

(2013) 10 GUJ CK 0042
In the Gujarat High Court

Case No : First Appeal No"s. 2865 With 2866 to 2879 of 2013

Special Land Acquisition Officer and Another	APPELLANT
Vs	
Mangalbhai Melabhai and Another	RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0042

Hon'ble Judges : Z.K. Saiyed, J; Jayant Patel, J

Bench : Division Bench

Advocate : Dhawan M. Jayswal, AGP No. 1-2, for the Appellant; K.M. Sheth, Advocate for Defendant No. 1, for the Respondent

Final Decision : Partly Allowed

Judgement

Jayant Patel, J.—Admit. Mr. Sheth, learned Counsel appears for the respondent-original claimants and waives Notice of admission. With the consent of the learned Advocates, appearing for both the side the Appeals are finally heard. All the Appeals are directed against the Judgment and the Award passed by the Reference Court in Land Reference Case Nos. 40 to 54 of 2008 whereby the Reference Court has awarded additional compensation of Rs. 200.45 paise, plus the statutory benefit of increase in the market value u/s 23(1-A), Solatium u/s 23(2) and the interest u/s 28 of the Land Acquisition Act (for short "the Act").

2. The short facts of the case are that the lands at village Dahri for the project of Narmada Canal were to be acquired under the Act. The Notification u/s 4 of the Act was published on 30.11.2005. The notification u/s 6 of the Act was published on 18.5.2007. Thereafter the Award was passed by the Special Land Acquisition Officer on 17.1.2008 and he awarded compensation of Rs. 154/- per Are (Rs. 1.54 paise per sq. meter). As the original claimants/land owners were not satisfied with the compensation they raised the dispute u/s 18 of the Act and demanded compensation at Rs. 10,000/- per Are (Rs. 1000/- per sq. meter). The said claim was subsequently enhanced to Rs. 35,000/- per Are (Rs. 350/- per sq. meter). Such disputes were referred to the Reference Court for adjudication

being LAR No. 40 to 54 of 2008. The Reference Court, at the conclusion of the Reference, passed the above referred Judgment and the Award. Under the circumstances, the present Appeals before this Court.

3. We have heard Mr. Jayswal, learned AGP for the appellant and Mr. Sheth for the respondent-original claimants in all the Appeals. We have considered the Judgment and the reasons recorded by the Reference Court and we have also considered the previous decisions of the Reference Court which were challenged before this Court pertaining to the acquisition of the land at Bhadkodra and Sindhav which have been made available by the learned Counsel appearing for both the side during the course of hearing. We have also considered the map of Jambusar Taluka which has been made available by the learned Counsel for both the side during the course of hearing.

4. It appears from the Judgment of the Reference Court that the Reference Court has mainly relied upon the previous decision of the Reference Court for acquisition of the land at village Chhidra in Land Reference Case No. 733 of 2010 wherein the notification u/s 4 was published on 30.11.2005 and the price assessed was at Rs. 201.99 paise per sq. mtr. and the additional compensation was awarded at Rs. 200.45 paise. As the date of the notification, in the present case was the same, the Reference Court has awarded the same amount of compensation. As such the map shows that village Chhidra is just adjacent to village Dahri where the lands in question are located and, therefore, in normal circumstances, if reliance is placed upon the earlier decision of the Reference Court for acquisition of land for the adjoining village it cannot be said to be erroneous, but the distinguishing circumstances as found and recorded hereinafter goes to show that there are also the decisions of the learned Single Judge as well as Division Bench of this Court for awarding of the compensation for the land at village Bhadkodra which is also just adjacent to village Dahri and for the acquisition of the land at village Sindhav which is just adjacent to village Bhadkodra and, therefore, we find that instead of only considering the previous decision of the Reference Court, which have been relied upon by the Reference Court in the impugned Judgment, in order to find out the correct assessment of the market value of the land when the decisions of the learned Single Judge as well as the Division Bench of this Court are available for the compensation awarded for the land of the adjoining villages, the same would assume more importance in comparison to the previous decision of the Reference Court.

5. As observed earlier, in the previous decision of the Reference Court for the acquisition of the land at village Chhidra wherein the notification u/s 4 of the Act came to be published on 30.11.2005, the market value was assessed at Rs. 201.99 paise per sq. meter and as the Land Acquisition Officer had already awarded compensation at Rs. 1.54 per sq. meter, additional compensation has been awarded at Rs. 200.45 paise per sq. meter. At this stage, we may refer to two decisions of this Court, viz. One of the Division Bench for acquisition of the land at village Sindhav in First Appeal Nos. 4002 to 4021 of 2012, decided on

28.12.2012 and the another decision of the learned Single Judge of this Court in First Appeal Nos. 1854 to 1867 of 2013, decided on 16.7.2013. In First Appeal Nos. 4002 to 4021 of 2012, the Division Bench of this Court for acquisition of the land at village Sindhav in the case where the notification u/s 4 was published on 15.1.2002, it was found by this Court that the market value of the land assessed by the Reference Court at Rs. 135.75 paise per sq. meter was appropriate and, therefore, the Division Bench of this Court did not interfere with the Award passed by the Reference Court in the said decision. Two relevant aspects may be recorded, one is that the notification u/s 4 of the Act in the said matter was published on 2.5.2002 and the second is that the land at village Sindhav is not just adjacent to village Dahri, but village Bhadkodra is taken as center, on one side village Dahri and village Chhidra are located whereas on the other side village Sindhav is located. After considering the price at Rs. 135.75 paise per sq. meter as on 15.1.2002 if appreciation is considered for the period of 3 years and 10 months at the rate of 10 % p.a., such amount would come to Rs. 52.03 paise and if added with the principal amount of Rs. 135.75 paise, such would come to Rs. 187.78 paise and if rounded, can be said at Rs. 190/- per sq. meter.

6. In the case of First Appeal Nos. 1854 of 2013, referred to herein above, decided by the learned Single Judge on 16.7.2013, wherein the notification u/s 4 was published on 1.10.2005 for the acquisition of the land at village Bhadkodra, the Reference Court had assessed the market value at Rs. 213.91 paise per sq. meter and had awarded additional compensation at Rs. 210.91 paise per sq. meters which was not interfered with by the learned Single Judge of this Court in the above referred decision. Further, it appears from the perusal of the order passed by the Division Bench of this Court as well as the learned Single Judge of this Court in First Appeal Nos. 4002 of 2012 and allied matters and in First Appeal Nos. 1854 of 2013 and allied matters respectively, that this Court had considered the valuation made by the valuation Committee for the land at village Malpor which is just adjacent to village Bhadkodra at Rs. 153.60 paise per sq. meters in March, 2001, and thereafter appreciation was considered and the factum of village Malpor, located just adjacent to village Bhadkodra was also considered. As such, it appears that when the lands are located at village Dahri and not at village Bhadkodra and further location of village Bhadkodra, as it appears from the map, shows that there are two roads passing from village Bhadkodra, one towards Dehgam and Mamadpur and the another towards Jantral and other villages, the location of village Bhadkodra could be said better in comparison to village Dahri where the lands in question are located. In our view such would call for at least 10 % deduction even if the assessment is made for the lands at village Bhadkodra by the Reference Court which did not come to be interfered with by the learned Single Judge of this Court in the above referred First Appeal Rs. 213.29 paise was assessed as market value for the land at Bhadkodra and if 10% deduction is considered, such amount would come to Rs. 21.30 paise and if deducted from the amount of Rs. 213.29 ps., the net amount would come to Rs. 191.99 ps. and the same can be rounded at Rs. 192/- per sq.

meter.

7. In any case, the amount of Rs. 1.54 paise per sq. meter is already awarded as compensation, therefore, we find it proper if the additional compensation is considered at Rs. 190/- per sq. meter to the original claimant as against Rs. 200.45 paise per sq. meter awarded by the Reference Court.

8. The other benefit conferred by the Reference Court are of increase in the market value and the solatium and the interest by way of statutory benefit to which we are not inclined to interfere, save and except with the observation that on account of reduction of the principal amount of compensation such amount would proportionately get reduced.

9. At this stage, we may also record that Mr. Sheth, learned Counsel appearing for the original claimants, under the instruction of his clients, had declared before the Court that if this Court is inclined to fix the additional compensation at Rs. 190/- per sq. meter, plus statutory benefits, his clients have no objection for such purpose. Hence, we find that no further discussions are required and suffice it to say that additional amount of compensation at Rs. 190/- per sq. meters, plus increase in the market value u/s 23(1-A), solatium u/s 23(2) and the interest u/s 28 of the Act can be awarded to the original claimants as compensation.

10. Mr. Jayswal, learned A.G.P. did contend that as the Judgment of the Reference Court for awarding compensation for the land at village Chhidra is already challenged by the State Government by preferring Appeal before this Court, the same be not considered as a valid basis for the purpose of deciding the present matter. However he fairly submitted that such Appeals are lying in office objections and yet to be heard by this Court.

11. In our view, when the two decisions of this Court for the adjacent lands are available whereby the compensation awarded by the Reference Court is examined, we need not rely upon the decision of the Reference Court which has yet not been examined by this Court and, therefore, we find that even if the contention is considered, it would not result in to supporting stand of the appellant beyond the point which has been found by this Court in the present judgment.

12. In view of the aforesaid observation and discussion the impugned Judgment and the Award passed by the Reference Court for awarding compensation exceeding Rs. 190/- per sq. meter as additional compensation is quashed and set aside. It is also observed and directed that the original claimants shall be entitled to additional compensation at Rs. 190/- per sq. meter, plus statutory benefits u/s 23(1-A) and the Solatium u/s 23(2) on the amount of compensation and the interest u/s 28 of the Act. All the Appeals are partly allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.