

(1998) 12 GUJ CK 0091
In the Gujarat High Court

Case No : First Appeal No's. 779 to 788 of 1989 and Cross Objection No's. 287 to 296 of 1998

Officer on Duty, Laq

APPELLANT

Vs

Aiyub Haji Ahmed Ismail Bada

RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 96
Land Acquisition Act, 1894 — Section 23(2), 4, 4(1), 51, 51A
Registration Act, 1908 — Section 57

Citation : (1998) 12 GUJ CK 0091

Hon'ble Judges : M.H. Kadri, J;J.M. Panchal, J

Bench : Division Bench

Advocate : U.A. Trivedi, A.G.P for First Appeal Nos. 779/89 to 783/89 and B.D. Desai, AGP in First Appeal Nos. 784/89 to 788/89 and R.M. Vin, in Cross Objection Nos. 287 to 296 of 1998, for the Appellant; R.M. Vin, in First Appeal Nos. 779/89 to 788/89 and D.U. Shah, in First Appeal Nos. 779/89 to 788/89 and U.A. Trivedi, for Cross Objection Nos. 287 to 291 of 1998 and D.U. Shah, for Cross Objection Nos. 287 to 296 and B.D. Shah, in Cross Objection Nos. 292 to 296 of 1998, for the Respondent

Judgement

J.M. Panchal, J.—All these appeals, which are filed u/s 54 of the Land Acquisition Act, 1894 read with section 96 of the CPC as well as Cross Objections which are filed under the provisions of Order-41 Rule 22 of C.P.C., arise from common judgment and award dated October 19, 1988 rendered by the learned Assistant Judge, Bharuch, in Land Acquisition Reference Cases No. 16/85 to 25/85 and, therefore, we propose to dispose of all these appeals and cross-objections by this common judgment.

2. The Mines and Industries Department, State of Gujarat proposed to the State Government to acquire lands of village Kosamdi for the purpose of extension of Housing Colony of Industrial Estate. The State Government was satisfied that lands belonging to the claimants in these cases and others were likely to be needed for the said purpose. Therefore, notification u/s 4 of the Land Acquisition

Act, 1894 ("the Act" for short) was issued, which was published in the Government Gazette on October 7, 1980. The land owners were served with notices, who had filed objections against the proposed acquisition. After considering the objections, Officer on Special Duty, Land Acquisition, Ahmedabad had forwarded his report to the State Government as contemplated by section 5A(2) of the Act. On receipt of the report, State Government was satisfied that the lands of village Kosamdi as mentioned in Section 4 notification were needed for public purpose of extension of Housing Colony of Industrial Estate. Therefore, declaration u/s 6 of the Act was made, which was published in Government Gazette on May 6, 1982. The interested persons were thereafter served with notices u/s 9 of the Act for determination of compensation. Before the Officer on Special Duty, Land Acquisition, Ahmedabad the claimants claimed compensation at the rate of Rs. 50,000/- per Acre i.e. Rs. 1250/per Are. The Land Acquisition Officer considered the materials placed before him and offered compensation to the claimants at the rate of Rs. 200/- per Are for non-irrigated lands and Rs. 100/- per Are for waste lands by award dated April 26, 1984. The claimants were of the opinion that offer of compensation made by the Special Officer on Duty, Land Acquisition, Ahmedabad was inadequate. Therefore, they did not accept the award and by making applications, required the said Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Bharuch, which were numbered as Land Acquisition Reference Cases No. 16/85 to 25/85. In the reference applications, it was pleaded by the claimants that having regard to better quality of the lands acquired as well as potentiality of the lands for residential and industrial use, the claimants should be paid compensation at the rate of Rs. 1250/- per Are. It was also claimed that the Officer on Special Duty, Land Acquisition had not considered the sale instances of nearby lands of the same village and, therefore, the claimants were entitled to higher compensation. The State Government had contested the reference applications by filing written statement at Exh.14. It was, inter-alia, pleaded that the claimants had not submitted claim before the Officer on Special Duty, Land Acquisition pursuant to notices u/s 9 of the Act and, therefore, references were barred by the provisions of the Act. It was further stated that the references were also barred by the provisions of Section 25 of the Act. What was claimed was that the offer made by the Officer on Special Duty, Land Acquisition was just and proper and, therefore, reference applications should be dismissed. The acquiring body i.e. Gujarat Industrial Development Corporation had also filed reply, inter-alia, stating that the compensation granted by the Officer on Special Duty, Land Acquisition was not only reasonable, but also proper and, therefore, the reference applications should be dismissed. What was highlighted in the written statement of the acquiring body was that the acquired lands were situated near Khadi-kotar lands and as there was no development either of industries or or buildings, the claimants were not entitled to higher compensation as claimed in reference applications.

3. In view of pleadings of parties, necessary issues for determination were raised by the Reference Court. In order to substantiate the claim advanced in the reference applications, the claimants examined; (1) Ismailbhai Sulemanbhai Mayat at Exh.123, (2) Kasambhai Ibrahimbhai Badat at Exh.139, (3) Chimanbhai Jerambhai at Exh.160, and (4) Jamolbhai Hirabhai at Exh.163. The Special Officer on Duty, Land Acquisition examined witness Natvarsinh Naharsinh Chauhan at Exh.171 in support of his case that the claimants were not entitled to higher compensation. The claimants also produced certified copies of entries from the register maintained under the provisions of Registration Act, 1908 at Exh.124 to Exh.136 through witness Ismailbhai Sulemanbhai Mayat. Witness Jamolbhai Hirabhai produced sale deed at Exh.144 regarding sale of Survey No.205/1 situated at village Bhadkodara in favour of M/s. Dattani Development Corporation for a sum of Rs. 83,700/-. Over and above the sale deeds, the claimants also produced two previous awards rendered by the Reference Court at Exhs. 31 & 32. Though the Reference Court took into consideration the evidence adduced by the parties, no reasons were indicated as to how value of acquired agricultural lands situated at village Kosamdi was assessed. It was found by the Reference Court that value of the lands situated at village Gadkhol was higher than the value of lands situated at village Kosamdi because village Gadkhol was nearer to Ankleshwar and agricultural lands situated at village Kosamdi had no value in the year 1981. However, without indicating clear reasons, Reference Court deduced that the value of the agricultural lands situated at village Kosamdi should be assessed at Rs. 720/- per Are. This finding was probably arrived at because the Reference Court took into consideration document at Exh.129, dated March 24, 1981 which was relating to sale of 53 plots to one builder. The Reference Court was of the opinion that the agricultural lands which were acquired had building potentiality and, therefore, 30% rise in price should be considered as reasonable for the purpose of determining market value of the lands acquired. Accordingly, the Reference Court held that market value of the lands acquired would be Rs. 936/per Are. However, the Reference Court needed that this was a case of acquisition of lands on large scale and, therefore, 20% should be deducted from the market value of the lands acquired. In ultimate analysis, the Reference Court held that market value of the lands acquired as on the date of publication of notification u/s 4 of the Act was Rs. 750/- per Are, by common judgment and award dated October 19, 1988, which has given rise to the present appeals and cross-objections.

4. Mr. U.A. Trivedi and Mr. B.D. Desai, learned Assistant Government Pleaders submitted that section 51A of the Act does not dispense with proof of comparable sale deeds and though certified copies of entries made available u/s 57 of the Registration Act, 1908 can be accepted as evidence of the transaction recorded in such entries, they should not have been relied upon when neither vendor nor vendee was examined to prove relevant features of the sale transactions. Learned Government Counsel stressed that sale deed produced by witness Jamolbhai Hirabhai is not reliable at all and, therefore, the same should be

ignored while determining market value of the lands acquired in the present case. It was claimed that the awards rendered earlier indicate that the market value of the lands situated at village Bhadkodara and village Piraman was Rs. 450/- per Are and, therefore, the Reference Court was not justified in awarding compensation to the claimants at the rate of Rs. 750/- per Are. What was highlighted on behalf of the appellants was that the offer made by the Land Acquisition Officer was not only just, but also reasonable and as determination of compensation by Reference Court is excessive, the impugned common award should be set aside. In the alternative, it was pleaded that direction to pay interest on the amounts envisaged under sections 23(1-A) & 23(2) of the Act should be set aside, as it is contrary to the provisions of the Act. To substantiate these arguments, learned Counsel for the Government placed reliance on the decisions rendered in the cases of (i) Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , and (ii) State of Maharashtra Vs. Maharau Srawan Hatkar, .

5. Mr. R.M. Vin, learned Senior Counsel for the claimants submitted that evidence of witness Ismailbhai Sulemanbhai Mayat shows that the lands situated within Bhadkodara, Kapodara, Piraman, Ankleshwar and Gadkhol villages form a compact block and, therefore, in view of overall industrial development in the area, determination of market value of the lands acquired cannot be said to be excessive so as to warrant interference of the Court in the present appeals. It was claimed that sale deed produced by Jamolbhai establishes that the market value of agricultural lands situated at village Bhadkodarsa in the year 1979 was Rs. 1000/- per Are and, therefore, ascertainment of market value of the lands acquired in the present case at the rate of Rs. 750/- per Are should not be disturbed by this Court. Learned Counsel for the claimants argued that awards produced at Exhs. 31 & 32 do not furnish good guidance for the purpose of ascertaining market value of the lands acquired and, therefore, market value of the lands acquired should not be determined with reference to those two awards. What was asserted on behalf of the claimants was that after determining market value of lands acquired in the present case, Reference Court has made appropriate deduction having regard to the large extent of acquired lands and, therefore, the appeals should be dismissed. It was further pleaded that in view of the overall industrial development in the area, the market value of the lands acquired ought to have been assessed at the rate of Rs. 1250/- per Are and, therefore, cross objections filed by the claimants should be allowed.

6. We have been taken through the entire evidence on record by the learned Counsel appearing for the parties. In this case, notification u/s 4 of the Act was published on January 29, 1981 and, therefore, market value of the lands acquired will have to be determined with reference to the said date. The factors which have to be borne in mind while determining market value of the lands acquired are as under :-

(1) Determined as on the crucial date of publication of the modification under S.

4 of the Land Acquisition Act (dates of notifications under Secs. 6 & 9 are irrelevant).

(2) Determination has to be made standing on the date line of calculation (date of publication of notification u/s 4) as if the valuer is hypothetically purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the lands at a reasonable price.

(3) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(4) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land).

(5) Even post-notification instances can be taken into account, (1) if they are very proximate, (2) genuine and (3) acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(6) Most comparable instances out of the genuine instances have to be identified on the following consideration:

(i) Proximity from time angle (ii) Proximity from situation angle.

(7) Having identified the instances, which provide the index of market value, the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustment for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(8) A balancesheet of plus and minus factors may be drawn for this purpose and the relevant factors evaluated in terms of price variation as a prudent purchaser would do.

(9) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

The exercise indicated in clauses (1) to (9) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors-

Plus factors :

1. smallness of size. 2. proximity to a road.

3. frontage on a road.

4. nearness to developed area.

5. regular shape.

6. level vis-a-vis land under acquisition.

7. special value for an owner of an adjoining property to whom it may have some very special advantage.

The evaluation of these factors, ofcourse depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 10000 sq. yds. or more. Firstly, while a smaller plot is within the reach of many a large block of land will have to be developed by preparing a lay out, carving out road, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked-up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depends on whether it is a rural area or urban area, whether building activity is picking-up and whether waiting period during which the capital of the entrepreneur would be locked-up, will be longer or shorter and the attendant hazards.

These are general guidelines to be applied with understanding informed with common sense.

7. The claimants have examined witness Ismailbhai Sulemanbhai Mayat at Exh.123. This witness was owner of survey No. 393 which was acquired for the purpose of extension of Housing Colony of Industrial Estate. The witness stated in his evidence that facility of electricity was made available in village Kosamdi since the year 1970 and village Kosamdi as well as village Bhadkodara were quite near village Kosamdi. The witness claimed that Bhadkodara, Kalodara, Piraman, Ankleshwar and Gadkhol villages form a compact block. He also claimed that market value of the lands acquired was Rs. 50,000/- per Acre and as his lands were fertile, he was able to grow cotton, tuver, millet etc. and was earning Rs. 8,000/- to Rs. 9,000/- per year from the yield. However, the witness admitted in his evidence that industrial growth in villages Piraman and Gadkhol was more than in village Kosamdi. He also admitted that village Kosamdi has no Railway Station nor big Civil Hospital and that facilities available in villages Piraman, Gadkhol and Ankleshwar were not available in village Kosamdi. During cross-examination, the witness stated that the distance between village Kosamdi and village Bhadkodara was 1 1/2 Kms. He also admitted that except sale instance covered by Exh.125, all other sale instances related to non-agricultural lands. He frankly stated that he had not maintained accounts regarding income derived from sale of agricultural produce. Though this witness produced certified copies of the entries mentioned in index registers maintained under the provisions of Registration Act, 1908 at Exhs. 124 to 136, neither vendor nor vendee was

examined to highlight the circumstances which promoted the purchaser to buy the lands. The best evidence of the value of the property is the sale transaction in respect of the acquired land to which the claimant himself is a party. In the absence of such a sale deed relating to acquired land, the sale transactions relating to the neighbouring lands in the vicinity of the acquired land furnishes good guidance for the purposes of ascertaining market value of the land acquired. In that case, the features required to be present are; (i) it must be within a reasonable time of the date of the notification, (ii) it must be a bonafide transaction, (iii) it should be a sale of land similar to the land acquired or land adjacent to the land acquired, (iv) it should possess similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired lands as on the date of notification published u/s 4(1) of the Act. This can be established by examining either vendor or vendee. If it is proved that they are not available, the scribe of the document may also be examined in that behalf. Section 51A of the Act only dispenses with the production of the original sale deed and directs to receive certified copy of the entry from the register made available u/s 57 of the Registration Act, 1908. The marking of the certified copy admissible in evidence, does not dispense with the requirement of examining either vendor or vendee because unless relevant features are brought on record, sale instances indicated in the certified copy of the entry cannot be relied on for the purpose of ascertaining market value of the lands acquired. In view of the principles laid down by the Supreme Court in *Special Deputy Collector and another etc. (Supra)*, certified copies of entries made available u/s 57 of the Registration Act, 1908 and produced at Exhs. 124 to 136 cannot be relied on for the purposes of ascertaining market value of the lands acquired in this case and they will have to be ignored for all practical purposes.

8. As Exhs. 124 to 136 cannot be considered for the purpose of ascertaining market value of the lands acquired in the present case, Court is left with only three documents viz. sale deed Exh.144 produced by witness Jamolbhai Hirabhai and two awards relied on by the claimants at Exhs. 31 & 32. Witness Jamolbhai Hirabhai has stated in his evidence that he was owner of Survyno.205/1 situated at village Bhadkodara and he had sold the same to M/s. Dattani Development Corporation by a sale deed dated March 7, 1982 for a sum of Rs.83,700/-. In the cross-examination, the witness admitted that before effecting sale in favour of M/s. Dattani Development Corporation, he had agreed to sell lands to Thakorbhai Manabhai Patel and with his concurrence land was sold to M/s. Dattani Development Corporation. It was also admitted by him that before execution of sale deed, user of land was converted from agricultural to non-agricultural. A bare look at Exh.144 makes it abundantly clear that this witness had agreed to sell land bearing survey no.205/1 of village Bhadkodara to Thakorbhai Mandas Patel at the rate of Rs. 10/- per sq. mt. by banakhat dated March 3, 1979. In the sale deed, it is further mentioned that Thakorbhai Mandas patel had executed a deed dated October 17, 1981 in favour of witness Jamolbhai Hirabhai. It is also

mentioned therein that out of total consideration of Rs. 83,700/-, a sum of Rs. 11,700/- was paid by witness Jamolbhai Hirabhai to Thakorbhai Mandas Patel as profits. It means that if the sum of Rs. 11,700/- is deducted from the total consideration of Rs. 83,700/-, the net sale price would be Rs. 72,000/-, which in turn would indicate that the land was sold at the rate of Rs.1000/- per Are. It is relevant to notice that after execution of agreement to sell in favour of Thakorbhai Mandas Patel, user of land was converted from agricultural to non-agricultural. Therefore, mention in the sale deed that agricultural land was agreed to be sold to Thakorbhai Mandas Patel at Rs. 10/- per sq. mt. does not inspire any confidence. If the price of agricultural land in the year 1979 had been Rs. 10/- per sq.mt., non-agricultural land would not have fetched price at the rate of Rs. 10/- per sq. mt. and that too after three years. Moreover, witness Jamolbhai Hirabhai has not produced agreement dated October 17, 1981 executed by Thakorbhai Mandas Patel in his favour, which is referred to in Para-6 of the sale deed. Admittedly, the agreement to sell dated March 3, 1979 was never acted upon and it is nobody's case that the said agreement was acted upon by the parties or that consideration mentioned therein was paid by Thakorbhai Mandas Patel to witness Jamolbhai. Having regard to all these attending circumstances, we are of the opinion that in order to ascertain market value of the agricultural lands of village Bhadkodara, substantial deduction will have to be made from the price indicated in Exh.144 and if deduction to the extent of 35% is made from the said price, the market value of the agricultural lands situated in village Bhadkodara cannot be assessed more than Rs. 650/- per Are in the year 1979. Further as admitted by witness Ismailbhai, the distance between village Kosamdi and village Bhadkodara is 1 1/2 Kms. The said witness has also admitted that there is no railway station in village Kosamdi nor any big Civil Hospital in the said village and that facilities available in village Piraman, Gadkhol and Ankleshwar are not available in village Kosamdi. Therefore, for the purpose of determining the market value of the lands of village Kosamdi, it would be reasonable to deduct 10% from the market value ascertained for the agricultural lands of village Bhadkodara. Thus, it can safely be said that market value of the agricultural lands situated at village Kosamdi in the year 1979 could not have been more than Rs. 585/- per Are. That would be the price of the agricultural lands in the year 1979; whereas in the present case, notification u/s 4 of the Act was published on January 29, 1981 and, therefore, reasonable rise in price will have to be considered for the purpose of ascertaining market value of the lands acquired as on January 29, 1981. Having regard to all the relevant factors, we are of the opinion that it would be just and proper to determine market value of the acquired lands as on the date of notification published u/s 4(1) of the Act at Rs. 750/- per Are. Thus, we hold that evidence of witness Jamolbhai Hirabhai read with sale deed produced by him at Exh.144 establishes that the market value of the acquired lands situated in village Kosamdi as on the date of notification u/s 4(1) of the Act would be Rs. 750/- per Are.

9. We may now proceed to consider evidenciary value of two awards which have

been produced on record of the case at Exhs. 31 & 32. Exh.31 is award of Reference Court rendered in Land Acquisition Reference Case No. 19/81. It indicates that lands of villages Bhadkodara and Piraman were acquired for Ukai Project. From Exh.31, date of publication of notification u/s 4(1) of the Act is not clear. However, it is mentioned therein that Land Acquisition Officer had made his award on August 17, 1979 and, therefore, it can be safely presumed that notification u/s 4(1) of the Act was published in that case in the year 1979. In the award it is mentioned that the claimants had claimed compensation at the rate of Rs. 175/- per Are, but the witness on behalf of the claimants had fairly conceded in his evidence that he was prepared to accept compensation at the rate of Rs. 450/- per Are. That is how the Reference Court determined the market value of the lands acquired in that case at the rate of Rs. 450/- per Are. A fair reading of award Exh.31 makes it clear that the market value of the lands acquired was determined on the concession made by the witness during the course of recording of his evidence. No other factors have been enumerated by the Reference Court as to why market value of the lands acquired in that case should be determined at Rs. 450/- per Are. The award at Exh.31 also does not show that the lands with reference to which the said award was made, are similar to the lands acquired in the present case and that they were possessed of similar advantages as acquired lands are possessed of. Therefore, the said award cannot be considered as base for the purpose of determining the market value in the present case. Similarly, Exh.32 shows that lands of village Bhadkodara were acquired for Ukai Right Bank Canal and notification u/s 4(1) of the Act was published in that case on March 22, 1979. Therein the Reference Court relied upon stale sale deed of the year 1974 for the purpose of ascertaining market value of the lands acquired as on the date of notification published u/s 4(1) of the Act. Prima-facie, it appears that the method adopted by the Reference Court for the purpose of determination of compensation is erroneous and Exh.32 cannot be treated as good guidance for the purpose of determining market value of the lands acquired in the present case. This award also does not indicate that the lands acquired in the present case are similar in nature to the lands regarding which award was rendered or that the lands were possessed of similar advantages and disadvantages. On overall view of the matter, we are of the opinion that neither Exh.31 nor Exh.32 furnishes good guidance for the purpose of determining market value of the lands acquired in the present case and they have been rightly not taken into consideration by the Reference Court for the said purpose. We may state that though it was argued on behalf of the claimants that the claimants should be awarded compensation at the rate of Rs. 1250/per Are, the learned Counsel for the claimants has failed to substantiate this plea. No evidence is produced on the record of the case which would justify the award of compensation to the claimants at the rate of Rs. 1250/per Are. Therefore, the Cross-Objections filed by the claimants will have to be rejected. From the impugned common award, it is evident that the Land Acquisition Officer had offered compensation at the rate of Rs. 200/per Are for non-irrigated lands ; whereas the Reference Court held that the claimants were entitled to

compensation at the rate of Rs. 750/- per Are. The Reference Court has also awarded amounts envisaged by sections 23(1-A) & 23(2) of the Act as compensation to the claimants. However, the Reference Court has also directed the appellants to pay interest on the amount envisaged under sections 23(1-A) & 23(2) of the Act. This is not permissible in view of the decision of the Supreme Court rendered in the case of State of Maharashtra Vs. Maharau Srawan Hatkar, . The pertinent observations made by the Supreme Court in Para-7 of the reported decision are as under :

"It would thus be seen that the additional amounts envisaged under sub-ss.(1-A) and (2) of S. 23 are not part of the component of the compensation awarded under sub-s.(1) of s. 23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under s. 28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the court as envisaged under the proviso."

In view of the above-referred to enunciation of law by the Supreme Court, operative part of the order in so far as it directs the appellants to pay interest on the amount envisaged under sections 23(1-A) & 23(2) of the Act will have to be set aside.

For the foregoing reasons, the appeals are partly allowed. The direction given by the Reference Court to the appellants to pay interest on the amounts envisaged under sections 23(1-A) and 23(2) of the Act is set aside. The finding recorded by the Reference Court that the claimants are entitled to compensation at the rate of Rs.750/- per Are is hereby upheld. The appeals are partly allowed only to the extent referred to above, with no order as to costs. The Cross-Objections are also dismissed, with no order as to costs. The Office is directed to draw decree in terms of this judgment.