
(2013) 05 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 2188 of 2012

Patel Bhanubhai Karsandas

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : AIR 2013 Guj 300 : (2014) 1 GLR 221

Hon'ble Judges : Mohinder Pal, J; Jayant Patel, J

Bench : Division Bench

Advocate : A.N. Patel and Ms. Trupti A. Patel, for the Appellant; Rakesh Patel, AGP, for the Respondent

Judgement

Jayant Patel, J.—The short facts of the case are that the lands owned by the petitioner were acquired by the Notification u/s 4 of the Land Acquisition Act (hereinafter referred to as "the Act"), which was published on 5.8.1998 for the purpose of Sabarmati Saraswati Link Canal. Notification u/s 6 of the Act was published on 24.2.1999 and the award was passed on 30th April, 1999; whereby, the compensation was awarded by the Land Acquisition Officer. It is the case of the petitioner that the compensation was not granted for crops and the trees and when the petitioner resisted to handover the possession, respondent No. 2 vide letter dated 11.10.1999 addressed to Sarpanch stated that the additional award for the market value for the standing crop and trees will be passed later on. It further appears that the concerned land owners, who were not satisfied with the compensation, had raised the dispute u/s 18 of the LAQ Act (hereinafter referred to as "the Act"). Such disputes were referred to the Reference Court for adjudication. Not only that but in the dispute raised for compensation, there was no specific additional compensation prayed for the crops or the trees. Thereafter, Reference Court in the said References being LAR Nos. 1230 of 2006 to 1251 of 2006 has fixed the compensation at Rs. 57 per Sq. Mtr. plus the statutory benefit of interest and solatium. As stated by the learned Counsel for petitioner, the said judgment of the Reference Court was carried before this Court in First Appeal No.

2275 of 2011 and allied appeals and this Court vide order dated 18.11.2011 enhanced the compensation at Rs. 142/- per Sq. Mtr., plus the statutory benefit of solatium, interest, etc. It appears that in the meantime, as per the petitioner, since compensation was not paid for the crop and the trees, they had to approach before this Court by preferring Special Civil Application No. 1464 of 2006 and before this Court vide, it was declared by the learned AGP that the compensation for lemon trees and standing crop has not been given and that additional award will have to be passed. In view of the said declaration, this Court vide order dated 20.2.2006 directed the respondent to grant opportunity of hearing to the petitioner and to pass additional award for the lemon trees and standing crop on the land in question at the time of acquisition within a period of 3 months from the date of the order. As per the petitioner, thereafter, the representation was made by the petitioner before the concerned officer and on 19.11.2007, the order has been passed by the Additional Collector (Irrigation) for awarding of total compensation of Rs. 2,32,404/-.

2. It is the case of the petitioner that the said amount of compensation, as fixed, was not sufficient and to meet with the actual compensation of the crops and the trees, therefore, the petitioner raised the dispute u/s 18 for getting additional compensation of Rs. 30,60,240/-. The said disputes were required to be referred to the Reference Court for adjudication, however, the petitioners have been conveyed by the Deputy Collector, that the reference of LAQ Case Nos. 14/98 & 15/98 have already been forwarded to the District Court. But, subsequently, vide order dated 1.11.2011 at Annexure-C, the advocate of the petitioner has been communicated that the only provision for making reference is against the award passed u/s 11(1) of the Act and there is no provision for making any other reference in other case. Therefore, if the petitioner is aggrieved by the order dated 9.11.2007 passed by the Additional Collector (Irrigation), he may approach before the appropriate Forum. It is under these circumstances, the petitioner has approached to this Court with the prayer to issue appropriate writ to quash and set aside the decision dated 24.10.2011 and it is prayed by the petitioner to direct the respondent to make the reference u/s 18 of the Act before the District Court.

3. We have heard Mr. A.N. Patel, learned counsel appearing for the petitioner and Mr. Rakesh Patel, learned AGP for the respondent.

4. It appears from the submissions made by the learned counsel appearing for both the sides and from the record produced in the present proceedings that following positions are undisputed:

(i) The acquisition of the land of the petitioner for which the award has been passed by the LAQ Officer on 30th April, 1999.

(ii) In the award, the compensation has been fixed of the land in question. However, under the Column No. 6(A) in the Schedule of the award for trees or houses or any other movable items, the compensation was fixed at Rs. 5400/-,

for 18 lemon trees over the land bearing Survey No. 80/2 held by Patel Kashiram Shankarlal. In Column No. 6 (K), there is no reference of any additional compensation towards crop or trees.

(iii) It further appears that qua the land bearing Survey No. 18/1, similarly the compensation of Rs. 5100/- for 17 lemon trees and the compensation of Rs. 5500/- for 55 small lemon plants and for the land bearing Survey No. 18/2, the compensation of Rs. 7500/- for 25 lemon trees have been fixed in the award by the Special Land Acquisition Officer.

5. The aforesaid shows that so far as the compensation as granted in the award was not satisfactory to the land-owners and, therefore, they raised the dispute u/s 18 of the Act, which came to be referred to the District Court for Reference and the Reference Court decided the matter, against which the matter is also carried before this Court and this Court enhanced the compensation to Rs. 149/- per sq. mtrs. Therefore, one may find that all disputes for the compensation of the land, which has been acquired have been concluded.

6. However, Mr. Patel, learned Counsel appearing for the petitioners raised the contention that the award u/s 11 of the Act was passed by the Special Land Acquisition Officer for the compensation of the land only and he did not consider the question of compensation for the trees and standing crops over the land. Therefore, the dispute raised against the said award u/s 18 of the Act and the proceedings carried further before the higher forum would not operate as a bar to the land-owner in claiming separate compensation for the trees and crops standing over the land at the time of acquisition and/or when the possession was taken over. He submitted that since the award was not passed for the compensation of the trees and crops over the land, when the possession was to be taken over, the owners of the land had resisted to hand over the possession and in response thereto, the Deputy Collector had issued letter dated 11.10.1999 to the Sarpanch of the Gram Panchayat stating that supplementary award will be passed in short time for the compensation of trees and standing crops over the land after consultation with the acquiring body. A copy of the said letter is produced at Annexure-A. Not only that but the panchnama was drawn on 21.9.1999, copy whereof is produced with the said letter for the details of the standing crops and trees over the land. Thereafter, as no supplementary award was passed for paying additional compensation for the crops and trees over the land, the petitioners had to prefer Special Civil Application No. 1464 of 2006 before this Court and when the matter was decided vide order dated 20.2.2006, communication dated 22.12.2004 of the Superintending Engineer was produced stating that additional award will have to be passed. Therefore, this Court directed the respondents to give opportunity of hearing to the petitioners and to pass additional award for the lemon trees and standing crops on the land in question within the prescribed time limit and the said communication dated 22.12.2004 was taken on record. He submitted that thereafter the matter was considered and vide decision dated 29.10.2007 (Annexure-C) additional

compensation of Rs. 2,32,404/- has been granted. He submitted that as the petitioners were not satisfied with the said decision, they have now raised the dispute dated 23.1.2008 for the additional compensation, stating that appropriate compensation should be Rs. 30,60,240/- with solatium and interest. Instead of referring the matter to the District Court for adjudication by the impugned decision the Deputy Collector has communicated that there is no provision for making reference and, therefore, the references are not made, but the petitioners, if aggrieved by the decision dated 19.11.2007, may approach before appropriate forum. Under these circumstances, it was submitted by Mr. Patel that there is clear non-application of mind on the part of the Land Acquisition Officer by not referring the matter u/s 18 of the Act.

7. It is true that the letter has, been issued by the Land Acquisition Officer on 11.10.1999 for supplementary award and it is also true that subsequently as no action was taken this Court vide order dated 22.6.2006 had passed the order in Special Civil Application No. 1464 of 2006 and it is also true that thereafter the order has been passed by the Additional Collector (Irrigation) for payment of compensation of Rs. 2,32,404/-, but the pertinent aspect is that the order dated 19.11.2007 - Annexure-C, which is stated by the petitioners as supplementary award does not appear to be correct, because the same has not been passed by the Deputy Collector in capacity as Special Land Acquisition Officer, nor has been passed by any other Land Acquisition Officer in exercise of power under Land Acquisition Act, but has been passed by Additional Collector (Irrigation). Therefore, if the additional compensation has been ordered to be paid by Additional Collector (Irrigation) at the most, it may remain as the additional compensation ordered to be paid, but it cannot be termed as the compensation awarded by the Special Land Acquisition Officer or the Land Acquisition Officer under the Land Acquisition Act. Apart from the above, the question may remain to be examined as to whether the Land Acquisition Officer has any power to pass any other award, may be supplementary award, after the award is already passed by him u/s 11 of the Act. Section 11 of the Act for ready reference reads as under:--

Section 11. Enquiry and award by Collector.--

(1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land [at the date of the publication of the notification u/s 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of--

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(ii) the apportionment of the said compensation among all the persons known or

believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf;

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf].

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.

8. The aforesaid provision shows that the Collector has to hold an inquiry into the objections, if any, filed by the persons interested pursuant to the notice u/s 9 of the Act and thereafter he has to make an award as provided u/s 11(1) of the Act or if there is consent, he may pass the award u/s 11(2) of the Act.

9. The aforesaid power vested to the Collector could be said as for determination of; (1) true area of the land; and (2) the compensation to each, in his opinion, should be allowed for the land and apportionment of the compensation etc. It is by now well-settled that the compensation for the land would include the super-structure thereon or any crop or trees thereon, but may be that in the award the Land Acquisition Officer may specify the compensation separately or may not specify by including the value of the crop or super-structure thereon in the value of the land. Section 11 of the Act provides for the time limit, which is not the subject-matter in the present petition, but Section 12 of the Act provides that the award shall be final. Section 13A provides for the power for correction of the clerical error, etc., by the Collector, but before making reference, if dispute is raised. The pertinent aspect is that the aforesaid is restricted to correction of clerical error etc., and the time limit provided is not later than six months from the date of the award.

10. In the present case, the award has been passed on 30.4.1999 and the letter is stated to have been written on 11.10.1999, but the fact remains that such

correction in the award has not been passed within a period of six months. Further in the said letter dated 11.10.1999 it has been stated by the Deputy Collector that supplementary award shall be passed within short time, but the fact remains that no such supplementary award has been passed. Not only that but if we consider the scope of Section 13A of the Act, the so-called compensation for the trees and crops over the land as such would not get included under the correction of the clerical error, etc., as provided u/s 13A of the Act. Even if it is considered for the sake of examination that such could be termed as correction of mistake, the same is not within the period of Six months from the date of award, inasmuch as after the letter dated 11.10.1999, the order for additional compensation is passed on 19.11.2007, roughly more than seven years from the date of the award, which was in the year 1999. Therefore, it appears to us that the order dated 19.11.2007 (Annexure-C) passed by the Additional Collector (Irrigation) could not be termed as supplementary award or any award u/s 11 read with Section 13A of the Act.

11. In view of the aforesaid observation and discussion, when the power is not exercised u/s 11 read with Section 13A of the Act, it could not be said that any reference was required to be made u/s 18 of the Act for the alleged additional compensation. Hence, the impugned order cannot be said as illegal on the ground as sought to be canvassed. However, in the impugned order, it has been mentioned that if the petitioners are aggrieved by the order dated 19.11.2007, they may approach before appropriate forum. Hence, the petitioners may resort to such proceedings before appropriate forum against the order dated 19.11.2007, but it cannot be said that non-making of the Reference u/s 18 of the Act by the impugned order is illegal or arbitrary. In view of the aforesaid, the petition fails. Hence, the same is dismissed. Considering the facts and circumstances, no order as to costs.