**(2001) 10 GUJ CK 0057**

**In the Gujarat High Court**

**Case No :** First Appeal No 2182 and 2204 of 2001

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| Special Land Acquisition Officer | APPELLANT |
| Vs | |
| Shanaji Ambaram Thakore | RESPONDENT |

**Date of Decision :** 12-10-2001

**Acts Referred:**
Land Acquisition Act, 1894 — Section 11, 18, 23, 4, 54

**Citation :** (2001) 10 GUJ CK 0057

**Hon'ble Judges :** J.N. Bhatt, J;Akshay H. Mehta, J

**Bench :** Division Bench

**Advocate :** AD OZA, GP, for the Appellant; AJ. Patel, for the Respondent

**Final Decision :** Dismissed

## Judgement

1. In this group of 23 appeals, u/s 54 of the Land Acquisition Act, 1894 (Act), arising out of Land Acquisition Reference Nos.555 to 568 of 1995 and 1271 to 1279 of 1995, the appellants, acquisition authorities, have assailed the common judgment and resultant awards recorded by the learned Assistant Judge, Mehsana, on February 29, 2000, whereby, the respondents, original claimants are awarded market price for the acquired lands at the rate of Rs.70 per sq. mtr. over and above the statutory benefits, on the main premise that the assessment and fixity of market price by the reference Court is excessive and therefore, not in terms of the provisions of section 23 of the Act.

2. With a view to appreciating the merits of this group of appeals and challenge by the original claimants, let us, first, have the relevant and material factual profile.

3. Pursuant to the notifications u/s 4(1) of the Act, dated 28.8.91 and 19.9.91 in LAQ Case No.8/91 and 33/91 respectively, followed by notifications u/s 6(1), dated 2.7.92 and 30.4.92 respectively, the appellant No.1, Land Acquisition Officer, acquired the lands situated in the sim of village Vadsar, Taluka Kalol for the purpose of Narmada Canal Project and offered an amount of Rs.3.60 per sq.

 

mtr. for irrigated lands and Rs.2.40 per sq. mtr. for non-irrigated lands by his two awards, dated 31.1.94 (LAQ Case No.8/91) and 25.3.94 (LAQ Case No.33/91) u/s 11 of the Act. Thus, the Land Acquisition Officer by virtue of his award fixed market value of the acquired land at Rs.3.60 per sq. mtr for irrigated land and Rs.2.40 per sq. mtr. for non-irrigated land against the claim of Rs.100 per sq. mtr. of the claimants. Obviously, therefore, the respondents, original claimants, and owners of the lands sought reference u/s 18(1) of the Act. The Collector concerned made references to the District Court, Mehsana. The references came to be decided by the District Court by the common judgment and awards dated 29.2.2000, whereby, the reference Court enhanced the market value and assessed and fixed at Rs.70 per sq. mtr. for both kinds of lands, against the claim of Rs.100 per sq. mtr. Hence, this group of 23 appeals under the provisions of section 54 of the Act, at the instance of the acquisition authority challenging the common judgment and award of the reference Court.

4. The parties relied on the following documentary and oral evidence, which is highlighted in the following tabular form:

Ex.Nos. Nature of evidence ------------------------------------------------------- Ex.13 Deposition of Maljibhai Ramabhai Rabari(claimant) Ex.14 Village form No.7-12. Ex.15 Award of District Court village - Agnaj, Tal Daskroi, LAR No.180/92 to 204/92. Purpose - Housing Board Sec.4 Date : 4.1.90. District Court awarded Total Rs.240 per sq. mtr.

Ex.16 Judgment of High Court, Village - Agnaj Tal: Daskroi, F.A.No.4093/98. Sec.4, Date : 4.1.90 Purpose: Housing Board High Court granted Rs.217/- per sq. mtr.

Ex.17 Judgment of High Court, village : Jaspur, Tal: Kalol. F.A.No.43/98. Section 4, date : 2.1.86. Purpose: Narmada Canal High Court granted Rs.52.00 per sq. mtr.

Ex.19 Deposition of A.S. Leuva (opponent).

Ex.22 Deposition of D.K. Shah (Opponent)

Ex.23 to 24 Copy of award.

Ex.25 Schedule of sales of land.

Ex.26Map -------------------------------------------------------

5. We have, extensively, heard the learned advocates appearing for the parties and have examined the aforesaid documentary and vivo voce evidence emerging from the present group of appeals, threadbare. We have, also, considered the relevant proposition of law. It has been, vehemently, contended on behalf of the appellants, by the learned Government Pleader, Mr.AD Oza that the assessment and fixity of market value of the acquired land by the reference Court at Rs.70 per sq. mtr. is exorbitant and excessive, whereas, the learned advocate Mr.Patel while appearing for the respondents, original respondents, has not only

 

supported the common judgment of the reference court u/s 18, but has also, contended that the reference court has committed serious error in reducing and deducting Rs.20 after making an assessment of market value at Rs.90 per sq. mtr. withot any reasonable and legal basis.

6. We have been taken through the entire impugned common judgment of the reference Court in course of the marathon submissions. The relevant discussions in relation to assessment and fixity of the market value in terms of the provisions of section 23 of the Act are, elaborately, discussed and analysed by the reference Court in the impugned common judgment, and particularly, in para 16 and 17 of the judgment. It may be noted, at this stage, that the Land Acquisition Officer while passing the award u/s 11 of the Act and to ascertain actual and correct market value on the date of notifications u/s 4(1) in both the land reference groups had considered, as many as 81 sale instances for the purpose of offering compensation. He has placed, relevant notes of all the important documents considered by him along with his award as at Annexure G in the original proceedings. He has, also, considered various other documents including sale instances commencing from 1987 to 1991, out of which only 14 sale instances are subsequent to the date of notification u/s 4(1). In para 15 of the impugned common judgment, it has been, rightly, observed by the reference Court that despite documentary evidence dated 28.2.89 in respect of land bearing block No.348, consideration of about Rs.1,57,000 per hectare had been paid. Copy of the sale deed was, also, considered by the Land Acquisition Officer. Similarly, other sale instances are, also, considered by the Land Acquisition Officer and in respect of some of the lands of village Vadsar came to be sold for Rs.86,000/- per hector. This is clearly evident from the sale transaction dated 10.11.89 which formed part of record of the Land Acquisition Officer. It will be, also, material to find that even in respect of land bearing block No.363 part of the same village Vadsar of one Manubhai Tribhovanbhai Panchal came to be sold for a consideration of Rs.4 lacs per hectare as evidenced from sale transaction dated 5.7.91. Despite such documentary evidence considered by the Land Acquisition Officer, he reached to the conclusion in fixing the market value of the lands situated in the same village Vadsar acquired by him belonging to the original claimants only at Rs.3.60 per sq. mtrs. for irrigated land and Rs.2.40 per sq. mtr. for non-irrigated land. It cannot be gainsaid even from the plain perusal of the award coupled with the documents relied on and considered by the Land Acquisition Officer that the fixity of the market value in the award u/s 11 offered to the owners of the lands acquired by him is grossly inadequate and highly unreasonable. Considering these aspects and the documentary and oral evidence available on record, the reference Court found that the market value of the land acquired on the relevant date of notification u/s 4(1) would come to Rs.90 per sq. mtr. approximately in respect of the non-irrigated lands. However, Rs.20/- per sq. mtr. was deducted by him merely on the ground that the lands acquired are situated in the opposite directions from each other lands and there might be considerable distance between both the lands and, also, towards development

expenditure. Since no Cross Objections are filed, we would not deem it expedient, at this stage to examine as to whether the deduction made by the reference Court is justified or not. The reference Court, ultimately, after making assessment of the evidence, fixed market value at the rate of Rs.70/- per sq. mtr. over and above the statutory benefits available to the claimants, owners of the lands under the act.

7. The reference Court has, extensively, considered the previous judgments and awards made by the competent courts relied on by the claimants and produced at Ex.15, 16 and 17. It, also, considered and relied on documentary evidence of revenue record including yield out of crop produce. Ex.15, is a copy of the judgment and award in respect of lands situated in sim of village Agnaj, wherein, the reference Court has awarded an amount of Rs.240/- per sq. mtr., which upon an appeal u/s 54 of the Act, this Court modified and reduced it to Rs.217 per sq. mtr. Award Ex.16 has become final about which there is no dispute. The distance between village Agnaj (covered under award Ex.16) and the lands situated in village Vadsar in the present group of appeals is about 5 k.m. and the date of notification u/s 4(1) in relation to award, Ex.16, was 4.1.90. The dates of notifications in the case on hand are in subsequent years, like that of 1991. It is not, clearly, understood as to why the award Ex.16, wherein, the amount of market value came to be fixed by this Court at Rs.217 per sq. mtr. which has become final is not, seriously, taken into consideration by the reference Court.

8. The reference Court placed reliance, mainly on the award Ex.17 which is in respect of the acquisition of land situated in village Jaspur, Tal: Kalol. The purpose in that case was for the construction of Narmada Canal. The reference Court fixed market value of the land acquired of village Jaspur covered under Ex.17 at Rs.72, which upon appeal u/s 54, this Court reduced it to Rs.52/- per sq. mtr. There is no dispute about the fact that it has, also, become final as the decision of this Court was assailed before the Hon''ble Court, which came to be dismissed on 10.3.2000, copy, whereof, is placed on record. No doubt, the reference Court has, also, considered the award Ex.15, but the main reliance is placed on award Ex.17 in which market value fixed by the reference Court at Rs.72 came to be reduced to Rs.52 which has been confirmed by the Hon''ble Supreme Court by dismissing SLP. The date of notification u/s 4(1) of the Act in sofar as award, Ex.17, is concerned was 2.1.86, whereas the date of notification u/s 4(1) of the Act in respect of both the groups of Land Acquisition cases referable to this group of 23 appeals are of 1991. Thus, there is a difference of five years and six months in terms of time gap. The boundaries of village Jaspur and Vadsar are adjoining. The reference Court has taken into consideration the principles of increase of value of 10 per cent per annum for a period of five years and six months finding that lands of village Jaspur and Vadsar are in neighbouring villages. The reference Court has, therefore, fixed market value of the land in the present group of matters approximately at Rs.90/-. But as observed hereinbefore by us, deducted an amount of Rs.20 and ultimately fixed market value at Rs.70/- per sq. mtr. In our opinion, the reliance placed by the

 

reference Court upon award which is comparable and relevant and which has become final as the controversy travelled upto the Apex Court at Rs.70/finding that boundaries of both the villages are adjoining, could not be said to be unreasonable, excessive or in any way vulnerable requiring our interference invoking the aids of section 54 of the Act. In so far as the proposition of law for the purpose of determination of market value on the relevant and material data, matters to be considered have been highlighted in number of decisions. Section 23 of the Act provides matters to be considered for determining the amount of compensation in case of acquisition of land.

9. They are :

A.(1) Market value of the land

(2) Damage to standing crops or trees

(3) Damage for severance of other lands

(4) Injurious affection of other property moveable or immovable, in any other matter or his earnings.

(5) Expenses incurred in cases of change of residence or place of business in consequence of the acquisition.

(6) Damage, if any, bona fide resulting from diminution of profits of land from the time of declaration u/s 6 and the time of the Collector''s taking possession of the land.

B. In addition to the market value interest at the rate of 12% per annum on the market value from the date of the publication of the notification u/s 4(1) to the date of the award or the date of taking possession, whichever is earlier.

C. In addition to the market value solatium at the rate of 30% of the market value.

10. It will be, also, material and interesting to observe that the lands acquired in the present group of appeals are situated in village Vadsar, wherein, Airport is situated and it is also found from the record that it is a developing area with many infrastructural facilities.

11. After having taken into consideration the factual matrix emerging from the record of the present group of appeals and examining the impugned common judgment rendered by the Reference Court, u/s 18 and in the background of the relevant latest legal proposition of law for assessment and fixity of market value, we find no hesitation in holding that the award of Rs.70 per sq. mtr. by the reference Court in respect of the lands acquired could not be shown to be, in any way, excessive, unjust or unreasonable. Therefore, appeals are required to be dismissed. The claimants, obviously, would be entitled to market value at the rate of Rs.70/- per sq mtr. in respect of the lands acquired by the appellants, acquisition authorities, over and above all the statutory benefits including

interest on solatium in terms of latest decision of the Constitution Bench of the Hon''ble Apex Court in the case of Sundar v. Union of India 2001 SOL Case 551.

12. This group of appeals, therefore, shall stand dismissed with costs.

It has been submitted, at this stage, that except the amount offered by the Land Acquisition Officer, nothing has been paid so far, which is not disputed. Therefore, the appellants, original acquisition authorities, are directed to deposit or pay the due and payable amount in terms of the award of the reference Court and also the interest on solatium within a period of three months from the date of receipt of certified copy of this judgment.

 