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**(2011) 07 GUJ CK 0135**

**In the Gujarat High Court**

**Case No :** First Appeal No's. 3545 and 3546 to 3579 and 3581 to 3613 of 1996

Patel Kacharabhai Ishvarlal

APPELLANT

Vs

Spl. Laq Officer

RESPONDENT

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**Date of Decision :** 11-07-2011

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 23(1A), 23(2), 28, 4

**Citation :** (2011) 07 GUJ CK 0135

**Hon'ble Judges :** R.M. Chhaya, J; Jayant Patel, J

**Bench :** Division Bench

**Advocate :** M.R. B.S. Patel, for the Appellant; Moxa Thakkar, AGP, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Jayant Patel, J.—As all the appeals arise from the common judgment and award passed by the Reference Court, they are being considered by this common judgment.

2. The relevant facts are that for the project of Dharoi Canal, lands at village Paldi and at village Visnagar were to be acquired under the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). Notification u/s 4 of the Act was published on 5.9.1985. Notification u/s 6 of the Act was published on 3.9.1987. The award was passed by the Special Land Acquisition Officer on 27.9.1989 and he had awarded compensation at Rs. 3.80 per square meter for the land located at village Visnagar, whereas for the land located at village Paldi, he awarded compensation at Rs. 3.20 per square meter.

3. As the claimants were not satisfied with the compensation, they raised dispute u/s 18 of the Act and demanded compensation at Rs. 100/- per square meter. All such disputes were referred to the Reference Court being Land Acquisition Reference Nos. 293 to 330 of 1991 and 341 to 371 of 1991. The Reference Court, at the conclusion of the references, awarded compensation at Rs. 14/- per

square meter for the lands at village Paldi and Rs. 15/- per square meter for the lands at village Visnagar. Out of which, the amount of Rs. 3.20 paise and Rs. 3.80 paise were already paid as compensation and, therefore, the Reference Court awarded additional compensation at Rs. 10.80 paise and Rs. 11.20 paise respectively for the lands located at village Paldi and village Visnagar. Additionally, the Reference Court awarded statutory benefits of increase in the price u/s 23(1A) of the Act, solatium u/s 23(2) of the Act and the interest on the additional amount of compensation and also on the amount of solatium as per Section 28 of the Act.

4. It is under these circumstances, the present appeals for enhancement of compensation have been preferred by the original claimants / Appellants herein.

5. We have heard Mr. Patel, learned advocate appearing for the Appellants in all these appeals and Ms. Thakkar, learned AGP for the Special Land Acquisition Officer - Respondent herein in all these appeals and considered the record and proceedings.

5.1 At the outset, learned Counsel for the Appellants declared before the Court that the Appellants are relying upon earlier award passed by the Reference Court in Land Acquisition Reference Nos. 809 to 813 of 1987, copies whereof were produced at Exh.97 whereby the Reference Court had fixed the market value for compensation at Rs. 40/- per square meter. It was submitted that the land was not only located at village Visnagar, but the notification u/s 4 of the Act was published on 31.7.1986, whereas in the present case, the notification u/s 4 of the Act has been published on 5.9.1985, otherwise the lands were acquired for very project of Dharoi Canal.

5.2 It was also submitted that the aforesaid awards of the Reference Court in Land Acquisition Reference Nos. 809 to 813 of 1987 were carried before this Court in the proceedings of First Appeal Nos. 7272 of 1995 to 7276 of 1995 by the Special Land Acquisition Officer and the Division Bench of this Court (Coram: Honourable Mr. Justice Y.B. Bhatt and Honourable Mr. Justice C.K. Buch) on 22.4.1998 has reduced the compensation from Rs. 40/- to Rs. 23/- per square meter. It was submitted that the lands in the present case are located at village Visnagar and, therefore, compensation at the same rate may be awarded by this Court and the appeals for enhancement of the compensation may be allowed to the aforesaid extent.

5.3 He submitted that so far as statutory benefits are concerned, the Reference Court has already awarded and hence no interference may be made to the said part of the judgment save and except that on account of increase of principal amount of compensation, such amount shall proportionately get enhanced.

6. Whereas, learned AGP opposed enhancement of compensation contending that the Reference Court, after taking into consideration the evidence on record, has appreciated the material and has rightly awarded the compensation as per the award.

7. Perusal of the judgment and reasons recorded by the Reference Court shows that the Reference Court has rightly discarded assessment of the value of the lands on the basis of the yield method since there was no sufficient and satisfactory material produced. It also appears that the Reference Court has discarded the sale instances, but the Reference Court has, to some extent, taken into consideration the award passed by the Reference Court in Land Acquisition Reference Nos. 809 to 813 of 1987 for acquisition of the lands at village Visnagar for very project and has thereafter arrived at market value at Rs. 15/- per square meter for the lands at village Visnagar and the market value of Rs. 14/- per square meter for the lands at village Paldi, but it appears from the reasons recorded by the Reference Court, more particularly at paragraph 20, that the Reference Court has not given clear reasons as to why the sale instances should be discarded and if yes, to what extent by facts and figures.

7.1 Considering the record and proceedings, we find that it was a case where the Reference Court could rely upon the award given by another Reference Court in respect of the acquisition of lands for very project at village Visnagar. It is true that in cases of those Land Acquisition Reference Nos. 809 to 813 of 1987, the notification u/s 4 of the Act was published on 31.7.1986 subsequent to the notification u/s 4 of the Act in the present case on 5.9.1985, but after taking difference of time in the notification u/s 4 of the Act, by taking note of average appreciation at the rate of 10% per annum, after reduction of the amount, the matter could be considered by the Reference Court. In any event, the decision taken by earlier Reference Court in Land Acquisition Reference Nos. 809 to 813 of 1987 as was carried before this Court in the above referred First Appeal Nos. 7272 of 1995 to 7276 of 1995, the market value fixed by the Reference Court would not be of much importance and ultimate decision of this Court in the above referred First Appeals would be required to be considered.

7.2 We may record that as per the decision of this Court in the above referred First Appeals dated 22/4/1998, this Court recorded the following reasons.

"5. As a result of the hearing and discussion, we had expressed our tentative view that the impugned judgment is unsatisfactory, and so also the determination of the market value on the basis of the only sale instance on record.

6. This doubtful sale instance is at Exh.76 whereby lands of Survey No. 2805/2 was sold by document dated 8th January 1985, reflecting a sale price of Rs. 39.33 ps per square meter. This document is proved by the purchaser Baldevbhai who has examined himself at Exh.78.

7. It, however, appears that looking to the deposition of Baldevbhai at Exh.78, and also the document at Exh.76, the Reference Court has made a calculation error in culling out the sale price. The document actually transfers an area of five and a quarter gunthas which is equivalent to 531 square meters. For this area the consideration paid was Rs. 27562.50, whereby the sale price would work out

to about Rs. 50/- per square meter.

8. However, what is material and relevant is that looking to the location of the land conveyed by the document, and comparing the same with the location and situation of the lands under acquisition, we find that the two are not comparable at all in terms of location and distance, and also looking to the development, the rate of development and the situation of the transferred land in the said context. Furthermore, it becomes apparent from the deposition of Baldevbhai (Exh.78), that he has purchased this small piece of land mainly because he was the owner of the adjacent and contiguous piece of land already. Thus, it is not only likely, but highly probable that he would have been willing to pay a higher price than would otherwise be justifiable. We are, therefore, of the opinion that Exh.76 cannot possibly constitute a reliable sale instance for the determination of the market value of the instant lands.

9. However, in all fairness, the learned Counsel for the Respondent-original land holders has agreed and conceded that even otherwise looking to other transactions of similar lands in the area, the lands under acquisition can fairly be valued between Rs. 22 to 24 per square meter. We may still clarify that firstly this offer is based on other material which is not strictly speaking evidence on record. However, since this is in the nature of a concession made by the learned Counsel for the Respondent, we have looked into such material merely to satisfy ourselves that this concession is fair and reasonable. Accordingly we find that this is a fair and reasonable offer, and that looking to the peculiar facts of the case, the determination of market value within this range would meet the ends of justice, fair play and good conscience.

10. We are conscious that if we were to decide the matter strictly on merits and strictly on the basis of evidence on record, we would have had to remand the matter back to the trial court while permitting the parties to lead further evidence. However, we are also conscious that the Supreme Court, in the case of K. Krishna Reddy and Others Vs. Special Deputy Collector, Land Acquisition Unit II, Lmd Karimnagar, Andhra Pradesh, has cautioned the lower courts to avoid orders of remand, particularly in land acquisition matters. These observations made in paragraphs 11 and 12 of the said decision apply with full force to the facts of the present case. It is under these circumstances that we venture to apply our minds to the offer made by the learned Counsel for the Respondents, and accordingly hold that it is a fair and just offer.

11. Although learned Counsel for the Appellants had sought to suggest that the market value of even Rs. 20/per square meter would be justified, ultimately the learned Counsel was not able to satisfy us to accept the figure suggested by the said counsel. Accordingly on the facts and circumstances of the case we hold and direct that the the market value of the lands under acquisition would be Rs. 23/- per square meter."

7.3 The aforesaid shows that this Court found that the market value of the lands

under acquisition should be Rs. 23/- per square meter, but if such market value is taken into consideration, the same can be in respect of acquisition wherein the notification u/s 4 of the Act was published on 31.7.1986. As the notification u/s 4 of the Act has been published in the present case on 5.9.1985, approximately one year prior to the notification in that case, there would be reverse deduction of 10% from the amount of Rs. 23/- which was found as market value for compensation by this Court. If the amount of 10% on Rs. 23/- is calculated, Rs. 2.30 paise would be required to be deducted and the net amount would come to Rs. 20.70 paise for being market value of the land in the present case wherein the notification u/s 4 of the Act was published on 5.9.1985. As out of the said amount, Rs. 3.80 paise has already been paid as compensation, additional compensation would be Rs. 16.90 paise for the lands at village Visnagar. As against the same, the Reference Court has awarded the compensation at Rs. 11.20 paise as additional compensation. Consequently, the amount of additional compensation would be required to be enhanced by modifying the judgment accordingly.

7.4 It is an admitted position that the village Paldi is adjacent to the village Visnagar, but the Reference Court has also recorded that the development in the village Visnagar is not the same in comparison to the village Paldi. Not only that, but the Special Land Acquisition Officer in the award has also recorded distinction and potentiality of the lands at villages Visnagar and Paldi and, therefore, the Special Land Acquisition Officer has awarded compensation at Rs. 3.20 paise for the lands at village Paldi as against Rs. 3.80 paise for the lands at village Visnagar. Even, the Reference Court, by recording the said distinction, has assessed Rs. 14/- being the market value for the lands at village Paldi as against Rs. 15/- which was assessed as market value for the lands at village Visnagar.

7.5 Perusal of the record shows that, there was no evidence led on behalf of the claimants to show that distinction as was made by the Special Land Acquisition Officer in the award for the lands at village Paldi and at village Visnagar was not correct or that was otherwise. Hence, we find that difference as was recorded by the Special Land Acquisition Officer while awarding compensation for the lands at village Visnagar and village Paldi could not have been reduced by the Reference Court without there being any satisfactory material. Under the circumstances, we find that if the market value of the lands at village Visnagar, as per the reasons recorded hereinabove, is assessed at Rs. 20.70 paise for compensation taking the base at Rs. 3.80 paise as awarded by the Special Land Acquisition Officer, the market value of the lands at village Paldi by taking the base at Rs. 3.20 paise is required to be proportionately reduced and consequently for the lands at village Paldi, the market value would come to Rs. 17.43 paise per square meter and if rounded, it would come to Rs. 17.40 paise. Out of the said amount, Rs. 3.20 paise is already awarded as compensation. Therefore, net additional compensation shall be Rs. 14.20 paise. As against the same, the Reference Court has awarded additional compensation at Rs. 10.80 paise per square meter and hence compensation would be required to be enhanced and the judgment and

award passed by the Reference Court is required to be modified accordingly.

7.6 As such other benefits awarded by the Reference Court are that of increase in the price u/s 23(1A) of the Act and solatium at the rate of 30% per annum are in the nature statutory benefits and the same are not required to be interfered with. However, so far as interest u/s 28 of the Act is concerned, it appears from the judgment of the Reference Court that it has also awarded interest on the amount of solatium as per Section 28 of the Act. In the case of Iyasamy and Another Vs. SPL. Tahsildar, Land Acquisition, after considering its earlier decision in the case of Sunder Vs. Union of India, the Apex Court has taken the view that if the appeal is pending before the High Court, interest on additional compensation u/s 23(1A) of the Act and solatium u/s 23(2) of the Act would be available from 19.9.2001 and not for the period prior to 19.9.2001. Since the Apex Court has settled the position of law only after its decision in the case of Sunder (supra), under the circumstances, we find that interest on additional compensation u/s 23(1A) and interest on solatium, both shall be available to the claimants as per Section 28 of the Act, but such interest shall be available from 19.9.2001 onwards and not prior thereto. Of course, aforesaid interest would be in addition to the principal amount of compensation as fixed by the present judgment.

8. In view of the aforesaid observations and discussion, it is held that the market value for compensation of all the lands located at village Visnagar is fixed at Rs. 20.70 paise per square meter and as the amount of Rs. 3.80 per square meter is already paid as compensation, concerned claimants would be entitled to additional compensation at Rs. 16.90 paise per square meter. It is further held that for the lands at village Paldi, the market value is assessed at Rs. 17.40 paise per square meter and as the amount of Rs. 3.20 paise per square meter is already paid as compensation, additional amount of compensation payable would be Rs. 14.20 paise per square meter. In addition to the above, the claimants shall be entitled to statutory benefits of increase in the price u/s 23(1A) of the Act and solatium u/s 23(2) of the Act. The interest on all the amounts u/s 28 of the Act would be payable but with a clarification that interest on the amount of solatium and the amount of increase in price u/s 23(1A) of the Act would be available for the period after 19.9.2001 onwards till the amount of compensation is actually deposited in the Court.

9. The impugned judgment and award passed by the Reference Court shall stand modified accordingly. The appeals are allowed to the aforesaid extent. Considering the facts and circumstances, the claimants would also be entitled to the cost in accordance with law. Decree accordingly. Record and Proceedings be returned to the trial Court.

10. It is further observed and directed that the amount of compensation as per the present judgment shall be calculated and deposited with the Reference Court within a period of 8 weeks from the date of receipt of the judgment and thereafter, the Reference Court shall be at liberty to permit withdrawal unless

there is any prohibitory order received by it of the higher forum. It is observed that the amount already paid shall be given set off and the remaining amount shall be required to be deposited and paid.