(1990) 11 GUJ CK 0033

In the Gujarat High Court

Patel Bhagabhai Shamalbhai APPELLANT

Vs

The Third Special Land Acquisition Officer RESPONDENT

Date of Decision : 21-11-1990

Acts Referred:
Land Acquisition Act, 1894 — Section 16, 4, 54

Citation : (1991) 1 GLR 613

Hon'ble Judges : Y.B. Bhatt, J;C.V. Rane, J

Bench : Division Bench

Judgement

C.V. Jani, J.—These six First Appeals u/s 54 of the Land Acquisition Act, 1894, arise from the common judgment and resultant awards delivered by the learned Assistant Judge, Narol, in three Land Acquisition Reference Cases in respect of acquisition of agricultural land bearing Survey No. 1299 situated in the outskirts of village Vavol, District Gandhinagar.

1(1). First Appeals Nos. 801 and 804 of 1980 have been filed by the claimant Bhagabhai Shamalbhai and the Third Special Land Acquisition Officer, Capital Project, respectively against the award made in Land Acquisition Case No. 72 of 1978.

1(2). First Appeals Nos. 802 and 805 of 1980 have been filed by the original claimant Naranbhai Shamalbhai and the Third Special Land Acquisition Officer, Capital Project, respectively, against the award made in Land Acquisition Case No. 73 of 1978.

1(3). First Appeals Nos. 803 and 806 of 1980 have been filed by the original claimant Somabhai Shamalbhai and the Third Special Land Acquisition Officer, Capital Project, respectively, against the award made in Land Acquisition Case No. 74 of 1978.

2. The historical background in which acquisition of land bearing Survey No. 1299 took place requires to be seen. On bifurcation of this bilingual State of Bombay the two States of Maharashtra and Gujarat came into existence with

effect from May 1, 1960, and the new capital of the State of Gujarat had to be constructed and developed at Gandhinagar. For that purpose a master plan was prepared and it was decided to acquire lands covered by the master plan. The master plan showing the development of Gandhinagar is depicted in the maps Exhs. 23, 28, 59 and 60, which show that the capital Gandhinagar was planned to be developed in 30 sectors. Most of the lands were acquired in the year 1965. It becomes clear from the evidence of Executive Engineer Mr. N.M. Patel that construction was carried out in several sectors in the year 1967 and the bungalows for Ministers, Secretaries, Pathik Ashram and library buildings were completed in the year 1969, and the Secretariat was shifted from Ahmedabad to Gandhinagar in the year 1970.

2(1). The land bearing Survey No. 1299 belongs to 3 brothers who are claimants, whose shares were demarcated as per revenue record Exhs. 29 and 32. Other lands of Vavol were already acquired in the year 1965. It appears from the Land Acquisition Officer''s award Exh. 3 that through oversight the land bearing Survey No. 1299 was not acquired in the year 1965. Therefore, a fresh proposal was sent by the Executive Engineer, Capital Project Division No. II to acquire the said land under urgency clause. The Notification u/s 4 of the Land Acquisition Act (''the Act'' for short) was issued on 19-9-1969 and published in the Gazette on 13-11-1969. It is to be borne in mind that between 1965 and November, 1969 rapid development had taken place in the area acquired for and which formed part of the capital Gandhinagar. It appears from the aforesaid maps that Sector 13 which included Survey No. 1299 was situated to the west of Sector 12 where there was Civil Hospital Complex and residential buildings as well as Primary Schools. Sector 15 is adjoining Sector 18 in the North and a College building and a Sports complex are situated in Sector 15, Sector 13 also touches Sector 16 on its North-east where there are Youth Hostel, Petrol Pump, Capital Project Bhavan, Primary and Secondary Schools, Broadcasting Station and residential buildings. It also appears from the evidence of one of the claimants that the Legislative Assembly building is situated in Sector No. 17 at a distance of one kilometre from the acquired land, and Pathik Ashram is also situated at a distance of one kilometre in Sector No. 11. Thus, it appears that the acquired land was in the the midst of developing locality, and substantial development had already taken place in the adjoining sectors like Sectors 12, 15 and 16. As it became a part of Sector 13, it had acquired great potentiality like any non-agricultural piece of land, even though it was agricultural land at the time of acquisition. Thus, development between the earlier acquisition of the lands of Vavol in the year 1965 and the date of the present acquisition has to be constantly borne in mind.

3. After serving the necessary notices under the relevant provisions of the Act and after hearing the interested parties, the Special Land Acquisition Officer for Capital Project awarded an amount of Rs. 150/- per acre, i.e. Rs. 1.50 per sq. mtr. though the claimants had claimed Rs. 100/- per sq. yd.

3(1) In the reference made at the instance of the claimants, their claim was at the rate of Rs. 20/- per sq. mtr. Oral and documentary evidence relating to orders passed by the Additional Collector regarding sale of lands by auction in Sector 16 and the rent at which the shops were hired in Sector 29 and 30 as well as the judgment and award regarding acquisition of certain lands of the village Khoraj at a distance of 15 kms. from Gandhinagar was led. The learned Judge also took into consideration a Government booklet Exh. 61 containing the Government Resolution dated 13-1-1969 fixing a reserve price between Rs. 23 to 31 per sq. mtr. for residential area in order to sell the plots either by auction or by allotment, and determined the compensation for the acquired land at Rs. 15 per sq. mtr. It is against this judgment and award that both the claimants and the Government have come in appeal.

4. Mr. A.R. Dave, learned Advocate appearing for the original claimants in First Appeals Nos. 801, 802 and 803 of 1980 submitted that the learned Judge committed an error in not giving due weight to the price fetched by the lands in Sector 15 which were sold in the year 1970, as well as the exorbitant rent at which small shops in Sectors 29 and 30 were let out by the Government itself. He further submitted that the judgment of the High Court in First Appeal No. 125 of 1973 relating to acquisition of agricultural lands in the village Khoraj in August 1967 would be most relevant, as the Court had awarded compensation at the rate of Rs. 13.50 per sq. yd. in the earlier application even though the village Khoraj was at a distance of 15 kms. from Gandhinagar. Thus, according to Mr. Dave, compensation could not have been awarded at less than Rs. 20 per sq. mtr.

4(1). Mr. D.K. Trivedi, learned In-charge Government Pleader appearing for the respondent in the aforesaid appeals and also for the appellant in First Appeals Nos. 804, 805 and 806 of 1980, on the other hand, submitted that neither the Additional Collector''s orders nor the evidence regarding rent of shops or the High Court''s judgment and the booklet Exh. 61 containing Government Resolution was relevant. He submitted that none of the instances relied on by the claimants was comparable. He further submitted that no evidence had been led regarding income from the acquired lands. So according to Mr. Trivedi, there was no case for raising the compensation already offered by the Land Acquisition Officer at the rate of Rs. 1.50 per sq. mtr.

5. On anxious consideration of the evidence on record we feel that the evidence regarding the Additional Collector''s order sanctioning the auction sale in Sector 16 at the rate of Rs. 203/- per sq. mtr. and the evidence regarding the realised by the Government by letting out small shops in Sectors 29 and 30, is not at all relevant.

5(1). Additional Collector''s order Exh. 38 dated 1-6-1977 shows that plot No. 436 admeasuring 200 sq. mtrs. in Sector 16 was sold by auction at the rate of Rs. 203/- per sq. mtr. This sale of small plot in another Sector in a commercial zone took place about 7 years after the acquisition in the instant case. Hence this instance Exh. 38 cannot be of any help to the appellants.

5(2). The evidence regarding the rent realised by the Government by letting out a shop admeasuring 14'' x 9'' in April 1969 in Sector 29 and another shop admeasuring 14'' x 15'' in October 1984 in Sector 30 also would be of no help to the appellants. The shop in Sector 29 was let out at the of Rs. 341/- per month and the shop in Sector 30 was let out at the rate of Rs. 811/- per month. This cannot afford any guidance for determining the value of the acquired lands but they only indicate the exorbitant rent which was willingly paid by the people for having shops in Gandhinagar in developed areas.

5(3). The judgment Exh. 56 delivered by a Division Bench of this Court in First Appeal No. 125 of 1973 and other cognate appeals, is in respect of acquisition of certain lands of Khoraj in Gandhinagar Taluka for construction of Khodiyar-Gandhinagar Road and sewge pipeline. One of me factors which was taken into consideration for determining the market price of the lands was that the location of capital in Gandhinagar would certainly boost up the prices of land situated in Khoraj. After considering other relevant facts also, the Division Bench was pleased to determine the market price of me lands under acquisition which ranged from Rs. 13.50 to Rs. 15/- per sq. yd. This instance also does not provide any guideline inasmuch as the village Khoraj is situated at a considerable distance from Gandhinagar, and the prices of lands in Khoraj might have been determined on the basis of its from the village itself and not on the basis of the distance from Gandhinagar and mat is why mere was great variance between the rates awarded to different pieces of land. Unfortunately no evidence had been led in this case regarding earlier acquisition of lands of the village Vavol itself for planning Sectors 13, 15 12 and 16.

6. Therefore the following evidence on record appears to be relevant, though not comparable:

(i) Order of the Additional Collector, Exh. 35, dated 8-12-1970, regarding auction price of land admeasuring 200 sq. mtr. in Sector 16.

(ii) Order of the Additional Collector, Exh. 41, dated 22nd December, 1970 sanctioning the auction sale of 200 sq. mtrs. of land in Sector 16.

(iii) Government booklet Exh. 61, regarding disposal of lands in Gandhinagar Township.

6(1). The Additional Collector''s order Exh. 35 dated 8-12-1970 was proved by the evidence of Haribhai Chhaganbhai, Exh. 33. His evidence as well as the order Exh. 35 show that a small piece of land admeasuring 200 sq. mtrs. was sold by auction on 18-8-1970 at the rate of Rs. 141/- per sq. mtr., and that the land was originally situated in the village Vavol. Haribhai''s evidence further shows that the upset price of this land was fixed at Rs. 125/- per sq. mtr.

6(2). Exh. 41 which is also Additional Collector''s order dated 22-12-1970 was proved by the evidence of Ramabhai Shankerbhai, Exh. 39. It appears from his evidence that Ramabhai purchased a plot of land admeasuring 20 mtrs. x 10 mtrs. in Sector 16 in public auction on 22nd December, 1970 at the rate of Rs. 187.05 per sq. mtr. for running a barber''s shop. Ramabhai''s evidence further shows that the upset price for this land was fixed at Rs. 87/-.

6(3). These two instances regarding the sale of small pieces of developed lands about one year after the acquisition may not be comparable as such but they can certainly be taken into consideration for determining the value of the acquired lands in the adjoining Sector by slicing down a substantial percentage.

6(4). The Booklet, Exh. 61 produced on behalf of the Third Special Land Acquisition Officer shows that the Government itself had taken a policy decision to dispose of the lands in Gandhinagar by public auction and by allotment in which the Government had fixed reserve price per sq. mtr. This Government resolution dated 13th January, 1969, was issued 10 months prior to the date of present acquisition. Relevant portion of this Resolution reads as under:

Government Resolution

The question of disposal of Government lands within the new capital, namely, Gandhinagar has been under consideration of Government for some time past. Government is now pleased to decide that such lands shall be disposed of in accordance with the instruction set out below.

2.(a) The lands shall be divided into appropriate plots and shall ordinarily be sold outright by Public Auction, but in the case of: (i) Co-operative Housing Societies, (ii) Non-Profit making institutions for charitable, religious and social welfare purposes, (iii) educational institutions, (iv) public utility undertakings (e.g. Gujarat State Transport Service, the Gujarat Electricity Board, etc. (v) Newspaper concerns, (vi) the Government of India, and (vii) in such other cases as the Government may decide, on merits, the sale may be effected by allotment without auction.

(b) Reserve prices for the disposal of the lands to be sold or allotted for different purposes or uses have been determined by Government after taking into account the cost of development, and are shown below:

--- Sr.No. Category of Land Reserve price per sq. metre --- 1 2 3 1. Residential Area Rs. 23 to 31 depending on the location of the plot.

7. When the Government itself has fixed the minimum rate at which the land can be allotted to certain categories of institutions and at the same time is fixed upset prices for sale of lands by auction as discussed above, there is no reason why the Government should not be prepared to pay similar rates to the agriculturists from whom it acquires their source of livelihood by compulsion. Though the minimum reserve price per sq. mtr. in residential area was fixed at Rs. 23 to 31 mere is not a single instance in which the Government sold lands by auction at that rate. That is the reason why the orders of Additional Collector, Exh. 35 and 41, passed about one year after the date of acquisition, have

become relevant for us. Because the land which were offered by the Government for allotment or public auction were situated in Gandhinagar town itself, we are prepared to deduct 25 percent from the minimum reserve price in view of the fact that the land which were acquired were agricultural lands, even though they were within the limits of Gandhinagar Township. It should bring the value of the acquired lands to Rs. 17/- per sq. mtr. even if we adopt minimum of the reserve price fixed by the Government about 10 months before the date of acquisition. This price would be much less than the price that would be arrived at by the most substantial deduction from the price realised by the Government itself by auction of lands in Section 16. This aspect was not taken into account by the learned Judge who had fixed the rate of Rs. 15/- arbitrarily without any correlation with the reserve price as evident from the Government Resolution Exh. 16. We are, therefore, of me view that the appellant who are original claimants entitled to recover additional compensation of Rs. 2/- per sq. mtr.

No other submissions were made.

8. As a result First Appeals Nos. 804, 805 and 806 of 1980 are dismissed with costs, while First Appeals Nos. 801, 802 and 803 of 1980 are allowed " to the aforesaid extent with no order as to costs. The respondents in First Appeals Nos. 801, 802 and 803 of 1980 will pay to the appellants additional compensation at the rate of Rs. 21- per sq. mtr. with solatium at the rate of 15 per cent and running interest at the rate of 41/2 percent on the total additional amount awarded from the date of taking possession of the land till payment. As the old rate of interest at the rate of 4''/2 percent is absolutely meagre as compared with me interest awardable under the amended provision of the Land Acquisition Act, it is further directed mat interest would run at the rate of 12 percent per annum if the opponent does not pay the compensation as ordered hereinabove within, a period of 6 months hereafter. Decrees will be drawn up accordingly.