
(2002) 12 GUJ CK 0012

In the Gujarat High Court

Case No : First Appeal No"s. 5254 to 5259 of 2001

Special Land Acquisition Officer

APPELLANT

Vs

Rameshbhai Murjibhai Patel and Another

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 23(1)(A), 23(2), 25, 25(2)

Citation : (2003) 2 GLR 1844

Hon'ble Judges : Kundan Singh, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Harsha Devani, A.G.P, for the Appellant; K.M. Sheth, for the Respondent

Judgement

B.J. Shethna, J.—All these appeals are being disposed of by this common judgment and order as they are arising out of the impugned common judgment and award dated 17-4-2001 passed by the learned 3rd Joint Civil Judge (S.D.), Bharuch passed in Land Reference Case Nos. 624 to 629 of 1989. Notification u/s 4 of the Land Acquisition Act (for short "the Act") was issued for acquiring the lands situated at village Kotiyamu of Taluka Jhagadia, District Bharuch for public purpose of irrigation tank at Andhara village. It was followed by notification dated 6-10-1988 issued u/s 6 of the Act. The Special Land Acquisition Officer passed his award u/s 11 of the Act on 28-2-1989 whereby the respondents-claimants-owners of the lands were awarded compensation at the rate of Rs. 125/- per Are. Being aggrieved and dissatisfied with the award dated 28th February, 1989 passed by the Land Acquisition Officer, all the claimants filed Land Reference Case Nos. 624 to 629 of 1989 before the Court of 3rd Joint Civil Judge (S.D.), Bharuch and claimed Rs. 750/-per Are. Surprisingly, the learned Judge passed the impugned common judgment and award dated 17-4-2001 passed in Land Reference Case Nos. 6242 to 6290 of 1989 fixing the market price of the lands acquired at the rate of Rs. 900/- per Are. This impugned common judgment and award dated 17-4-2001 passed by the learned trial Judge is challenged by the appellant-Special Land Acquisition Officer in these appeals.

2. The learned Assistant Government Pleader appearing for the appellant in all these appeals submitted that the learned Judge ought not to have awarded more than Rs. 750/- per Are to the claimants which were claimed by them before the Court in Reference cases. In support of her submissions, she has relied upon the judgment of the Hon''ble Supreme Court in the case of Ujjain Vikas Pradhikaran Vs. Tarachand and another etc., .

3. However, learned Counsel Mr. Sheth appearing for the respondents-claimants in these appeals submitted that prior to the year 1984, there was an embargo for awarding the claim more than what has been claimed by the claimants, but that embargo is now lifted after the amendment introduced in 1984 u/s 25 of the Land Acquisition Act. He submitted that u/s 25 of the Act, the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11 of the Act, but there is no outer limit for the Court to award the amount to the claimants. He submitted that if the Court is satisfied, then it can always award more than what has been claimed by the claimants. He submitted that in the instant case, after relying upon the judgment of the Reference Court in the case of adjoining land owners of Vasna village where Rs. 815/- per Are was awarded Rs. 815/- and considering the evidence of the claimant Rameshbhai Patel, the Reference Court has awarded Rs. 900/- per Are against the claim of the claimant of Rs. 750/- per Are, therefore, this Court should not interfere with such award in these appeals. In support of his submissions, Mr. Sheth has tried to rely upon the judgment of the Hon''ble Supreme Court in the case of The Land Acquisition Officer-cum-DSWO, Andhra Pradesh Vs. B.V. Reddy and Sons, .

4. Prior to the amendment which was introduced in the year 1984, the Court had no powers to award the compensation in excess of the amount claimed pursuant to the notice issued under Sections 9 and 10 of the Act as there was a specific provision u/s 25(2) of the Act. However, sub-Section (2) of Section 25 was deleted by Amendment Act 68 of 1984 in the year 1984 and the restriction on exercise of the power of the Court was removed. We have carefully gone through the judgment of the Hon''ble Supreme Court in the case of B.V. Reddy (supra) and from the aforesaid judgment, we are not able to say that the Hon''ble Supreme Court has laid down that though the claimants had not claimed more in their reference cases before the Court, still the Court can award more to the claimants. Whereas in the case of B. V. Reddy (supra) the Hon''ble Supreme Court has made it absolutely clear that when claimant claims compensation at a particular rate, he assessed market value at a particular rate and then claimed compensation. Having assessed the compensation at that particular rate, the question emerged, whether the Court would grant higher compensation than what was assessed by the party? The Hon''ble Supreme Court answered it in the negative. Full Bench of this Court, where one of us (Kundan Singh, J.) was a party to the judgment, in the case of Dr. Urmila J. Sangani Vs. Pragjibhai Mohanlal Luvana and Others, had an occasion to consider the judgment of the Hon''ble Supreme Court in the case of B. V. Reddy (supra) and having considered

the same with other judgments of the Hon''ble Supreme Court and of this Court, the Full Bench of this Court clearly held that the Tribunal cannot award compensation higher than what was claimed by the claimants.

5. It is true that the claimant Rameshbhai Patel Exh. 8 has stated in his evidence that their lands were irrigated lands and the lands of village Vasna for which the award of Rs. 815/- per Are was passed by the Reference Court was non-irrigated lands. However, from the judgment of the learned Judge, it clearly appears that there was a facility of irrigation in village Vasna also. It appears to us that after claiming Rs. 7507/- per Are before the Reference Court, the claimants have claimed more from the Reference Court without amending the pleadings and raising their claim. In the instant case, the Special Land Acquisition Officer passed the award u/s 11 of the Act way back on 20th February, 1989 and awarded only Rs. 125/- per Are against which they filed reference cases in the year 1989 and claimed Rs. 750/- per Are. It is clear that as an afterthought, in the evidence, they tried to exaggerate the claim and claimed Rs. 900/- per Are, having initially claim the compensation at the rate of Rs, 750/- per Are. In the instant case, the claimants assessed the market value of the lands at the rate of Rs. 750/- per Are in the year 1989, and accordingly, they sought compensation from the reference Court in the year 1989. Having assessed the compensation at the rate of Rs. 750/- per Are, the question arises for our consideration is : whether the Court could have granted more compensation to the claimants than what was claimed by them? Obviously, the answer would be ""No". Having restricted their claim to Rs. 750/- per Are before the Reference Court, it was not open to the Court to award more at the rate of Rs. 900/- per Are.

6. In view of the above discussion, all these appeals are required to be partly allowed and the impugned common judgment and award passed by the learned Reference Court awarding Rs. 900/- per Are to all the respondents-claimants is modified to the extent that the respondents-claimants are to be paid compensation at the rate of Rs. 750/- per Are. In the instant case, the respondents-claimants have not filed cross-objections, but in view of the judgment of the Constitution Bench of the Hon''ble Supreme Court of India in the case of Sunder Vs. Union of India, , the respondents-claimants would be entitled to get the interest on the amount awarded u/s 23(2) and 23(1)(A) of the Land Acquisition Act and they are also entitled to get 12% interest towards difference on the amount so awarded under Sections 23(2) and 23(1)(A) of the Land Acquisition Act. Accordingly, while partly allowing all these appeals, the appellants are directed to pay the same to the respondents-claimants at the earliest and not later than 3 months from the date of receipt of the certified copy of the judgment and award.

7. At this stage, learned Counsel Mr. Sheth submitted that the amount is already disbursed to the claimants. If it is so, then the learned Judge may calculate the amount awarded by us for solatium and interest on it under Sections 23(2) and 23(2) of the Act and adjust the said amount with what has been already paid to

the claimants. After adjusting the said amount, if amount is due to the claimants, then the claimants shall pay the same to the respondents, otherwise the claimants shall pay the difference amount, within a period of three months from today. All these appeals are partly allowed with costs. Office is directed to draw the award accordingly in all these appeals within one month from today.