

(2022) 06 GUJ CK 0027

In the Gujarat High Court

Case No : R/Special Civil Application No. 3478 Of 2022

Shaileshbhai Dineshbhai Parmar

APPELLANT

Vs

Competent Authority, National Highway Authority Of India &
3 Other(S)

RESPONDENT

Date of Decision : 06-06-2022

Acts Referred:

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

Citation : (2022) 06 GUJ CK 0027

Hon'ble Judges : R.M.Chhaya, J;Sandeep N. Bhatt, J

Bench : Division Bench

**Advocate : Shalin N Mehta, Shikha Panchal, Maulik G Nanavati, Devang Vyas,
Tirthraj Pandya**

Final Decision : Disposed Of

Judgement

R.M.Chhaya, J

1. We have heard Mr. Shalin Mehta, learned Senior Advocate assisted by Ms. Shikha Panchal, learned counsel for the petitioner, Mr. Maulik Nanavati, learned counsel for respondent Nos. 1 and 2 (National Highway Authority of India), Mr. Devang Vyas, learned Assistant Solicitor General for respondent no.3 and Mr. Tirthraj Pandya, learned Assistant Government Pleader for respondent no.4.

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

“(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 No.1 to amend/modify/revise the award dated 05.09.2017 bearing no.LAQ. Vadodara- Mumbai Express Way/ Nandesari Compensation Case No.10/2013 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 Judgement;

(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;”

3. It is the contention of learned Senior Advocate appearing for the petitioner that the petitioner is an agriculturist and is holding total agricultural land admeasuring 15277 Hecter-Are-Sq. Mtrs., bearing block no. 78/21 within the ceiling limit prescribed in village Nandesari, Taluka Vadodara (Rural), District: Vadodara and is tilling the said land. The land is situated within revenue and panchayat limits of the Village Nandesari Gram Panchayat. The land do not fall within the limits of any 'transitional area, smaller urban area or larger urban area' 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.

It is further contended that the competent authority passed an award dated 05.09.2017 bearing No.LAQ/Vadodara-Mumbai Express Way/Nandesari Compensation Case No.10/2013. As per Section 26(1) of the Act, from block no.78/21 of the petitioner's land, 2884 sq. mtrs. land was acquired and the market value of the acquired land was arrived at INR 61,06,435/- and thereafter, a revised/ supplementary award was passed and further 706 sq. mtrs. land was acquired and the award for the same was passed on 05.02.2021 and the market value of the acquired land was arrived at INR 25,83,308/- and thereby, a total compensation of INR 86,89,743/- was paid to the petitioner. Though the acquired land is situated in rural area, respondent no.2 applied factor 1 and not factor 2.

4. 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 Hon'ble 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. 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.

5. Learned counsel for respondents no.1 and 2-NHAI, further submitted that as in the other cases if it is found that the petitioner is entitled to Factor-"2" being applied for determination of compensation and other benefits, respondents no.1 and 2 shall make deposit within 21 days of such determination.

6. 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.

7. 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-"2" 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.

8. The present petition, therefore, stands disposed of accordingly. However, there shall be no order as to costs.