
(1994) 03 GUJ CK 0023
In the Gujarat High Court

Parshottam Ranchhodbhai Tadpada

APPELLANT

Vs

Spl. Land Acquisition Officer

RESPONDENT

Date of Decision : 19-03-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(1)(b), 152
Land Acquisition Act, 1894 — Section 4, 53, 6, 9

Citation : (1995) 1 GLR 71

Hon'ble Judges : J.M. Panchal, J

Bench : Single Bench

Judgement

J.M. Panchal, J.—The lands bearing Survey Nos. 465 and 467/1 situated at Village Kamla, Taluka Nadiad, District Kheda, belonging to the petitioner were acquired by the opponent for the purpose of the road connecting the Nadiad-Mehmdabad road and the National Highway No. 8. After publication of Notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 ("the Act" for short) necessary notices were issued to the petitioner u/s 9 of the Act and ultimately the opponent passed an award on January 4, 1989 offering compensation to the petitioner at the rate of Rs. 500/- per Are. The petitioner was dissatisfied with the compensation offered by the opponent and, therefore, the petitioner by making an application required the Collector to refer the matter to the Court for determination of compensation. Accordingly, the Collector made reference which was registered as Land Reference No. 241 of 1991.

2. At the time of hearing of the said reference application, the petitioner noticed that Survey No. 465 alone was mentioned in the reference and due to inadvertence Survey No. 467/1 was not referred to in the reference application at all. In the circumstances, the petitioner moved an amendment application on May 1, 1991 requesting the Court to mention Survey No. 467/1 also in the reference application. On the said application, learned Government Pleader appearing for the opponent, made an endorsement that the opponent had no objection if the amendment was granted. In view of endorsement, the learned Judge granted the said application and directed to amend the Land Reference

Case No. 241 of 1991 accordingly. That order was passed by the learned Judge on May 1, 1991 itself.

3. Thereafter, Land Reference Case No. 241 of 1991 and other allied cases were taken up for hearing and were disposed of by the learned 2nd Extra Assistant Judge, Nadiad by judgment and award dated January 10, 1992.

4. On receiving the copy of judgment and award delivered by the learned Judge, the petitioner found that in the Schedule attached to the judgment and award there was no mention of Survey No. 467/1 and the learned Judge had made mention of only Survey No. 465 belonging to the petitioner. In the circumstances, the petitioner submitted another application on March 31, 1993 and prayed that necessary amendment be made in the judgment and award for incorporating Section No. 467/1 in the Schedule to the award and necessary directions be given to the opponent to pay compensation to the petitioner for Survey No. 467/1 also. On receipt of the said application, learned Government Pleader made an endorsement that the application was not maintainable, as it was filed at a belated stage. The learned Judge by an order dated July 13, 1993 has rejected the application dated March 31, 1993 on the ground that the Court has become functus-officio and the application cannot be entertained. That order is the subject-matter of challenge in the present revision application which is filed u/s 115 of the Code of Civil Procedure.

5. To say the least, the learned Judge has failed to exercise jurisdiction vested in him by law. Section 53 of the Land Acquisition Act, 1894 reads as under:

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC shall apply to all proceedings before the Court under this Act.

In view of the provisions of Section 53 of the Act, it becomes evident that the provisions of Section 152 of the CPC would be applicable to all the proceedings before the Court under the Land Acquisition Act, 1894, as there is nothing to indicate that the provisions of Section 152 of the CPC are in any manner inconsistent with the provisions of the Land Acquisition Act, 1894.

6. It may be mentioned that by an order dated May 1, 1991 passed below Exh. 12, the learned Judge had permitted the reference application to be amended and in view of the said amendment, the learned Judge was also duty bound to consider the question of compensation to be paid regarding Survey No. 467/1. It hardly requires to be emphasised that the amendment is required to be carried out by the Officers of the Court and not by the party. This is a ministerial function which the Court establishment is charged to perform. If it is not performed or neglected, the fault will not lie with the party concerned. The view taken by the learned Judge that the Court has become functus-officio and, therefore, the application seeking necessary amendment in the judgment and award could not be entertained, is not supported by any provision of the Code of Civil Procedure. On the contrary, as is noticed earlier, Section 152 of the Code empowers the

Court to carry out amendment of judgments, decrees or orders when the Court finds that clerical or arithmetical mistakes in judgments, decrees or orders have crept in or errors arising therein from any accidental slip or omission have been made. In fact, a clerical error was made by the Court in the judgment and award passed by it arising from accidental slip or omission.

7. Having regard to the facts and circumstances of the case, it was the duty of the learned Judge to supply the omission by granting amendment application. In my view, the learned Judge has failed to exercise the jurisdiction vested in him u/s 115 of the CPC necessitating interference of this Court while exercising powers u/s 115 of the Civil Procedure Code. The requirements of Section 115(1)(b) of the Code are clearly satisfied and over and above that, if the order is allowed to stand, it would certainly occasion a failure of justice and cause irreparable injury to the petitioner, as the petitioner would be deprived of compensation though the land in question is acquired by the opponent.

8. In the result, the revision application succeeds. The order dated July 13, 1993 passed by the learned Extra Assistant Judge, Nadiad below Exh. 16 in Land Acquisition Reference Case No. 241 of 1991 is hereby quashed and set aside and the application Exh. 16 stands allowed.

Rule is made absolute, with no order as to costs.