

**(2019) 07 GUJ CK 0075**  
**In the Gujarat High Court**

**Case No :** R/First Appeal No. 1350, 1351, 1352 Of 2015

Patel Mangubhai Narsihbhai

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

**Date of Decision :** 03-07-2019

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4, 6, 11, 18, 23(1)(a), 23(2), 28, 54 Code Of Civil Procedure, 1908 — Section 96

**Citation :** (2019) 07 GUJ CK 0075

**Hon'ble Judges :** R.M.Chhaya, J;B.N. Karia, J

**Bench :** Division Bench

**Advocate :** Dilip B Rana, Jayesh V Patel, Rakesh Patel

**Final Decision :** Allowed

## Judgement

1. Feeling aggrieved by and dissatisfied with the judgment dated 29.9.2012 and award dated 13.10.2012 passed by the learned 2nd Additional Senior

Civil Judge, Patan in Land Acquisition References no.1295 of 2006, 1278 of 2006 and 1285 of 2006, the present appellants " land owners have filed

this appeal under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") read with Section 96 of the Code of Civil

Procedure, 1908.

2. Following noteworthy facts emerge from the record of the appeals:Â?

2.1 That, the lands belonging to the appellants situated at Village Kahoda, Taluka Unjha, District Patan were acquired for the public purpose of

SabarmatiÂSaraswati Link Canal by the Government. A notification under Section 4 of the Act was published on 21.9.1998 and the declaration under

Section 6 of the Act came to be published on 30.3.1999. The Special Land Acquisition Officer declared the award as provided under Section 11 of the

Act on 3.6.1999 and awarded Rs.4.50 per sq. mtr. Feeling aggrieved by the same, the appellants preferred an application under Section 18 of the Act

before the Land Acquisition Officer, which came to be referred as Land Reference Cases and demanded compensation at the rate of Rs.500/Â per

sq. mtr.

2.2 The Reference Court, after appreciation of the evidence on record, determined the market value of the land so acquired at Rs.119/Â per sq. mtr.

and being aggrieved by the same, the appellants â?" land owners have preferred these appeals.

3. Heard Mr. Dilip Rana, learned advocate with Mr. Jayesh Patel, learned advocate for the appellants and Mr. Rakesh Patel, learned Assistant

Government Pleader for the respondents in all the appeals and have perused the original record and proceedings.

4. Record indicates that the claimants relied upon the documentary evidence, such as, map of Villages Kahoda, Bhunav and Khatasana at Exh.23,

copy of Resolution given by the learned 3rd Senior Civil Court, Mehsana in Land Acquisition References no.100 of 2005 to 112 of 2005 with regard to

the lands of Village Bhunav at Exh.24, copy of Resolution given by the learned 2nd Senior Civil Court, Patan in Land Acquisition References no.1230

of 2006 to 1251 of 2006 with regard to the lands of Village Khatasana at Exh.25, copy of Resolution with regard to the lands of Village Khatasana

submitted before this Court in First Appeals no.2275 of 2011 to 2296 of 2011 at Exh.26, copy of Resolution given by the learned Principal Senior Civil

Court, Patan in Land Acquisition References no.2853 of 2006 to 2890 of 2006 with regard to the lands of Village Biliya at Exh.27 and copy of the

judgment accepted by the Government of Village Biliya at Exh.28.

5. Over and above the documentary evidence, one of the claimant â?" Ashwinkumar Babubhai Patel at Exh.17 and the respondentÂState have

examined Ajitbhai Mahipatsinh Zala at Exh.20 who happens to be the Deputy Commissioner Land Acquisition and Rehabilitation Project, Palanpur.

Issues are framed by the Reference Court at Exh.12 and after considering the overall as well as documentary evidence relied upon the judgment of

this Court rendered in First Appeals no.2564 to 2573 of 2009 and considering the potentiality as well as geographical location of the land in question

and even the distance between Khatasana and Kahoda, deducted Rs.30/Â from

the market price determined by this Court in case of lands Village

Khatasana and determined the market value of the land under acquisition at Rs.119/Â? per sq. mtr.

6. Mr. Dilip Rana, learned advocate for the appellants has submitted that though reliance was placed for by the appellants on the judgment of this

Court for the lands of Village Khatasana before the Reference Court, the Reference Court in Land Acquisition References no.186 and 187 of 2012

has fixed the market value of the lands situated at Village Samoda at Rs.227/Â? per sq. mtr. Mr. Rana further relying upon the said award of the

Reference Court, submitted that the lands of Village Samoda and the lands of Village Kahoda are situated nearer than Khatasana and the lands are

acquired for the same public purpose, namely, SabarmatiÂSaraswati Link Canal and even the date of notification is dated 22.9.1998. It is therefore

contended that the exemplar of the price determined in Land Acquisition References no.186 and 187 of 2012 is the best exemplar to determine the

market price of the lands under acquisition. Mr. Rana also relied upon the revenue map which is on record and contended that Village Samoda, on the

contrary, is on the interior, whereas Village Kahoda is on the main road. It is submitted that though Village Khatasana is also having same boundaries,

the market value of the lands of Village Khatasana was on the contrary based upon the market price of Village Bhunav and Brahmanvada and Unjha

city which are far from village Kahoda. It is therefore submitted that in order to determine the compensation, the exemplar of Village Samoda in form

of the judgment and award of the Reference Court in Land Acquisition Reference no.186 and 187 of 2012 should be adopted. Upon instructions, Mr.

Rana pointed out that no appeal is filed by the Government against the judgment and award passed by the Reference Court in Land Acquisition

References no.186 and 187 of 2012. On the aforesaid grounds, it is contended that the appeal may be allowed and the market value of the land under

acquisition to be determined at Rs.227/Â? per sq. mtr.

7. Per contra, Mr. Rakesh Patel, learned Assistant Government Pleader for the respondents has supported the judgment and award. Mr. Patel has

relied upon the judgment of the Division Bench of this Court in First Appeal no.2275 of 2011 dated 18.11.2011 and contended that even the appellants

â?" land owners have contended and relied upon the fact that Village Kahoda is

adjacent to Village Khatasana and therefore, the Reference Court

has determined the market value upon the said exemplar which was relied upon by the land owners themselves before the Reference Court.

According to Mr. Patel, the appellants should not be permitted to now rely upon the award passed by the Reference Court in Land Acquisition

References no.186 and 187 of 2012 which relate to Village Samoda. Mr. Patel, relying upon the same revenue map, contended that Khatasana and

Kahoda are adjacent villages and therefore, the Reference Court has rightly determined the market value of the land under acquisition at Rs.119/Â?

per sq. mtr., which does not require any alteration. According to Mr. Patel, even the potentiality of the lands of Villages Samoda and Kahoda are

different and therefore, similar treatment cannot be given for the lands situated at Village Kahoda. On the aforesaid grounds, it is contended that the

appeals, being meritÂ? less, deserve to be dismissed.

8. No other or further contentions and/or submissions are made by the learned advocates appearing for the respective parties.

9. Upon considering the submissions made and on appreciating the evidence on record and on bare perusal of the revenue map which is on record, it

clearly transpires that Villages Samoda and Kahoda are also adjacent to each other. It is no doubt true that Village Khatasana is also adjacent to

Village Kahoda. However, the exemplar of award of Village Samoda in Land Acquisition References no.186 and 187 of 2012 is also an appropriate

exemplar. Even considering the geographical location and potentiality of the lands under acquisition, it has come on record and as recorded by the

Reference Court, Kahoda is at a distance of about 7 kms. from Unjha and 10 kms. from Siddhpur and is connected by Pakka road. It is also noted

that the electricity facilities are available for 24 hours and there is transport facility by way of State Transport bus. It is also observed by the

Reference Court that Village Kahoda has other infrastructural facilities, such as, branch of Mehsana District Bank and State Bank, agriculture credit

society, post office, educational institutions apart from other facilities like private hospitals and milk dairies. The record also indicates that the distance

from Khatasana to Kahoda is 2 to 3 kms. Though the reliance placed for by the Reference Court on the judgment rendered by this Court in First

Appeals no.2564 to 2573 of 2009 is not totally wrong, the fact remains that while

determining the market value for the lands situated at Village

Khatasana, the Division Bench of this Court has relied upon the judgment of the lands situated at Unjha and while determining the market price of the

lands situated at Village Khatasana at Rs.142/Â? per sq. mtr. has observed thus:Â?

â??(7) We may also record that judgment at Exh.31 for acquisition of the land at Unjha is already confirmed by the Division Bench of this Court in

First Appeal No.2147 of 2004 to 2249 of 2004 on 02.07.2007 whereby the compensation was confirmed at Rs.231/sq.mtr. in a case where notification

under Section 4 of the Act was published in the year 1992. It is not the case of either side that the Apex Court has reversed or modified the said

judgment of the Division Bench of this Court. Under the circumstances, the position would be that for the acquisition of the land at Unjha city, in a

case where notification was published in the year 1992, the compensation was Rs.231 per squar metre.â??

10. However, the fact remains that in the exemplar in the form of the award rendered by the Reference Court in Land Acquisition References no.186

and 187 of 2012, Section 4 notification is only one day after the notification in the case on hand. Apart from the fact that the public purpose is also the

same, the respondents have not been able to even remotely establish the type of land and potentiality of the lands situated at Villages Kahoda and

Samoda are different in any manner.

Moreover, considering the geographical location, Village Kahoda is on the main road, whereas Village Samoda is little interior. Still however, the

Reference Court has determined the market value at Rs.227/Â per sq. mtr. In opinion of this Court, when a better exemplar is available on record that

would be the best exemplar and which should be made basis for determining the market value. We are therefore of the opinion that the market value

for the land situated at Village Kahoda in these appeals requires to be determined on the exemplar of the award passed by the Reference Court in

Land Acquisition References no.186 and 187 of 2012 which, according to the learned advocate for the appellants, has become final. Mr. Rakesh

Patel, learned Assistant Government Pleader for the respondents has not been able to point out that the said award is challenged or stayed by this

Court.

11. In view of the above, we hold that the market value for the lands acquired should be Rs.227/Â per sq. mtr. The appeals are therefore allowed to the aforesaid extent. The appellants would be entitled to additional compensation of Rs.108/Â per sq. mtr. It is also observed and directed that the appellants would be entitled to the aforesaid amount of compensation along with all statutory benefits under Sections 23(1)(a) and 23(2) of the Act and interest under Section 28 of the Act. The judgment and award passed by the Reference Court is modified to the aforesaid extent. The respondents shall deposit the amount of compensation with the Reference Court within a period of three months from the date of the present judgment and order. Registry is directed to send back the record and proceedings to the learned Trial Court forthwith.