

(2022) 01 GUJ CK 0053

In the Gujarat High Court

Case No : R/Special Civil Application No. 91 Of 2022

Patel Sureshchandra Purshottamdas

APPELLANT

Vs

Competent Authority National Highway Authority Of India
And Special Land Acquisition Officer

RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 243Q(2)
National Highways Act, 1956 — Section 3A, 3D, 3G(5)
Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And
Resettlement Act, 2013 — Section 26(1), 30(1), 30(3)

Citation : (2022) 01 GUJ CK 0053

Hon'ble Judges : Aravind Kumar, CJ;Ashutosh J. Shastri, J

Bench : Division Bench

Advocate : Aditi S Raol, Vrunda Shah, Maulik Nanavati, Devang Vyas

Final Decision : Disposed Of

Judgement

Aravind Kumar, CJ

1. Mr. Maulik Nanavati accepts notice for respondent no. 2 (The National Highway Authority of India). Registry to print the name of Mr. Maulik

Nanavati as counsel appearing for respondent no. 2. Petitioner counsel undertakes to serve a copy of the Special Civil Application during the course of the day. His submission and undertaking placed on record.

2. We have heard Mr. Shalin Mehta, learned Senior Advocate with Ms. Aditi Raol, learned advocate for the petitioner, Ms. Vrunda Shah, learned

Assistant Government Pleader for respondent Nos.1 and 4, Mr. Maulik Nanavati, learned counsel for respondent No. 2 (National Highway Authority

of India) and Mr. Devang Vyas, learned Assistant Solicitor General for respondent No.3.

3. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

â??(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction and

thereby be pleased to direct the respondent number 1 to amend/modify/revise the award dated 05.09.2017 bearing No. LAQ. Vadodara â?" Mumbai

Express Way/Bhayli Compensation Case No. 17/2013 and re-compute the compensation qua the lands of the petitioner by multiplying the market

value as determined under Section 26(1) of the LARR, 2013 Act with a Factor of 2 (two) and applying all other statutory benefits as provided under

the LARR Act, 2013 including solatium under Section 30(1), interest under Section 30(3) and be further pleased to direct the respondents to pay the

same, with interest from 05.09.2017 @ 9% for the first year and 15% per annum for subsequent years till date of realisation within 6 weeks of the

Judgment;

(B) Pending admission, hearing and final disposal of the petition, your Lordships may be pleased to restrain the respondents from using, altering,

making any construction of any kind on the land of the petitioner;

(C) Any other and further reliefs may be deemed just and proper in the facts and circumstances of the case may please be granted.â??

4. It is the submission of Mr. Mehta, learned Senior Advocate appearing with Ms. Aditi S. Raol, learned advocate for the petitioner that petitioner is

an agriculturists and is holding total agricultural land admeasuring 12621 Ha.Ra.Sq.Mtrs, bearing Block No./Survey No. 1506 Paiki 1 within the ceiling

limit prescribed in village Bhayli, Taluka : Vadodara (Rural), District: Vadodara. The said land is under cultivation and he is totally dependent upon it

for his livelihood. The land in question, according to Mr. Mehta, learned Senior Advocate is not falling within the limits of any â??transitional area,

smaller urban area or larger urban areaâ?? as defined and specified under Article 243Q (2) and is not part of any area falling within the limits of any

Urban Local body or Municipality or Municipal Corporation and as such, the land is not covered under any urban area. According to Mr. Mehta,

learned Senior Advocate, the major economic activity is agriculture and there are no significant non agricultural activities in the village or surrounding

area and the village limits of Vadodara Urban Development Area Authority,

however, no T.P. Scheme is proposed in the area and the lands are still in agriculture zone. It is contended that by virtue of Notification dated 03.03.2014, issued by Government of India, in exercise of power under Section 3A of the National Highways Act, 1956, the land of the petitioner was undertaken for acquisition for the purpose of construction of Vadodara - Mumbai Express way and by virtue of further Notification under Section 3D, published on 05.03.2015, the lands vested in respondent no. 3. It is contended that for the purpose of compensation, the competent authority passed an award dated 05.09.2017 bearing No. LAQ./Vadodara - Mumbai Express Way/Bhayli Compensation Case No. 17/2013 and the market value of the acquired lands was arrived at INR 34,67,067/- and though the land acquired is situated in rural area, the authority i.e. respondent No.2 applied factor 1 and not factor 2. Hence, the present petition. The main grievance raised in the petition is that erroneously respondent no. 2 " authority applied factor 1 instead of factor 2.

5. At this juncture, learned counsels appearing for the respective parties submitted that the issue involved in this petition is identical to the issue

decided by the Coordinate Bench of this Court in case of Shah Rajesh Manibhai vs. National Highway Authority of India rendered in Special Civil

Application No. 5913 of 2021 dated 23.04.2021. The said order is further based upon a Division Bench judgment of this Court dated 12.09.2019

passed in a group of petitions led by Special Civil Application No. 8734 of 2019, which has since been affirmed by the Supreme Court as the Special

Leave Petition filed by the State Government has been dismissed on 07.01.2021 in Special Leave Petition (Civil) Diary No. being 18777 of 2020. It is

also submitted that the issue in the present case is identical to the case of Dilipbhai Ganpatbhai Parmar vs. Competent Authority rendered in Special

Civil Application No.12140 of 2021 dated 27.08.2021. It was, therefore, submitted that this petition may also be disposed of, following the order passed

in Special Civil Application No.5913 of 2021 dated 23.04.2021. No other submissions were made.

6. Learned counsel for respondent No.2 - NHAI, further submitted that as in the other cases if it is found that the petitioner is entitled to Factor-

" being applied for determination of compensation and other benefits, respondent No.2 " authority shall make deposit within 21 days of such

determination.

7. Thus, following the decision of the Coordinate Bench rendered in Special Civil Application No.5913 of 2021 dated 23.04.2021, the present petition is

disposed of with the same directions and terms as contained in the order dated 23.04.2021 passed in Special Civil Application No.5913 of 2021.

8. However, it is clarified that if the petitioner has moved for re-determination of compensation before the Arbitrator under Section 3G (5) of the

National Highways Act, 1956, the petitioner may not insist for Factor-â??2â?? claim or in the alternative the respondents may be permitted to appraise

the Arbitrator of the said issue, so that there is no further multiplicity or complications in the proceedings.

9. The present petition, therefore, stands disposed of accordingly. There shall be no order as to costs.