(1964) 07 GUJ CK 0005

In the Gujarat High Court

Case No : Civil Revision Application No. 583 of 1963

Patel Anandilal Harilal APPELLANT

Vs

The Additional Special Land Acquisition Officer, Ahmedabad RESPONDENT

Date of Decision : 17-07-1964

Acts Referred:

Bombay Court Fees Act, 1959 — Section 5(2), 7(1)

Citation : AIR 1965 Guj 212 : (1964) GLR 862

Hon'ble Judges : Mehta, J;Bhagwati, J

Bench : Division Bench

Advocate : I.C. Bhatt, for the Appellant; J.R. Nanavati, for the Respondent

Judgement

Bhagwati, J.

(1) The Revision Application directed against an order made by the Taxing Office u/s 5(2) of the Bombay Court-fees Act, 1959, raises a short question of construction of Section 7(1) of the Act. the question arises in the following manner. The petitioner owned two plots of land situate in Manipur Town Planning Scheme, Ahmedabad. These plots were acquired by the Government by a notification dated 2nd Mat 1957 issued u/s 6 of the Land Acquisition Act, 1894. The petitioner claimed compensation for the acquisition of these plots at the rate of Rs. 13-25 nP per square yard in the course of proceedings before the Land Acquisition Officer. The Land Acquisition Officer, however, awarded compensation to the petitioner at the rate of Rs. 4 per square yard in the case of one plot and at the rate of Rs. 3.50 nP per square yard in the case of the other. The petitioner thereupon applied for a reference u/s 18 and the Reference came up for hearing before the City Civil Court, Ahmedabad. The learned Judge of the City Civil Court increased the rate of compensation in the case of both the plots by Re.1/- per square yard. The additional compensation awarded to the petitioner as a result of this judgment was Rs. 28,381/-. The learned Judge of City Civil Court also awarded interest to the petitioner on the amount of additional compensation at the rate of 4 per cent per annum from the date of taking possession of the plots

till payment. The petitioners was aggrieved by the order by the order relating to the amount of compensation contained in the award and he, therefore, preferred an appeal to this Court. In the memorandum of appeal the petitioner claimed compensation at the rate of Rs.10-50 nP per square yard and after giving credit for the amount of compensation already awarded, the additional amount of compensation claimed by the petitioner came to Rs. 1,54,842-35 nP. The petitioner also claimed interest on this additional amount of compensation at the rate of 4 per cent per annum form the date of taking possession of the plots up to 20th December 1962being the date of judgment of the learned Judge of the City Civil Court and this claim for interest amounted to Rs. 23,338/52. The amount of additional compensation together with the amount of interest claimed by the petitioner in the memorandum of Appeal thus aggregated to Rs. 1,78,180-87nP. At the time of filling the memorandum of appeal the petitioner valued the claim in the appeal at Rs. 1,79,180-87nP and paid a court fee of Rs.4, 100/- on the basis of such valuation. The office however took the view and as we shall presently how rightly, that the court-fee was payable only on the amount of additional compensation claimed by the petitioner and not on then amount of interest which the petitioner claimed on the amount of additional compensation. On this view a court-fee of only Rs. 3,900 /- was payable by the petitioner and there was an excess payment of court-fee to the extent of Rs. 200/-. The matter was thereupon referred to the Taxing Officer u/s 5(2) and the Taxing Officer by an order dated 14th May 1963, decided that court-fee was payable by the petitioner not only on the amount of additional compensation bur also on the amount of interest claimed by the petitioner on the amount of additional compensation. The petitioner thereupon brought the matter in revision before the Court u/s 5(3) and the Revision Application was refereed by me sitting as a single Judge to a Division Bench of this Court. Hence the present Revision Application before us.

(2) The question which arises for consideration in this Revision Application lies in a very narrow compass. In the course of the arguments before us a reference was made to Article 1 of Schedule I of the Act, but that Article is a residuary Article and if there is any provision of the Act which deals specifically with a memorandum of appeal, in a particular case, the residuary Article cannot apply and the court-fee payable on the memorandum of appeal must be governed by the specific provision. Such specific provision is to be found in the present case in Section 7(1) of the Act. That section provides that the amount of fee payable under the Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force the acquisition of land for public purposes shall be computed according to the difference the amount awarded and the amount claimed by the appellant. According to this section if a memorandum of appeal is directed against an order relating to compensation under the Land Acquisition Act, 1894, the Court-fee payable on the memorandum of appeal is required to be computed according to the difference between the amount awarded and the amount claimed by the appellant. Now

what is the true connotation of the expressions "amount awarded" and "amount claimed" within the meaning of this Section? Do they mean the aggregate amount directed to be paid by the Collector to the appellant under the award inclusive of interest and costs and the aggregate amount claimed by the appellant in the memorandum of appeal inclusive of interest and costs or do they refer only to the amount of compensation awarded to the appellant and the amount of compensation claimed by the appellants in the memorandum of appeal? Now in the context in which these words occur and particularly the context of the words "an order relating to compensation ", it is clear that these words refer to the amount of compensation awarded and the amount of compensation claimed by the appellant. The section speaks of a memorandum of appeal against an order relating to compensation and provides for the amount court-fee on a memorandum of appeal in so far as it is directed against the order relating to compensation. If the memorandum of appeal challenges the amount of compensation awarded to the appellant, Section 7(1) applies and the court-fee payable on the memorandum of appeal must be computed according to the difference between the amount of compensation awarded to the appellant and the amount of compensation claimed by the appellant in the memorandum of appeal.

(3) Having regard to this position in view which could not be seriously disputed, Mr.J.R.Nanavati, learned Assistant Government Pleader appearing on behalf of the State, contended that interest also formed part of compensation and the expressions "amount awarded" and "amount claimed" in Section 7(1) therefore, included interest awarded and interest claimed by the petitioner. But this contention is, in our opinion, entirely without force. It is now well settled that the right to receive interests is in substitution of the right to retain possession of the land and when a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily, he does not make a claim for damages properly or technically so called but he bases his claim on the general rule that if he is deprived of his land, he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition interest should be paid to him on the amount of compensation . (Vide Satinder Singh v. Umrao Singh AIR 19761 SC 908 and National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India, . It will thus be seen that interest claimed on the amount of compensation does not form part of compensation. As a matter of fact a similar argument was advanced in the former case of Satinder Singh and Others Vs. Amrao Singh and Others, and was negatived by the Supreme Court. Moreover, the scheme of the Land Acquisition Act, 1894,itself shows that interest is treated as distinct from compensation for the purpose of that Act. Interest cannot, therefore, regarded as forming part of compensation and the expressions compensation and "amount awarded" and "amount claimed" cannot on a true construction include the amount of interest awarded under the award and the amount of interest claimed by the appellant in the memorandum of appeal. It must follow as a necessary consequence that

where the memorandum of appeal is directed against an order relating to compensation, the court-fee must be computed only on the difference between the amount of compensation awarded to the appellant and the amount of compensation claimed by the appellant. The claim for interest on the additional compensation claimed in the memorandum of appeal would stand or fall with the decision of the main claim and being merely an adjunct of the claim, no court-fee would be payable on it. This being the position it is clear that in the present case court-fee was payable only in the sum of Rs. 1,54,842-nP being the difference between the amount of compensation awarded to the appellant by the learned Judge of the City Civil Court and the amount of compensation claimed by the petitioner in the memorandum of appeal and not on the sum of Rs. 23,338-52 nP. being the amount of interest on this on this additional compensation at the rate of 4 per cent per annum from the from the date of taking possession of the plots up to 20th December 1962.

(4) The decision of the Taxing Officer is, therefore, set aside and Court-fee to the extent of Rs. 200/- paid by the petitioner is ordered to be refunded to him. There will no order as to costs of this Revision Application.

(5) Revision accepted.

