, therefore, do not propose to be over enthusiastic as to enter into that exercise and feel satisfied with the valuation placed by the City Civil Court in these appeals excepting First Appeal No. 1147/81 and First Appeal No. 1150/81 which have been apparently wrongly decided by the City Civil Court.

9. In the result, First Appeals No. 1144/ 81, 1145/81, 1146/81 and 1148/81 and 1149/81 are dismissed with no order as to costs. First Appeal No. 1147/81 is partly allowed. The appellant would be entitled to recover an additional amount

of Rs. 5556/- by way of additional compensation with solatium at the rate of 15%. First Appeal No. 1150/81 is partly allowed and the appellant will be entitled to recover an additional amount of Rs. 11,268/- by way of additional compensation with solatium at 15%/. The appellants in both the appeals would also be entitled to recover interest at the rate of 4 1/2% in each case from the date of taking possession till payment, along with proportionate costs.

10. Order accordingly.