
(1999) 03 GUJ CK 0052

In the Gujarat High Court

Case No : First Appeals No's. 194 to 201 of 1990 with Cross First Appeals No's. 2503 to 2510 of 1992

Officer on Special Duty (Land Acquisition)

APPELLANT

Vs

Shivlal M. Patel

RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1999) 03 GUJ CK 0052

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

Bench : Division Bench

Advocate : H.L. Jani, AGP in First Appeal Nos. 194 to 197 of 1990, M.R. Raval, AGP in First Appeal Nos. 198 to 201 of 1990 and M.R. Shah, in Cross First Appeals No. 2503 to 2506 and 2507 to 2510 of 1992, M.G. Nagarkar, for G.I.D.C, for the Appellant; M.R. Shah, First Appeal Nos. 194 to 197 and 198 to 201 of 1990, H.L. Jani, AGP for Spl. Land Acq. Officer in Cross First Appeal No. 2503 to 2506 of 1992 and M.R. Raval, AGP for Spl. Land Acq. Officer in Cross First Appeal Nos. 2507 to 2510 of 1992, for the Respondent

Judgement

J.M. Panchal, J.—All these appeals and cross-appeals which are filed u/s 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908 are directed against the common judgment and award dated February 15, 1989 rendered by the learned 2nd Extra Assistant Judge, Bharuch in Land Acquisition Reference Cases No.127/83 to 134/83. The above-referred to reference cases were consolidated with Land Acquisition Reference Case No. 129/83, which was treated as the main case and in which parties had led common evidence. The lands of the claimants were placed under acquisition pursuant to publication of preliminary notification on December 26, 1978 u/s 4(1) of the Land Acquisition Act, 1894. As common questions of fact and law are involved in these appeals and cross-appeals, we propose to dispose of them by this common judgment.

2. The State of Gujarat had received proposal to acquire agricultural lands of

village Gadkhol, Taluka : Ankleshwar, District : Bharuch for the public purpose of extension of Ankleshwar G.I.D.C. On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Gadkhol were likely to be needed for the said public purpose. Accordingly, notification u/s 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in the Government Gazette on August 3, 1978. There were some mistakes in the notification published u/s 4(1) of the Act and, therefore, erratum was issued which was published in Government Gazette on December 26, 1978. It may be stated that the lands which were proposed to be acquired were specified in the notification published u/s 4(1) of the Act. The land owners whose lands were proposed to be acquired were served with notices u/s 4 of the Act and they had filed their objections against proposed acquisition. After considering their objections, Officer on Special Duty (Land Acquisition) (hereinafter referred to as "Land Acquisition Officer") had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that lands which were specified in the notification published u/s 4(1) of the Act were needed for public purpose of extension of Ankleshwar G.I.D.C. Therefore, declaration u/s 6 of the Act was made which was published in the Government Gazette on January 3, 1980 and amended declaration made u/s 6 of the Act was published in Official Gazette on September 11, 1980. The interested persons were thereafter served with notices under sections 9(3) & 9(4) of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 8000/- per Acre i.e. Rs. 2000/- per Are. However, having regard to the materials placed before him, the Land Acquisition Officer by his award dated April 26, 1983 offered compensation to the claimants at the rate of Rs. 300/- per Are. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring Land Acquisition Officer to refer the matters to Court for determination of compensation. Accordingly, references were made to the District Court, Bharuch, which were numbered as Land Acquisition Reference Cases No. 127/83 to 134/83. In the reference applications, it was pleaded by the claimants that having regard to fertility of the lands acquired as well as income which was derived by the claimants from the sale of agricultural produces, they were entitled to compensation at the rate of Rs. 2000/- per Are. Land Acquisition Officer had contested reference applications by filing common reply contending, inter-alia, that the award passed by the Special Land Acquisition Officer was legal as well as proper and, therefore, reference applications should be dismissed. It was claimed therein that though the claimants were served with notices u/s 9 of the Act, they had not produced sale instances or any other evidence in support of their claim that they were entitled to compensation at the rate of Rs. 2000/- per Are and, therefore, enhanced compensation should not be granted to the claimants. In view of the rival assertions made by the parties, necessary issues for determination were raised by the reference court at Exh.6. However, after framing of the issues,

acquiring body, G.I.D.C. had filed common reply at Exh.13 controverting the averments made in the applications. The acquiring body in its reply pleaded that the Officer on Special Duty (Land Acquisition) had granted compensation after taking into consideration the situation of the lands acquired, market price of lands prevailing on the date of notification published u/s 4 of the Act etc. and, therefore, reference applications should be dismissed.

3. In order to substantiate the claim advanced in the reference applications, the claimants examined witness Balubhai Desaibhai Patel at Exh.21. The said witness was claimant in Land Acquisition Reference Case No. 127/83. The witness deposed before the Court that lands acquired were fertile and had potentiality for building purpose. The witness testified before the Court that the lands from this very village Gadkhol were earlier acquired and those lands which were acquired earlier, were just adjoining the lands acquired in the present case. The witness claimed before the Court that lands acquired in the present case and the lands previously acquired were having same fertility and level as well as building potentiality. It was also claimed by the said witness that survey No. 216 of village Gadkhol was acquired in the year 1962-63 for the public purpose of O.N.G.C. Colony and other lands acquired in the year 1970 were also similar in all respects to the lands acquired in the present case. The witness informed the Court that the old and new national highway as well as Bombay Ahmedabad Railway Line passes through the lands of village Gadkhol and in the year 1970 also lands from this very village were acquired for the purpose of establishing residential colony for the people of village Borbhata and another village. According to the witness, octroi naka of Ankleshwar is situated within the limits of village Gadkhol and Ankleshwar - Gadkhol - Jaghadia Road passes through the limits of village Gadkhol. The witness also stated in his evidence about acquisition of lands of village Gadkhol in the year 1972-73 for the public purpose of G.I.D.C. and stated that industries had been established at village Gadkhol at the time of publication of notification issued u/s 4(1) of the Act. According to this witness, private industries were also established in the vicinity of acquired lands and that O.N.G.C. Colony, petrol pump, Bhavna Shopping Centre and several residential societies were situated near the acquired lands. The witness further testified before the Court that sims of village Ankleshwar, Gadkhol and Piraman are one and that Mahavir Talkies is situated at a distance of only 200 to 300 ft. from the acquired lands. The witness also gave further particulars of development which had taken place in village Gadkhol as well as adjoining industrial town Ankleshwar. In cross-examination, the witness admitted that he had not kept accounts pertaining to agricultural income and had no document to establish that agricultural lands were being sold at the rate of Rs. 20 to 30 per sq.mt. at the time of publication of notification u/s 4(1) of the Act. Neither the acquiring body nor the State Government examined any witness in the above referred to references. After taking into consideration the evidence adduced by the claimants, the Reference Court held that aggregate price of lands as indicated in the sale instances produced at Exhs. 29 to 39 was Rs. 21.50 ps. per

sq.mt., but the said price was in relation to lands which were used for non-agricultural purpose and, therefore, agricultural lands should be assessed at the rate of Rs. 10/- per sq.mt. The Reference Court took into consideration the fact that in previous award, market value of the acquired lands was fixed at the rate of Rs. 4.50 ps. per sq.mt., but according to the Reference Court, there was overall development and, therefore, the claimants were entitled to 25% increase in price of lands i.e. Rs. 562.50 ps per Are. The Reference Court further added 10% for determining the value of the lands acquired, as the lands acquired were just adjoining State Highway and were at a distance of only 2 KMs. from Ankleshwar Railway Station. The Reference Court took into consideration fast development in the area of G.I.D.C. and held that the claimants were entitled to rise in price of lands at the rate of 30% per annum. In the ultimate decision, Reference Court held that the claimants were entitled to compensation at the rate of Rs. 865.95 ps per Are by the impugned common judgment, giving rise to present appeals and cross-appeals.

4. Learned Government Counsel pleaded that neither the vendor, nor the vendee, nor the scribe of sale deeds produced at Exhs.28 to 39 was examined and, therefore, those sale instances should not have been relied on by the Reference Court while ascertaining market value of the acquired lands. It was pleaded that the previous award of the Reference Court produced at Exh.24 was comparable as well as relevant for determining market value of the acquired lands and, therefore, market value of the acquired lands ought to have been assessed on the basis of the said award. Learned Counsel for the appellants emphasised that determination of compensation payable to the claimants by the Reference Court is excessive and, therefore, appeals filed by the appellant should be allowed.

5. Mr. M.R.Shah, learned Counsel for the claimants submitted that having regard to fast development which had taken place near the acquired lands, Reference Court was justified in considering rise in price of lands while determining market value of the acquired lands and, therefore, the just award passed by the Reference Court should not be disturbed by this Court in the appeals filed by the State Government. What was claimed by the learned Counsel for the claimants was that in view of the overall development which had already taken place near the acquired lands at the time of publication of notification issued u/s 4(1) of the Act, the claimants are entitled to higher compensation than awarded by the Reference Court and, therefore, cross appeals should be allowed.

6. We have heard the learned Counsel for the parties at length and we have also taken into consideration the record of the case. Though the claimants have produced sale instances at Exh.28 to 39 in order to substantiate their claim that they were entitled to higher compensation, neither vendor, nor vendee nor scribe of any deed was examined to present relevant features before the Court- such as similarity of the lands, potentiality etc. In view of the judgment of the Supreme Court rendered in the case of Special Duty Collector and another v. K.S.Rao and others AIR 1965 S.C. 2625, sale deeds produced at Exhs.28 to 39 could not have

been taken into consideration by the Reference Court while ascertaining market value of the acquired lands. Having regard to the facts of the case, those sale instances will have to be excluded from consideration while ascertaining market value of the lands acquired.

7. The evidence of witness Balubhai Desaibhai Patel examined at Exh.21 shows that earlier also from this very village lands were acquired and therein preliminary notification u/s 4(1) of the Act was published on October 27, 1977. Exh.24, which is previous award of Reference Court indicates that the Reference Court had determined market value of the acquired lands in that case at the rate of Rs. 450/- per Are. It may be stated that the said award was challenged by the claimants before High Court in First Appeals No.170/90 to 193/90 and High Court, after taking into consideration relevant factors had determined market value of the acquired lands in that case at the rate of Rs.685/- per Are by judgment dated December 23, 1998. The evidence of witness Balubhai indicates that previously acquired lands were similar to the lands acquired in this case and though sufficient opportunity was given to the State Government as well as acquiring body, it was never brought on record that the acquired lands had certain disadvantages in comparison to the lands acquired previously or that they were not similar at all. It is well settled that previous award of the Reference Court as modified by the Appellate Court in respect of lands of same village can be made basis for the purpose of ascertaining market value of the lands acquired from that very village subsequently. In view of the materials placed by the claimants on the record of the case, we are of the opinion that previous award produced at Exh.24 as modified by High Court in First Appeals furnishes good guidance to the Court for the purpose of determining market value of the acquired lands in this case and it can be referred to and relied upon advantageously. If the previous award produced at Exh.24 is taken into consideration, it can safely be held that market value of the acquired lands in the month of October, 1977 was Rs. 685/- per Are. As noted earlier, in the previous case notification u/s 4(1) of the Act was published on October 27, 1977; whereas in the present case, notification u/s 4(1) of the Act was published on December 26, 1978. There is no manner of doubt that lands acquired were situated in a fast developing area and development had already taken place near the acquired lands. There is also no manner of doubt that acquired lands had building potentiality and, therefore, in view of time lag between notifications published u/s 4(1) of the Act, we are of the opinion that the claimants would be entitled to reasonable rise in price of lands at the rate of 10% per annum. Thus, we hold that the claimants would be entitled to compensation at the rate of Rs. 755/- per Are. Though in cross-appeals the claimants have claimed that they should be paid compensation at the rate of Rs. 2000/- per Are, except previous award, no other cogent or reliable evidence has been produced by the claimants on the record of the case, which would justify grant of higher compensation to the claimants. Under the circumstances, cross-appeals cannot be entertained and are liable to be dismissed.

For the foregoing reasons, First Appeals No. 194 to 201 of 1990 are partly allowed. First Appeals No. 2503 to 2510 of 1992 are dismissed. It is held that the claimants would be entitled to compensation at the rate of RS. 755/- per Are. Rest of the directions given in the award are not disturbed and are hereby upheld. There shall be no order as to costs in all these appeals.

Office is directed to draw decree in terms of this judgment.