(2007) 08 GUJ CK 0010

In the Gujarat High Court

Case No : First Appeal No''s. 3663 with 3664 to 3667 of 2007

Special Land Acquisition Officer, Narmada Project and Another — APPELLANT

Vs

Ratilal Chunilal — RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 4, 4(1), 54

Citation : (2008) 1 GLR 544

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : Reeta Chandarana, A.G.P, for the Appellant; K.M. Sheth, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Mehta, J.—Special Land Acquisition Officer, Narmada Project Unit-12, Bharuch and Executive Engineer, Narmada Yojna Naher Division No. 2/3, Karjan, Dist. Baroda appellants herein-original opponents have filed these appeals u/s 54 of the Land Acquisition Act, 1894 against the judgment and award dated 24-2-2005 passed by the learned Civil Judge (S.D.), Bharuch in Land Acquisition Reference Case Nos. 1414 to 1419 of 1997, Main Case No. 1414 of 1997. By the impugned judgment, learned Judge has pleased to partly allow the reference applications for proportionate cost. The learned Judge has held that the applicants are entitled to receive market price on their acquired land at the rate of Rs. 36-50 per sq.mtr. as additional amount of compensation in Compensation Case No. 13 of 1995 over and above compensation of Rs. 4-17 per sq.mtrs. which was awarded by the Special Land Acquisition Officer, that means the learned Judge awarded in all Rs. 40-67 ps. per sq.mtrs. The learned Judge has also awarded other amount as per the provisions of the Land Acquisition Act. The State Government has sent a proposal to acquire lands of village Sarbhan, Taluka Amod, District Bharuch for the purpose of construction of Sarbhan branch minor canal of Narmada Yojna which is for the public purpose. The total land which was sought to be acquired was 6070 sq.mtrs. On perusal of the said proposal, the State Government was satisfied that the lands of village Sarbhan, Taluka Amod, District Bharuch were likely to be needed for the said purpose. In view of the same, the State Government issued a Notification u/s 4(1) of the Act, which provides publication of preliminary notification and powers of officers thereon. The said notification was published in Official Gazette on 8-2-1996. After the said notification, the notice was served on the owners of the land. The said owners have filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer submitted his report u/s 5A(2) of the Act, which provides hearing of objections, to the State Government. Considering the said report, the State Government was satisfied with the lands of village Sarbhan, which were specified in that Notification published u/s 4 of the Act were needed for the purpose of construction of Sarbhan branch minor canal of Narmada Yojna. Thereafter, the State Government decided to issue notification u/s 6 of the Act which provides declaration that land is required for a public purpose. The said notification was published in the Official Gazette on 6-8-1996. After issuance of the said notification, notices were sent to the interested persons in this behalf.

2. After considering the material placed before him, the Special Land Acquisition Officer passed an award dated 31-1-1997 u/s 11 of the Act which provides Enquiry and award by Collector. The Special Land Acquisition Officer awarded compensation at the rate of Rs. 4-17 per sq.mtrs. to the claimants.

3. As the claimants were of the opinion that the amount of offer of the compensation passed by the Special Land Acquisition Officer was inadequate, and therefore, they have filed an application in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for determining the just amount of compensation payable to them u/s 18 of the Act which provides Reference to Court. It may be noted that the said Section falls within Part III of the Act which also provides Reference to Court and procedure thereon.

4. When the matter reached before the learned Judge i.e. Land Reference Court, the Court gave the number as 1414 to 1419 of 1997. Before the Reference Court, the claimants claimed compensation at the rate of Rs. 50-00 per sq.mtrs.

5. Before the Reference Court, the claimants have filed a documentary evidence and also placed oral evidence which reads as follows:

Before the Reference Court, the claimants examined following witnesses:

1. Ratilal Chunilal who is happened to be the claimant of the land in question at Exh. 131.

2. Mahendra Nanubhai Nanavati who is happened to be Assistant Secretary, A.P.M.C. Bharuch at Exh. 138.

3. Saiyad Yakubbhai who is happened to be Accountant of Shree Ganesh Khand Udyog Sahkari Mandli at Exh. 140.

4. Govindbhai Ranchhodbhai who is happened to be Assistant Secretary, in the Sarbhan Co-operative Agricultural Produce and Processing Marketing Society at Exh. 142.

6. The Reference Court noted that no evidence of comparable sale or other evidence of compensation of the market value was produced by the claimants and that enhanced compensation was claimed on yield basis.

7. As the record of the documentary evidence is concerned, the claimants have produced extract of 7/12 of land acquisition, extract for well produced at Exhs. 24 to 129, Village Form No. 6 at Exhs. 130 average price list of the crops which is at Exhs. 139 and 141 and copies of the price of the cotton which have been shown at Exhs. 143 to 145.

8. Before the trial Court, Ratilal Chunilal who has been examined at Exh. 131, deposed that he has produced the evidence on behalf the other claimants as all claimants are agreed that the compensation awarded by the Special Land Acquisition Officer is inadequate. He has deposed before the Court that the lands were having quality of black and fertile and having facility of irrigation. Some of the claimants were growing cotton, lady''s fingers, sugarcane, pigeon peas etc. To establish this aforesaid fact, the claimants have also produced extract of 7/12. He further deposed that they were getting crops by applying modern technique in first season they were getting crops of 28 quintals of cotton which they used to sell to A.P.M.C., Bharuch and other private traders. The claimants have also produced other price lists of A.P.M.C., Bharuch showing the same crops for the particular year.

9. They also stated that they were receiving from the crops of cotton Rs. 58,400/- per acre, after deducting 35% cultivation expenses, they were getting Rs. 38,200/- net annual income. After taking crops of cotton, they were taking crops of lady''s fingers in second season. 150 quintals of lady''s fingers which they used to sell it to A.P.M.C., Bharuch and other private traders. He has stated that after deducting 35%, they were getting Rs. 73,400/- per acre as net annual income from the crops of lady''s fingers. He has also deposed that they were getting 50 quintals of green tuver and used to sell it to A.P.M.C., Bharuch and other private traders. He further stated that from the crops of green tuver they were getting Rs. 62,300/- per acre and gross annual income after deducting 35%, they were getting net annual income of Rs. 40,500/- per acre from green tuver annually. In that in the third fall they were getting 12 quintal dry tuver which they used to sell to A.P.M.C., Bharuch and other private traders.

10. Ultimately, they have stated that they were getting gross annual income of Rs. 22,800/- per acre and after deducting 35% cultivation expenses, they were getting net annual income from the crops of dry tuver Rs. 14,800/- per acre. Ultimately, net income from the crops of tuver was Rs. 55,300/- per acre. They were getting crops of lady''s fingers in second season, and ultimately, they were getting net income Rs. 73,400/- per acre after deducting 35% cultivation

expenses. He further deposed that the acquired lands were having irrigation facility. To show the said facts, claimants produced 7/12 extracts at Exhs. 24 to 129 which indicates that there were 100 wells for irrigation. The claimants have also produced copies of the price of cotton Sarbhan Coop. Agricultural Produce Society and Marketing at Exhs. 143 to 145. He also deposed that their acquired land is away 3 to 5 kilometres from place of Amod Taluka the lands are having high potential, residential and industrial, surrounding there are industries of sugarcane, gin of cotton. The said land is used for both residential and industrial purposes. The land is also surrounded by industries of sugarcane, gin of cotton etc. He has also deposed that they were having amenities of transport like motor and truck, telephone, water, academic education, electricity, co-operative societies, railway track etc. The lands were adjacent to State Highway. He has, therefore, deposed that they are entitled for Rs. 50/- per sq.mtrs. by way of compensation.

11. The claimants have also examined one Mahendrabhai Nanubhai Nanavati at Exh. 138 who happened to be Assistant Secretary in A.P.M.C. Bharuch. The said witness produced price-list of A.P.M.C. to show at what price, the crop is selling in the market. The witnesses have also deposed that the price list has been issued after verifying the record of A.P.M.C., Bharuch. The claimants have also examined Shri Saiyad Yakubbhai at Exh. 140 who happened to be Accountant in Ganesh Khand Udyog, which issued certificate pertaining to average price of sugarcane after verifying the record of the society. Claimant Govindbhai Ranchhodbhai at 132, happened to be the Secretary of Sarbhan Co-operative Society, has also produced price list of the society. On the other hand, the State as well as the opponent has not examined any witnesses, and therefore, has not collected oral evidence in this behalf. They have produced statement of five years sale at Exh. 152. They also produced a copy of the extract of 7/12 at Exh. 154. They have the authority to support the award of the Land Acquisition Officer.

12. The Reference Court noted that in this case, the claimants have claimed enhanced compensation on yield basis. On appreciation of evidence adduced namely extract 7/12 produced by the claimant which, 1 have referred and 1 have also referred documentary evidence which has been produced by the claimants in this behalf. The Reference Court has held that each claimant was able to raise crop of cotton as well as green tuver and lady''s fingers in this behalf. After going through the evidence on record, oral as well as documentary evidence, learned Judge of the Reference Court taken into consideration the rate of Rs. 36/- per sq.mtrs. as income, the said would be just and proper. The learned Judge has taken into consideration the income from the crop of cotton comes to Rs. 73/- per sq.mtrs. After deducting 50% gross income towards cultivation expenses against the income of Rs. 58,800/- of cotton crops, the same is to come to Rs. 29,400/- if divided the net income by 4000/- sq.mtrs, it will come to Rs. 7-35/- per sq.mtrs. Thereafter, the learned Judge has come to the conclusion that after applying multiplier of 10 as held by the Hon''ble Apex Court, it will come to Rs. 73/- per sq.mtrs., and therefore, ultimately the Reference Court comes to

conclusion that, the claimants would be entitled to Rs. 36-50/- as just and proper. Thus, learned Judge of the Reference Court has partly allowed the Reference case by awarding additional compensation at the rate of Rs. 36-50 per sq.mtrs to the claimants by a common judgment and award dated 24-2-2005 which has given rise to the above-numbered appeals.

13. The learned A.G.P. for the appellant in this appeal contended that the award passed by the learned Judge and has given very excessive amount of compensation, and therefore, the judgment and award of the learned Judge is required to be quashed and set aside and the award passed by the Land Acquisition Officer should be confirmed as the same was passed by the Special Land Acquisition Officer after considering several aspects.

14. On the other hand, learned Advocate Mr. K.M. Sheth, appearing for the defendant, contended that the award of the Special Land Acquisition Officer can hardly be regarded as a relevant piece of evidence and as witnesses examined by the acquiring body had not produced any sale-deed for consideration of the Court. He further stated that the judgment and award of the learned Judge is based upon oral and documentary evidence. It is further stated that the claimants have adduced in this behalf particularly the crops of cotton, pigeon peas, lady''s fingers, sugarcane grown on the land acquired as well as the price fetched by the sale of the same to A.P.M.C., Bharuch, Sarbhan Co-operative Society etc. He has further stated that the claim of the claimants that they were taking the aforesaid crops should be accepted by this Court also because the witnesses have led evidence which is supported by the documentary evidence. He has also relied upon the evidence of the claimants which shows that they were growing 28 quintal of cotton on the acquired land and the rate indicated at Exhs. 139 and 141 as well as Exhs. 143 to 145 should accepted by this Court in view of the principle laid down by the Hon''ble Apex Court in the case of State of Gujarat and others Vs. Rama Rana and others, in that matter the Hon''ble Apex Court has held that the Court has a duty to subject the oral evidence to great scrutiny and evaluate the evidence objectively and dispassionately to reach a finding on compensation. Multiple of 10 should be applied and deduction of 50% towards cultivation expenses should be made. The Claimants are also entitled to statutory benefits under amendment Act 68 of 1984.

15. This Court has heard both the learned Advocates and also gone through the evidence on record and paper-book produced by learned Advocate Mr. Sheth, appearing for the appellant in this behalf.

16. Learned A.G.P. Ms. Chandarana has relied upon the recent judgment of the Hon''ble Apex Court in case of Land Acquisition Officer, A.P. Vs. Kamadana Ramakrishna Rao and Another, and stated that agricultural income on yield basis, multiplier of 10 to be taken for that purpose. She has also relied upon Paragraphs 15, 16 and 17 of the said judgment in this behalf, where the Hon''ble Apex Court has considered the earlier decision in this behalf.

17. In this case, the claimants claimed compensation on the yield basis and after considering the evidence adduced by the claimants, Reference Court has awarded additional amount of compensation at the rate of Rs. 36-50 per sq.mtrs. after applying multiplier of 10. I have gone through the evidence of Ratilal Chunilal at Exh. 131 and further relevant documentary evidences produced by the other witnesses in this behalf. After going through the same, it is established that the claimants are entitled to Rs. 36-50/- per sq.mtrs. from the crop of cotton instead of Rs. 73/-. per sq.mtrs.

18. After going through the judgment of the Hon''ble Apex Court in case of Rama Rana (supra) as well as Kamadana Ramakrishna (supra) and after going through the evidence on record, this Court is of the view that each of the claimant is entitled for growing 16 quintals cotton per year per acre. The rate of cotton per quintal at the relevant time was Rs. 2100/- at Exhs. 139, 141, 143, 145 which is the price-list of A.P.M.C., Bharuch and other Cooperative Societies which has been produced by the claimants. From that, this Court is of the view that each of the claimant was able to realise income of Rs. 33,600/- per year, 50% is deducted towards cost of cultivation it will come to Rs. 16,800/- per year per acre from the sale of cotton.

19. This Court also relied upon the judgment of the Hon''ble Apex Court in case of Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, , wherein the Hon''ble Apex Court has held that 50% should be deducted towards the costs of cultivation. If 50% is deducted from 33,600/- the net income which would be come to Rs. 16,800/- per year per acre from the sale of cotton. An acre is equivalent to nearly 4000 sq.mtrs. Therefore, in order to arrive at income from agriculture produce per sq.mtrs., the figure of Rs. 16,800/- will have to be divided by 4000 sq.mtrs. which will bring the price of the land acquired at Rs. 4-20 per sq.mtrs.

20. As indicated above, for the agricultural income, the basis of the capitalization principle, proper multiplier to be applied. If multiplier of 10 is applied, then income derived from sale of cotton would be Rs. 42/- per sq.mtrs. The Reference Court in this case has awarded compensation payable to the claimants at the rate of 36-50/- per sq.mtrs. as additional compensation and the Special Land Acquisition Officer has awarded Rs. 4-17/- per sq.mtrs. Thus, total amount awarded to the claimants is Rs. 40-67/- per sq.mtrs. which cannot be regarded as excessive at all.

21. Thus, after going through the oral and documentary evidence, this Court is of the view that the learned Judge of the Reference Court has given just award and price per square metre is just and correctly arrived at after applying the principle laid down by the Hon''ble Apex Court. Thus, First Appeal Nos. 3663 to 3667 of 2007 filed by the Government will have to be dismissed. In the result, all the appeals fail and are dismissed. Ultimately, there shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment.