(2005) 11 GUJ CK 0030

In the Gujarat High Court

Case No : First Appeal No. 1038 of 2004

Sonaben and Others — APPELLANT

Vs

The Special Acquision Officer and Another — RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Evidence Act, 1872 — Section 11, 13, 40, 41, 42
Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 23(2), 4

Citation : (2005) 11 GUJ CK 0030

Hon'ble Judges : R.M. Doshit, J;Anil R. Dave, J

Bench : Division Bench

Advocate : P.V. Nanavaty, for the Appellant; V.M. Pancholi, AGP, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—This Appeal preferred u/s 54 of the Land Acquisition Act, 1894 read with Section 96 CPC arises from the judgment and award dated 15th February 2002 passed by the learned Extra Assistant Judge and Special Judge (LAQ), Ahmedabad (Rural), in Land Acquisition Reference No. 771/95. The Appellants are the successors of the claimant whose lands have been acquired under the Land Acquisition Act, 1894 (hereinafter referred to as ''the Act'').

2. The lands bearing Block Nos. 1126 and 1129 admeasuring 6751 square mtrs. and 12220 square meters respectively of Village Adalaj have been acquired by the State for construction of Sardar Sarovar Project Main Canal. Notification of the Government intention to acquire the said lands u/s 4 of the Act was issued on 1st January 1990 and was published in the Government Gazette on 8th January 1990. The declaration as envisaged by Section 6 of the Act was issued on 23rd May 1990 and was published in the Government Gazette on 23rd May 1990. Before the Land Acquisition Officer, the claimant, the predecessor of the appellants - the owner of the said lands - claimed compensation of Rs. 80,000/-

per Hectre of land. The claimant also claimed compensation for the well, the pipelines, construction, etc. The Land Acquisition Officer declared his award on 17th November, 1992. The Land Acquisition Officer recorded that the aforesaid lands were irrigated, were not highly fertile and had no potential for non agricultural use. Under the said award, the market value of the said lands was determined to be Rs. 7.80 per square meter. The appellants were allowed statutory increase at the rate of 12% per annum as envisaged by Section 23(1-A) of the Act, solatium at the rate of 30% as envisaged by Section 23(2) of the Act and the statutory interest. The appellants were also awarded compensation of Rs. 4480/- and solatium for the pipeline laid in the land block No. 1129.

3. Feeling aggrieved by the amount of compensation awarded u/s 11 of the Act, the appellants applied for reference u/s 18 of the Act. Accordingly, the above referred Reference No. 771/95 was made to the District Court, Ahmedabad (Rural). The learned Extra Assistant Judge partly allowed the claim made by the appellants. The compensation awarded to the appellants was enhanced to Rs. 90/- per square meter, i.e., an additional compensation of Rs. 82.20 per square meter has been awarded. The appellants have also been allowed solatium at the rate of 30%; interest at the rate of 9% and 15% per annum and also the statutory increase of 12% per annum as envisaged by Section 23(1-A) of the Act on the additional amount of compensation awarded in Reference. Feeling aggrieved, the appellants have preferred the present Appeal.

4. Mr. Nanavaty has relied upon the evidence on record and the judgments of this court in respect of acquisition of other lands of Village Adalaj. Mr. Nanavaty has submitted that before the court below, the appellants had claimed compensation at the rate of Rs. 125/- per sq.m. however, in the present Appeal, the claim is restricted to Rs. 120/- per sq.m. Mr. Nanavaty has submitted that in the judgments relied upon by him, this Court has awarded compensation at the rate of Rs. 80/- per sq.m. Considering annual appreciation of the price of the lands, the potential for future development of the lands acquired and other relevant factors, the appellants'' claim for compensation at the rate of Rs. 120/- per square metre ought to have been allowed by the court below. He has submitted that, ordinarily, while calculating market value of the lands, the annual price appreciation is considered at the rate of 10%. However, in the present case, while calculating the market value, the learned Judge has considered annual price appreciation at the rate of 7%. In the submission of Mr. Nanavaty, the court below has erred in not considering 10% annual price appreciation while determining market value of the lands acquired.

5. Mr. Nanavaty has read out the evidence of Natwarbhai Ranchhodbhai, one of the appellants (Exh. 28). The said Natwarbhai has deposed that Village Adalaj is situated between a state highway and a National Highway. The village is situated within less than 10 Kms. from Ahmedabad as well as from Gandhinagar. The village is highly developed and has potential for future development. The village has the facilities of post office, public transport, banks, schools, colleges,

industries, etc. The Sardar Sarovar Project Main Canal passes through the Villages Adalaj, Jamiatpura, Ganpatpura, etc. The compensation awarded for the other lands of village Adalaj and the lands of Jamiatpura, Ganpatpura, etc. are, therefore, relevant for the purpose of determination of fair market value of the lands acquired. He has relied upon the awards Exhibits 38 and 39 declared by the Reference Court with respect to other lands of village Adalaj acquired for the purpose of the aforesaid Main Canal. Mr. Nanavaty has submitted that both the above awards Exhibits 38 & 39 are confirmed by this court by the judgments Exhibits 40 & 41. Thus, the said awards have become final and shall be relevant for the purpose of determination of market value in respect of the aforesaid lands of the appellants.

6. In support of his contentions, Mr. Nanavaty has relied upon the judgments of the Hon''ble Supreme Court in the matters of The State of Madras Vs. A.M. Nanjan and Another, ; of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, ; of The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, ; of Bhim Singh and Others Vs. State of Haryana and Another, ; of Ramesh Dutta v. State of Punjab and Ors., (2004) 7 SCC 388 and of Laxmappa Bhimappa Hulsgeri by Lrs. and Others Vs. Hanamappa Shetteppa Korwar and Others, ; and of this Court in the matters of State of Gujarat v. Gobar Rupa 36 (1) GLR 1 ; ofSpecial Land Acquisition Officer, Bharuch v. Motibhai Mohanbhai 1997 (2) GLH 773; of Dy. General Manager, O.N.G.C. Vs. Chaturji Lalaji and Others, of Ramaji Valaji Rabari v. Special Land Acquisition Officer First Appeals Nos. 2548 of 2001 to 2550 of 2001 :: Decided On : 19th October, 2001 :: Coram : Messrs. Justice B.C Patel, as he then was & Sharad D. Dave, JJ.].

7. The Appeal is contested by Mr. Pancholi. He has relied upon sale deed (Exh. 44) and the index (Exhs. 45 & 46) and also the Village Forms (Exhs. 18-21). He has submitted that the sale deed (Exh. 44) indicates that the price of the lands of Village Adalaj at the relevant time was Rs. 3.95 paise per square metre. Nevertheless, the court below has relied upon the aforesaid judgments and has determined the market value at Rs. 90/- square metre. There is no evidence on record to justify such high price for the lands acquired. He has submitted that the lands which were subject-matter of the award Exhs. 38 & 39 had a greater potential as some of the acquired lands abutted on the National Highway while others were nearer to the National Highway. The lands acquired in the present case are far away from the National Highway. They are agricultural lands. Though the deponent, Natwarbhai Ranchhodbhai, had stated that the lands were irrigated and that the appellants took three crops every year, the Village Forms suggest to the contrary. He has submitted that according to the entries made in Village Forms (Exhs. 18-21), major part of the lands acquired were fallow lands. On a small part of the said lands admeasuring 5 gunthas was a brick yard and only a small part of the said lands was cultivated and that too only one crop a year. He has submitted that the appellants have failed to prove the annual yield. Appellants failed to produce any sale instance to prove the market value of the

acquired lands. He has, therefore, submitted that the compensation awarded to the appellants is far more than just and adequate compensation. He has also submitted that the appellants had failed to prove appreciation of price of the lands in the vicinity of the acquired lands. Nevertheless, the court below has proceeded on the premise that there was annual appreciation of the price of the lands at the rate of 7%. He has submitted that there is no scope for further enhancement in the compensation awarded to the appellants.

8. In support of his submissions, Mr. Pancholi has relied upon the judgments of the Hon''ble Supreme Court in the matters of Union of India (UOI) Vs. Mangat (Dead) by L.Rs. and Others, ; of Cement Corporation of India Ltd. Vs. Purya and Others, ; of ONGC Ltd. v. Sendhabhai Vastram Patel and Ors. (2005) 6 SCC 454; and unreported judgment of this Court in the matter of Vishnubhai Himmatbhai Panchal and Anr. v. Special Land Acquisition Officer and Anr. First Appeal No. 1017/04 & other Appeals : Decided on ?" 21.9.2005 :: Coram : R.S. Garg & K.M. Mehta, JJ.).

9. We have considered the above-referred judgments relied upon by Mr. Nanavaty and Mr. Pancholi. The award Exh. 38 pertains to the lands of Block Nos. 1131 and 1112 of Village Adalaj. In the said case, the notification u/s 4 of the Act was issued on 21st December, 1987. The learned Judge, considering the location of the village, development and the potential for future development, the fertility of the lands, etc., determined the market value of the agricultural lands to be Rs. 69/- per square metre. By the award Exh.39, the learned Assistant Judge, Ahmedabad (Rural), determined the market value of various pieces of lands of Village Adalaj which were acquired pursuant to Notification dated 1st August 1991 issued u/s 4 of the Act. Relying upon the aforesaid judgment Exh. 38 and considering annual price appreciation at the rate of 10%, the learned Judge determined the market value of the agricultural lands at the rate of Rs. 80/- per square metre. In the present case, the court below has indeed relied upon the aforesaid judgments Exhs. 38 and 39. However, considering the location of the lands acquired, he has allowed annual price appreciation at the rate of 7% and not at the rate of 10%.

10. Both the above-referred judgments Exhs. 38 & 39 have been confirmed by this court by the judgments Exhs. 40 & 41. In both the said cases, while determining the market value, the learned Judges had considered the location of the village, development in the village and potential for future development. We, therefore, need not consider the same once again. Though the appellants have claimed that the acquired lands were cultivated three times a year, the same has not been proved. The village forms Exhs. 18-21 suggest to the contrary. Thus, the compensation claimed has not been proved by the appellants either by producing comparable sale instances or by proving the annual yield. The sole reliance is on the judgments Exhs. 38 & 39. As recorded hereinabove, the lands acquired are not in the proximity of the lands in connection with which the above-referred judgments Exhs. 38 & 39 had been delivered. The lands acquired are

away from the National Highway and also away from the village site.

11. In declaring the awards Exhs. 38 & 39 the Courts below had relied upon earlier awards Exhs. 22 to 25 declared with respect to other lands of village Adalaj. The market value of the concerned lands of village Adalaj as on 21st December, 1987 was determined on the basis of the award in respect of the lands of Jamiatpura. The price of the agricultural land was assessed at Rs. 50 per square meter. Relying on the said award and the award Exh. 23, the market value of the agricultural land of village Adalaj, as on January, 1986, was determined at Rs. 63 per sq meter. The award Exh. 24 was declared on the basis of the award Exh. 22 & 23. The learned Judge treated the award Exh. 22 as the basis and determined the market value at Rs. 80 per square meter. The learned Judge had noted that the award Exh. 22 was declared in respect of the land of village Adalaj where Section 4 notification was published on 21st December, 1987. In the case on hand, Section 4 notification was published on 2nd January, 1988 i.e. within less than 15 days. Nevertheless the learned Judge while declaring the award allowed the price appreciation at the rate of 10%. The market value of the concerned land was arrived at Rs. 69/- per sq meter. The learned Judge considered that the lands in question, though were agricultural lands, were situated adjoining the non agricultural land and had the potential for non agricultural use. The learned Judge accordingly determined the market value at the rate of Rs. 80/- per square meter. Relying on the said awards, the appellants have claimed compensation at the rate of Rs. 120 per square meter.

12. As recorded hereinabove, the Awards Exhs. 38 & 39 were decided on the basis of the Awards Exhs. 22 to 25. The said Awards Exhs. 22 to 25 were decided on the basis of some earlier Awards. Thus, in none of the aforesaid Awards, the market value of the acquired lands has been determined on the basis of well accepted principles i.e. on the basis of comparable sale instances or on the basis of annual yield. The sole reliance is placed on the judgments/awards which were not inter partes and were not admissible in evidence under any of the Sections 40 to 43 of the Indian Evidence Act. Such judgments/awards shall be admissible in evidence, as held by the Hon''ble Supreme Court in the matter of The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others, under Sections 11 & 13 of the Evidence Act. A Court, before it relies upon any judgment which is not inter partes, is required to consider its probative value in context of the facts in issue or of the relevant facts. We are, however, at pains to note that in none of the aforesaid judgments/awards the concerned Civil Judge has undertaken such exercise and has mechanically followed the judgment. The annual price appreciation of the land has also been considered at a uniform rate of 10% without any supporting evidence. As recorded hereinabove, in Award Exh. 24 though the two Section 4 notifications were published a few days apart, the learned Judge has considered 10% price appreciation. In the present case also, the learned Judge has not considered the sale deed Exh. 44 produced by the State Government and has instead preferred to rely upon the earlier judgments/awards without considering their probative value. The price

appreciation has also been worked out without recourse to the evidence on record. If we treat the Award Exh. 22 as the basis, irrespective of absence of any evidence allow 10% annual price appreciation, the market value of the acquired lands on the relevant date would not be more than Rs. 60 to Rs. 65 per sq.m. In Award Exh. 22, the concerned lands were situated adjacent to the National Highway. In Award Exh. 24, the special consideration by which the learned Judge was guided was proximity of the non-agricultural land. In the present case, the lands acquired are not in proximity of the non-agricultural land. Further, as recorded hereinabove, the acquired lands are situated far away from the National Highway and also from the village site. Considering the location of the land and only a partial use as an agricultural land, the appellant shall not be entitled to such special consideration. We are, therefore, of the view that the claim made by the appellants is highly exaggerated and is not acceptable to us.

13. In view of the above discussion, the appeal is dismissed with costs.

