

(2002) 06 GUJ CK 0014

In the Gujarat High Court

Case No : First Appeal No's. 4746 and 4747 to 4776 of 1995

Ramanbhai Motibhai Patel

APPELLANT

Vs

Arun Land Corpo.

RESPONDENT

Date of Decision : 21-06-2002

Acts Referred:

Arbitration Act, 1940 — Section 8(2)

Land Acquisition Act, 1894 — Section 18, 18(1), 20, 21, 23(1A)

Partnership Act, 1932 — Section 69

Citation : (2002) 06 GUJ CK 0014

Hon'ble Judges : M.H. Kadri, J;K.A. Puj, J

Bench : Division Bench

Advocate : H.M. Parikh, for the Appellant; C.C. Bhalja, for Respondent No. 1, B.Y. Mankad AGP for respondent No. 2 and Ketty A. Mehta, for Respondent No.3, for the Respondent

Judgement

K.A. Puj, J.—This group of 31 appeals is filed by the different appellants, who are the original applicants nos.1 in the different Reference Cases before the learned 2nd Extra Assistant Judge, Vadodara. The appellants have challenged the judgment and order passed in main Land Reference Case No. 6 of 1982 on 02.05.1995 and the said judgment and order covers in all 15 Land Reference Cases. Another judgment and order was passed on the same day in main Land Reference Case No. 148 of 1983, which covers in all 17 Land Reference Cases. Thus, the present appeals are filed against these two judgments and orders passed on 02.05.1995 by the learned 2nd Extra Assistant Judge, Vadodara in all 32 Land Reference Cases and accordingly barring one Land Reference Case, 31 appeals are filed by the appellants before this Court. No appeal is filed by the appellant, Jai Narayan Ind. Works Society in Land Reference Case No. 124 of 1983.

2. The present appeals are in respect of a block of land consisting of Survey No. 141 of village Gorva, situated within the limits of the municipal corporation of Vadodara and admeasuring 74 hectare - 32 Are - 54 sq.mtrs., which was notified

for acquisition for Gujarat Housing Board by the State Government u/s 4 of the Land Acquisition Act, 1894 [for short the 'Act'] on 15.05.1974. The said notification was published in the official gazette on 08.08.1974. Thereafter, notification u/s 6 of the Act was issued on 12.07.1977 and published in official gazette on 21.07.1977.

3. The claimants had claimed the compensation at the rate of Rs.3/- per square foot to Rs.7/- per square foot and in all, 94 claims were registered in the office of the Special Land Acquisition Officer. The Land Acquisition Officer had, after considering the sale instances produced by the parties as well as obtained from the Government Record of the Village awarded all the compensation at the rate of Rs.1=00 Lac per hectare to Rs. 1,70,000=00 per hectare. He has also awarded solatium at the rate of 15% on the market value of Rs.1,28,03,810=15ps. towards the compensation.

4. Being aggrieved by the compensation awarded by the Land Acquisition Officer, the claimants requested the Land Acquisition Officer to make the Reference u/s 18 of the Act to the District Court for enhancing the compensation. It was contended by the claimants that the market value of the land could not have been less than Rs.3=00 per square foot to Rs.7=00 per square foot and the Land Acquisition Officer has committed an error in awarding compensation of Rs.1=35ps. to Rs.1=70ps. per square foot. It is further important to note that during the pendency of the reference cases before the District Court, the Land Acquisition Act, 1894 came to be amended and the solatium was increased from 15% to 30% on market value. The additional amount at the rate of 12% per annum on the market value from the date of the Notification u/s 4 till the date of award by the Collector or the date of possession, whichever was earlier was also claimed in view of the newly inserted Section 23(1-A) of the Act. The interest at the rate of 9% for the first year and thereafter at the rate of 15% was also claimed as per the amendment by the claimants. All the necessary amendments were carried out in the original claim applications by the claimants.

5. It is further important to note at this stage that before the Land Acquisition Officer, there was only one claimant and he was claimant no.1 in each reference case, but before the date of award, the claimant no.2, i.e., Arun Land Corporation filed the application to join it as claimant no. 2 and also urged that the Arun Land Corporation was entitled to the award on the strength of the Agreement dated 16.12.1978 which was entered into between the Arun Land Corporation on the one hand and claimant no. 1, i.e., land owner on the other hand in each reference case. The Land Acquisition Officer along with his endorsement sent the Land References before the District Court. In all, there were about 83 Land Reference Cases and in that group of land Reference Cases, Arun Land Corporation filed an application Exh. 12 in the Land Reference Case No. 92 of 1983 to join it as claimant no. 2 in all those land reference cases. After hearing the respective parties, the District Court allowed Arun Land Corporation as a claimant no. 2 and, thereafter, it appeared as a claimant no.2 in all the Land

Reference Cases. Thereafter, there were separate groups of all those Land Reference Cases. Present appeals mainly concern with two groups. Land Reference Case No. 6 of 1982 (Main) covers 15 reference cases and 15 appeals. In this group, over and above the agreement dated 16.12.1978, a new agreement dated 04.12.1994 produced at Exh.16 was relied upon by the claimant no.2 and according to this new agreement, Arun Land Corporation would pay Rs.0=65ps. per square foot to the every land owner, over and above, Rs.1=35 per square foot as per the previous agreement dated 16.12.1978. The claimant no. 2 had further relied on the compromise pursis filed in the Special Civil Suit No. 156 of 1980, certified copies of which were produced at Exhs. 39 to 46 in the present Reference Cases and all these compromise pursis were signed by the respective land owners of present Land Reference Cases. The respective Land Reference Cases and First Appeals arising therefrom are as under:

----- Sr.No. Land Reference Case	
First Appeal Nos.	Nos. -----
1. 6/82 4750/95	2. 101/83 4747/95
3. 102/83 4748/95	4. 95/83 4749/95
5. 99/83 4746/95	6. 115/83 4759/95
7. 116/83 4757/95	8. 117/83 4758/95
9. 120/83 4760/95	10. 127/83 4753/95
11. 128/83 4754/95	12. 129/83 4755/95
13. 130/83 4756/95	14. 131/83 4752/95
15. 134/83 4751/95	

----- Another group is of LRC No. 148 of 1983 (Main) which covers 17 Land Reference Cases, 16 appeals and 12 claimants, which are as under:

----- Sr.No. Land Reference Case	
First Appeal Nos.	Nos. -----
1. 94/83 4775/95	2. 110/83 4763/95
3. 111/83 4765/95	4. 112/83 4761/95
5. 119/83 4776/95	6. 121/83 4762/95
7. 123/83 4764/95	8. 124/83 No Appeal
9. 126/83 4774/95	10. 135/83 4766/95
11. 136/83 4767/95	12. 143/83 4773/95
13. 144/83 4768/95	14. 148/83 4770/95
15. 147/83 4769/95	16. 151/83 4771/95
17. 152/83 4772/95	

----- As stated earlier, no appeal is filed against the order passed in LRC No. 124 of 1983 and hence, though there were 17 Land Reference Cases, there are only 16 appeal in this group. On the basis of the agreement dated 16.12.1978 entered into between the claimant no.1, the original land owners and Arun Land Corporation, an application Exh. 12 was filed in Land Reference Case NO. 92 of 1983 by Arun Land Corporation to join it as claimant no.2 in all these Land Reference Cases and the same was allowed by the Reference Court.

6. Before we proceed further, it is important to note at this stage that out of total 94 claimants, 42 claimants refused to abide by the agreement dated 16.12.1978 and hence, the claimant no.2, Arun Land Corporation, the Respondent No.1 herein had instituted a Special Civil Suit No. 156 of 1980 before the Court of Civil Judge (S.D.), Nadiad against these 42 claimants for an injunction restraining the Land Acquisition Officer from disbursing the amount payable under the award.

The Trial Court restrained the Land Acquisition Officer from disbursing to these 42 claimants the amounts payable under the award. An appeal was filed by the said 42 claimants to this Court and this Court had permitted them to withdraw only Rs.1=35 per sq.foot from the awarded amount and the amount awarded in excess of Rs.1=35ps. per sq. foot was directed not to be released till the disposal of the suit filed by Arun Land Corporation. It is submitted that the Said suit is still pending. However, except 7 claimants, the rest of the 42 claimants, who had challenged the agreement dated 16.12.1978 have settled the matter with Arun Land Corporation and, hence, the pending suit is relatable to the 7 claimants only.

7. It is further relevant at this stage to record that against the award declared by the Special Land Acquisition Officer on 10.10.1980, several references were made u/s 18 of the Act to the Reference Court and from amongst these references, about 36 references were decided by the Extra Assistant Judge, Vadodara by his judgment and order dated 11/09/1987 holding that the Special Land Acquisition Officer had erroneously divided the lands into four categories as all the lands were contiguous and similarly situated and, therefore, compensation was required to be awarded at a uniform rate. On the basis of the sale instances, the Reference Court fixed the market value at Rs.4=00 lakhs per hectare and accordingly awarded compensation at the rate of Rs.4=00 lakhs per hectare. The State Government filed 36 appeals through the Land Acquisition Officer before this Court which were registered as First Appeal Nos. 31 of 1988 to 66 of 1988 and this Court, vide its Judgment and order dated 01.04.1991, reduced the price of land in question to Rs.1=88ps per sq.foot instead of Rs.3=71 as fixed by the Reference Court. Order of the Reference Court awarding solatium at the rate of 30% u/s 23(2) of the Act was maintained but the additional amount u/s 23(1-A) of the Act was disallowed.

8. Following the aforesaid judgment rendered by this Court on 01.04.1991 in First Appeal Nos. 31 of 1988 to 66 of 1988, the Reference Court has also awarded compensation of Rs.1=88 per square foot in these two groups of references vide its two separate judgments and orders dated 02.05.1995 given in LRC No. 6 of 1982 and LRC No. 148 of 1983. The Reference Court has further observed that since the agreement dated 16.12.1978 executed by Arun Land Corporation and various claimants has not been declared as illegal and void by this Court in the above referred judgment, the said agreement cannot be considered as champertous agreement and against public policy. The said Arun Land Corporation, the claimant no.2, was, therefore, held to be entitled to get excess compensation, solatium, interest etc.

9. Being aggrieved and dissatisfied with the said findings of the Reference Court, the present appeals were filed by the appellants, claimant no.1 in each of the References.

10. The main grounds raised by the appellant challenging the impugned judgments and orders are to the effect that the compensation should have been awarded at the rate of Rs.7=00 per sq.foot. and that M/s. Arun Land

Corporation, the respondent no.1 herein, cannot be termed to be an "interested person" in view of the definition of the word "person interested" as defined in Section 3(b) of the Act and that only "person interested" can file a reference u/s 18 of the Act and since, the respondent no.1 was not a person interested, it could not have been joined as claimant no.2 in all these reference cases. The order was further challenged on the ground that the respondent no.1 was a partnership firm and there was no evidence to show that the partnership firm was registered partnership firm and that the proceedings cannot be initiated by the respondent no.1 without producing any evidence with regard to the registration of the firm. It was further contended that there was nothing on record to show that what kind of services was rendered by the respondent no.1 on behalf of the appellant and what would be reasonable remuneration for the said services. It was further contended that the agreement only refers to Rs.1.35ps. per sq.foot. and there was no reference with regard to interest and solatium. So, in any case, the said amount of interest as well as solatium should be given to the present appellants. The dispute was also raised to the effect that the respondent no.1 has not paid a single paisa and, hence, it cannot take away fruit and major portion of the award without rendering any services and merely taking advantage of illiteracy of the appellants. Thus, the alleged agreement was certainly in the nature of champertous agreement and it was contrary to the public policy. It was also contended that if the amount has been disbursed as per the agreement, the respondent no.1 would take away the substantial portion of the award. Thus, it cannot be said that the contract was fair, equitable, reasonable and conscionable and it would certainly fall under the definition of champertous agreement and is contrary to public policy.

11. Mr. H.M.Parikh, learned advocate appearing for the appellants in all these appeals, has submitted with regard to jurisdiction and that the Reference Court had no jurisdiction to implead the respondent no.2 as claimant no.1 in the Land Reference Cases pending before it. In support of his contention, he has relied on the decision of this Court in the case of Babubhai Khusaldas Gandhi & Ors. vs. The Special Land Acquisition Officer, Corporation, Ahmedabad reported in AIR 1967 Guj 264 wherein, it is held that "Sections 18 to 21 of the Act indicate that the scope of enquiry before the Court in a reference made under Sections 18 and 19 is to consider the objections made by the persons interested u/s 18 and no more. The scope of the enquiry cannot be enlarged by others putting forward contentions not relevant to those objections. Those who do not ask for a reference u/s 18 on any of the points covered by it or those who cannot in view of Sections 20 and 21 call for an enquiry upon a matter outside the objections raised in the reference. Even the person who had applied for a reference cannot go beyond the objections raised by him in his application for reference."

11.1 Mr. Parikh has further relied on the judgment of the Supreme Court in the case of State of T.N. Vs. Thiru K.S. Murugesan and Others, wherein, it is held that "the District Judge is enjoined to go into the objections raised by the claimants in making enquiry u/s 20 and to pass an award u/s 26 of the Act with

reference to the objections raised by the claimants in respect of the area of the land or the amount of compensation. It is, therefore, clear that the reference court cannot go behind the reference and give a declaration that the notification u/s 4(1) and declaration u/s 6 are null and void or illegal. His duty and power are confined vis-a-vis the provisions contained under Sections 11, 18 and 20 to 23 and he would not traverse beyond his power."

11.2 Mr. Parikh has further relied upon the judgment of the Apex Court in the case of Smt. Ambey Devi Vs. State of Bihar and another, , wherein it is held that 'making an application in writing under subsection (1) and within the limitation prescribed under sub-section (2) of Section 8 are conditions precedent for the Land Acquisition Officer to make a reference u/s 18; only on its receipt, u/s 20 Civil Court gets jurisdiction to issue notice and, thereafter to conduct enquiry, as contemplated under the Act.'" It was further held that 'at that stage, the procedure of trial etc. as contemplated under the C.P.C. would apply and Section 53 of the Act would become applicable. It is an admitted position that the co-owner filed an application and had sought reference u/s 18 in respect of his share only. So, it is, as a fact, claims for compensation in specie and was paid towards 1/4th share to all the claimants. By no stretch of imagination, the application u/s 18(1) by one of the co-shares would be treated as one made on behalf of all the co-shares. Accordingly, it is held that the appellant was not entitled to lay any higher compensation pursuant to an award made by the reference Court u/s 26 at the instance of one of the co-owners."

11.3 Mr. Parikh has further relied on the judgment of the Apex Court in the case of Land Acquisition Officer Vs. Shivbai and others, , wherein it is held that 'it is now settled position in law that the claimants who receive the compensation under protest and who make application u/s 18(1) alone, are entitled to seek a reference; third parties, who have been impleaded, have no right to claim higher compensation by circumventing the process of reference u/s 18. Under these circumstances, the reference itself is without any jurisdiction and barred by limitation. Thereby, the award of the reference Court is clearly illegal. On appeal, the award of the High Court has not considered all these perspectives and found it convenient to rely on another judgment to uphold the award of the Civil Court. The appeal was accordingly allowed by the Supreme Court."

11.4 Mr. Parikh has lastly referred to and relied on the judgment of the Apex Court in the case of Ajjam Linganna & Ors. vs. Land Acquisition Office, Revenue Divisional Officer, Nizamabad & Ors. reported in AIR 2001 SCW 4854, wherein it is held that 'it was not open to the appellants to have applied directly to the reference Court for impleadment and to seek enhancement u/s 18 for compensation. The only person for whom some consideration can be shown is Ajjam Linganna who had atleast filed an application on 14-9-1993 before the Land Acquisition Officer seeking reference. The Supreme Court has, therefore, dismissed the appeals preferred by various appellants, except Ajjam Linganna as it was not open to the Reference Court to implead the said appellants in the

reference Court without their having approached the Land Acquisition Officer seeking reference earlier."

12. Mr. Parikh has, thereafter, submitted with regard to the validity of the agreement that such agreement was not binding to the appellants as they were not signatories of the agreement and the signatures were forged signatures. The dispute with regard to execution of agreement was also raised by the appellants and the said issue is pending before the Civil Court. Even otherwise, the contents of the agreement are such that the same would certainly shock the conscience of the Court and since the major chunk of the compensation goes to the respondent no.1 though the respondent no.1 has not rendered any service whatsoever and though the appellants are real owners of the land acquired, the appellants are duped and deprived from their legitimate right. The agreement is, therefore, champertous agreement and it is against public policy and such an agreement cannot be implemented. The Reference Court has, therefore, committed an error in impleading the respondent no.1 as claimant no.2 in the Land Reference Cases and awarding the excess amount to the respondent no.1 including solatium, interest etc.

12.1 Mr. Parikh has relied on the judgment of Apex Court in the case of Rattan Chand Hira Chand Vs. Askar Nawaz Jung (Dead) by Lrs and Others, , wherein it is held that `both the city civil courts as well as the High Court have created a new head of public policy to declare the agreement as void, although according to the relevant statutory provisions (sections 23, 65, 69, 70 and second part of Section 73) of the Contract Act as well as the decisions of the court, the agreement was not void and that the specific rule of English law against maintenance and champerty have not been adopted in India and a champertous agreement is not per se void in this country. It was contended that ignoring the champertous nature of the agreement, there was no other ground of public policy on which the agreement could be struck down." It is further held that `the contract such as the present one which, as found by the city civil court as well as the High Court, had been entered into with the obvious purpose of influencing the authorities to procure a verdict in favour of `S" was a "carrier" contract. To enforce such a contract although its tendencies to injure public weal is manifest is not only to abdicate one's public duty but to assist in the promotion of a pernicious practice of procuring decisions by influencing authorities when they should abide by the law. To strike down such contract is not to invent a new head of public policy but to give effect to its true implications. A democratic society is founded on the rule of law and any practice which seeks to subvert or circumvent the law strikes at its very root. When the Court discountenance such practice, it only safeguards the foundation of the society. Even assuming, therefore, that the Court finds a new head of public policy to strike down such practice, its activism is not only warranted but desired."

13. With regard to maintainability of the application moved by the respondent no.1 before the Reference Court for impleading it as applicant / claimant no.2, it

is submitted by Mr. Parikh that the said application is contrary to the provisions of the Indian Partnership Act as the respondent no.1 is not a registered partnership firm and, hence, it has no right to move such an application. It is further submitted that there is no evidence produced on record showing that the firm is a registered partnership firm. Mr. Parikh has invited our attention to the provisions contained in Section 69 of the Partnership Act. Relevant portion of the said section reads as under:

"69(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of the any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suit is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of the sub-sects. (1) and (2) shall apply also to a claim of set off or other proceeding to enforce a right arising from a contract, but shall not affect,

(a) xxx xxx xxx

(b)xxx xxx xxx

(4)xxx xxx xxx

(a) xxx xxx xxx

(b)xxx xxx xxx

13.1 On the basis of these provisions, it was submitted that the word `other proceedings" appears u/s 69(3) would govern the proceedings before the Reference Court. In this connection, he has relied on the decision of the Supreme Court in the case of Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., wherein, it is held that `the words `other proceedings" in Section 69(3) are not controlled by preceding expression and bar u/s 69(3) applies to all proceedings including one u/s 8(2) of the Arbitration Act."

14. With regard to quantum of compensation, Mr. Parikh has submitted that the Supreme Court in the case of Kashiben Bhikabai & Ors. vs. Special Land Acquisition Officer & Anr. reported in A.I.R 2002 . SCW 852 has determined the price at the rate of Rs.2=00 per sq.foot. instead of Rs.1=88ps. per sq.foot. as determined by this Court in First Appeal Nos. 31 to 66 of 1988 in respect of the land bearing same survey number and acquired under the same notification for the said purpose.

15. As far as interest on solatium is concerned, Mr. Parikh has relied on the

judgment of the Supreme Court in the case of *Sunder vs. Union of India* reported in 2001(3) G.L.H. 446 wherein, it is held that 'the compensation awarded includes not only the total sum arrived at as per subsection (1) of Section 23, but the remaining subsections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensations worked out in accordance with the provisions contained in Section 23, including all the sub-section thereof." The Supreme Court has, therefore, held that 'the person entitled to compensation awarded is also entitled to get interest on the aggregate amount including solatium."

16. Mr. Parikh has lastly submitted that even if it is held that the Reference Court was justified in impleading the respondent no.1 as the claimant no.2 and even if it is held that the respondent no.1 is entitled to claim certain amount of compensation under the agreement, this Court should not express any opinion so far as the validity of the agreement is concerned as the dispute with regard to validity of the agreement is pending before the Civil Court and unless and until, after due appreciation of evidence, the Civil Court comes to any definite conclusion, the agreement cannot be implemented. Mr. Parikh has, therefore, submitted that no orders should be passed with regard to disbursement of additional compensation along with solatium, interest etc.

17. Mr. B.Y.Mankad, learned Asst. Government Pleader for the respondent no.2 and Ms. K.M.Mehta, learned advocate appearing for the respondent no.3, the acquiring body, have supported the case of the appellants and submitted before us that the appellants being real owners are entitled to the entire compensation and impugned agreement deprives the appellants from their legitimate claims of receiving the entire compensation in lieu of their lands having been acquired by the respondent nos. 2 and 3. It is, therefore, submitted that the agreement is in the nature of champertous agreement and it is against public policy and, hence, this Court should not take any cognizance of the said agreement. They have further submitted that since the Supreme Court has raised the claim of compensation from Rs.1=88ps. sq.foot. to Rs.2=00 per sq.foot., this Court should follow the said decision and award compensation at the rate of Rs.2=00 per sq.foot.

18. Mr. Bhalja, learned advocate appearing for the respondent no.1, has strongly objected to submissions made and the contentions raised by the appellants as well as the respondent nos. 2 and 3. He has further submitted that the Reference Court has rightly come to a conclusion to implead the respondent no.1 as a necessary party in the proceedings before it and after taking due notice of the agreement and other facts brought on record, has awarded the amount in excess of Rs.1=88ps. per sq. foot in favour of the respondent no.1, which inter alia includes solatium, interest etc. Mr. Bhalja has further submitted that the respondent no.1 has raised the issue before the Special Land Acquisition Officer prior to the date of the award and instead of deciding that issue, the Land Acquisition Officer forwarded the same to the Reference Court along with his

endorsement with regard to the claim of the respondent no.1. He has further submitted that the Reference Court has decided the respondent no.1's application below exh.12 and allowed the respondent no.1 to implead it as necessary party in the Reference Court in the reference proceedings. The said order has gone unchallenged and become final. Once having accepted the said order, it is not open for the appellants to raise the same issue in the present appeals before this Court. Mr. Bhalja has further submitted that he has claimed proper apportionment of the amount of compensation on the basis of the agreement entered into between the appellants and the respondent no.1 on 16.12.1978 and the said agreement was already accepted by as many as 52 claimants out of 94 claimants. Even with regard to 42 claimants, subsequently the matter was settled by almost 35 claimants and the suit before Nadiad Court is pending with regard to only 7 claimants. Mr. Bhalja has further submitted that the respondent no.1 is the person interested and has every right to raise the dispute before the Land Acquisition Officer as well as the Reference Court. Mr. Bhalja has further submitted that the validity of the agreement dated 16.12.1978 has been decided by this Court in First Appeal Nos. 31 to 66 of 1988 and other matters by an order dated 01.04.1991 and on the basis of the said order, the learned 2nd Extra Assistant Judge, Vadodara in different groups of references has been pleased to hold that the said agreement was valid one. As the agreement, which is referred to in the said judgment and relied on before us, is the same agreement and in respect of the same acquisition proceedings, the present agreement should also be treated as valid one. Mr. Bhalja has further pointed out that while passing the interim order in Civil Application Nos. 3627 of 1995 to 3657 of 1995 in First Appeal Nos. 4746 of 1996 to 4775 of 1996 on 12.01.1996, this Court has observed that this very agreement and its validity require scrutiny before the Supreme Court and, hence, final outcome should be kept in abeyance so far as the appeals are concerned till the decisions of the Supreme Court is received. It is further submitted by Mr. Bhalja that the Supreme Court in Civil Appeal Nos. 5354 to 5389 of 1993 filed by the appellants - claimants as well as Arun Land Corporation challenging the judgment and order of this Court dated 01.04.1991 in First Appeal Nos. 31 to 66 of 1998 was pleased to pass an order on 06.02.2002 enhancing the compensation to Rs.2=00 per sq.foot. In the said appeals, the Supreme Court has decided two points. So far as first point is concerned, the Supreme Court has fixed the price of the land at Rs.2=00 per sq.foot. instead of Rs.1=88ps. per sq.foot. and thereby, enhanced compensation by 0=12ps. per sq.foot. and solatium at the rate of 30%. It was directed that the enhanced amount be paid to M/s. Arun Land Corporation reserving the right that the claimants may recover the amounts from M/s. Arun Land Corporation, if they are permitted to do so in law, on taking recourse of an appropriate jurisdiction in accordance with law.

19. So far as the second point with respect to inter se dispute between 22 claimants - appellants, who have filed the applications for separating their Special Leave Petitions and M/s. Arun Land Corporation in whose favour they

have transferred their right to get compensation over and above Rs.1=35 per sq.foot., it is observed by the Supreme Court as under:

"It would be seen that the reference Court as well as the High Court have held that the claimants are bound by the agreement entered into by them with the ALC in view of the admissions made by them in their reference applications and the statements made in the Court. Claimants had accepted that they had entered into an agreement to transfer their interest in the compensation payable over and above Rs.1=35ps. per sq.ft. in favour of ALC. They had specifically stated that the amount of compensation over and above Rs.1=35ps. per sq. ft., be paid to the ALC. We are not opining on this matter as this might prejudice the rights of the parties in Suit No. 156 of 1980 between the ALC and the seven claimants in the Civil Court at Nadiad."

On the basis of these observations, Mr. Bhalja has contended that this very agreement and its validity has been finally decided by the Supreme Court in the aforesaid judgment and since there is no factual distinction between earlier group of matters decided on 01.04.1991 and the present one, the said decision should be followed in the present case. Mr. Bhalja has further submitted that out of 42 claimants, except 7 claimants against whom Civil Suit No. 156 of 1980 is pending before the learned 2nd Jt. Civil Judge (S.D.), Nadiad, remaining 35 claimants including the appellants in the present appeals have submitted pursis of compromise for accepting amount of Rs.2=00 per sq.foot, in lieu of compensation amount on solatium, 12% on the market value and amount of interest etc. Vide Exhibits 39 to 46. The said compromise pursis filed in Special Civil Suit No. 156 of 1980 were produced before the learned 2nd Extra Assistant Judge, Vadodara in Main Land Reference No. 6 of 1982 and Land Reference No. 148 of 1983. He has further submitted that on the basis of subsequent agreement as well as on the basis of the decision taken by the Supreme Court, the present appellants should be awarded compensation of Rs.2=00ps. per sq. foot. and rest of the amount should be awarded to the respondent no.1 herein.

20. We have heard the learned advocates appearing for the respective parties at length. We have also gone through their respective pleadings and perused documents referred to and relied on by them. We have also given our serious thoughts to the record and proceedings of Land Reference Case Nos. 6 of 1982 and 148 of 1983. We have further perused the case record of Special Civil Suit No. 156 of 1980, which was on the record of Land Reference Case Nos. 6 of 1982 and 148 of 1983. On the basis of material and evidence on record, we are of the view that the respondent no.1 also falls within the definition of 'person interested'. The Respondent No.1 has moved an application before the Special Land Acquisition Officer prior to declaration of the award and without taking any decision on the said application, the Special Land Acquisition Officer has straightaway forwarded the said application along with reference papers to the Reference Court by making necessary endorsement. The Reference Court has considered the claims put forward by the respondent no.1. Initially, in application

moved by it for joining it as a party and while passing the order below Exh. 12 in Land Acquisition Reference No. 92 of 1983, the Reference Court has permitted the respondent no.1. to be joined as the applicant / claimant in the said proceedings. The Reference Court has thereafter come to a conclusion that the agreement dated 16.12.1978 was a valid agreement. For this purpose, the Reference Court has relied on the judgment of this Court delivered in First Appeal Nos. 31 of 1988 to 66 of 1988 wherein it is held that 'in view of the agreed legal position emerging from the authorities cited at the bar, the agreement [Exh. 42] cannot be regarded as invalid only on the ground that it is champertous in nature. It can be held as illegal only if it is found to be unfair, unequitable or unreasonable or in other words unconscionable. By the agreement [Exh. 42], the owners of the lands entered into agreement with M/s. Arun Land Corporation and authorised it to prepare replies on their behalf and to take such other steps, that the proceedings of acquisition which were not being completed in spite of lapses of considerable time were completed soon. Arun Land Corporation undertook to see that the owners of the land got compensation at least at the rate of Rs.1=35 ps. per sq.foot. For the services rendered, it has to get anything that may be paid at a rate higher than Rs.1=35ps. per sq.foot. What transpires from the this agreement is that the owners of the lands had entered into agreement with M/s. Arun Land Corporation because the acquisition proceedings were not being completed even though considerable time had passed, after issuance of Section 4 notification. They wanted compensation atleast at the rate of Rs.1=35ps. per sq. foot and did not want to take a chance. Therefore, they authorised M/s. Arun Land Corporation to prepare replies on their behalf and to lead proper evidence and take appropriate steps. Thus, if compensation is awarded at the rate higher than Rs.1=35ps. per sq.foot then it is to be taken by M/s. Arun Land Cooperation as payment for their services, but it it is at a lesser rate, then it has not to take anything by way of remuneration." The Court has further observed that 'simply because Arun Land Corporation was not an expert, the Court cannot jump to the conclusion that it has entered into the agreement with a view to take undue and unfair advantage." The Court has further observed that 'it clearly appears from the record that the owners of the lands were illiterate farmers. If under these circumstances, the said owners entrusted the work to Arun Land Corporation on the terms and conditions stated therein, it cannot be said that the transaction was of gambling nature or intention of the party was to pollute the acquisition proceedings with it in unfair manner." The Court has observed that 'there is nothing on the basis of which, it can be said that this was a case of created litigation or a purchased litigation or that Arun Land Corporation had taken an undue advantage, or that the said agreement had the tendency to pollute the fountain of justice. For all these reasons, it will have to be held that the agreement [Exh. 42] is not invalid and the Land Acquisition Officer and the lower Court were justified in passing an award in its favour for the excess amount." It is equally important to note that the above judgment of this Court was challenged before the Supreme Court and except slight modification in the said judgment, the Supreme Court has not disturbed the findings of this Court with

regard to validity of the agreement. Since this very agreement is in question in the present proceedings before us, we are also of the view that this agreement cannot be held to be invalid agreement simply on the basis that some of the claimants have disputed subsequently the genuineness of this agreement by raising the contention that they have not signed the said agreement and their signatures were forged. It appears to us that such an attempt was made only with a view to get the entire amount of compensation without having an intention to share a part of that amount in favour of the respondent no.1, in view of the services rendered by it for getting atleast minimum compensation, which was referred to in the agreement and entered into by the appellants as well as the respondent no.1. This issue can be examined from another angle. Even subsequent to the agreement dated 16.12.1978, another agreement was executed between some of the appellants and the respondent no.1. It has come on record that out of 42 claimants, about 35 claimants have executed another agreement, under which they have agreed to accept the compensation at the rate of Rs.2=00 per sq.foot and on the basis of the said agreement, a compromise pursis was filed before the Court of learned Civil Judge (S.D.), Nadiad and order to that effect was passed by the Court on 05.05.1994. Even with regard to all these 31 appeals, record and proceedings show that the statement of only one of the claimants was recorded and even that claimant has given two statements, which are contradictory with each other. There was no other evidence led on behalf of the claimants stating that they were not parties to the agreement dated 16.12.1978. In this view of the matter, though we are not expressing any final opinion at this juncture since the suit is still pending before the Court of Civil Judge (S.D.), Nadiad, we are of the view that the claimants, who have already settled their disputes with the respondent no.1 and filed compromise pursis before the learned Civil Judge (S.D.), Nadiad in Special Civil Suit No. 156 of 1980, those claimants are not permitted to raise any dispute in the present proceedings before this Court and accordingly their appeals are required to be dismissed on this point. However, it is made clear that since the Supreme Court has already fixed the compensation at the rate of Rs.2=00 per sq.foot, the impugned judgment and order passed by the Reference Court awarding compensation at the rate of Rs.1=88ps. per sq.foot. is required to be modified and it is directed that the compensation at the rate of Rs.2=00 per sq.foot be awarded to the claimants with solatium at the rate of 30% and interest u/s 28 of the Act as per the compromise arrived at between the respective appellants and the respondent no.1 herein. With regard to other claimants, who have not settled their dispute with the respondent no.1 and are still challenging the agreement dated 16.12.1978 before the Court of learned Civil Judge (S.D.), Nadiad, we direct that the amount of compensation is to be apportioned between the appellants and the respondent no.1 on the basis of findings which may be arrived at by the learned Civil Judge (S.D.), Nadiad in Special Civil Suit No. 156 of 1980 and we hope that since more than 22 years have passed and still matter is not decided, the same can be taken up on priority basis and the claims of the respective parties should be decided as early as

possible. Since this Court in earlier cases and the Supreme Court has also decided the validity of the agreement and involvement of the respondent no.1, the issues raised in the present proceedings by the appellants do not assume much significance. We, however, take note of the fact that there is no infirmity in the order of the Reference Court in impleading the respondent no.1 as a necessary party and also permitting the respondent no.1 to make its claim so far as apportionment of the awarded amount of compensation is concerned. The dispute raised regarding registration of the firm of M/s. Arun Land Corporation has also not impressed us much as there was no factual foundation for raising such dispute and even otherwise, neither before the Land Acquisition Officer nor before the Reference Court such a dispute was raised and/or was found favour with. Even in earlier proceedings before this Court or before the Supreme Court such a dispute was not pressed into service. Moreover, the partner of the firm has admitted in his deposition that the firm was a registered firm.

21. With the above observations, we partly allow this appeals to the extent of enhancing the claim of compensation of the amount from Rs.1=88ps. per sq.foot to Rs.2=00ps. per sq.foot and disbursement of the amount including 30% solatium and statutory interest should be made keeping in mind the dispute having been resolved in the light of compromises pursis filed before the Court of learned Civil Judge (S.D.), Nadiad in Special Civil Suit No. 156 of 1980 and for the rest of the claimants, disbursement should be made in accordance with the findings which may be arrived at by the learned Civil Judge (S.D.), Nadiad in the said suit. No orders as to costs. Decree to be drawn accordingly.

[M.H. Kadri, J.] [K.A. Puj, J.]

22. After the pronouncement of the judgment, the learned advocate, Mr. H.M.Parikh, has requested to extend the interim relief which was granted earlier for a further period of 12 weeks, so as to enable the appellants to challenge the judgment and order of this Court before the Higher Forum.

23. Heard the learned advocates for both the parties. The request made by the learned advocate, Mr. H.M.Parikh, is accepted. The interim relief, which was granted earlier, is ordered to continue for a further period of 12 weeks. The operation and implementation of the C.A.V. Judgment pronounced today shall also remain stayed for a period of 12 weeks.