(2011) 05 GUJ CK 0129

In the Gujarat High Court

Case No : First Appeal No''s. 1337 to 1352 of 2010

Special Land Acqusition Officer and Another APPELLANT

Vs

Prahladkumar Abaidas Patel and Others RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 40, 60, 62
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43
Gujarat Land Revenue Rules, 1972 — Rule 37, 42
Land Acquisition Act, 1894 — Section 11, 18, 23(2), 23A(1), 28

Citation : (2011) 05 GUJ CK 0129

Hon'ble Judges : Jayant Patel, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : Moxa Thakkar, AGP, for the Appellant; A.V. Prajapati, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—As in all the matters, the common questions arise for consideration, they are being considered by this common judgment.

2. The short facts of the case are that the lands at Village Kada, Taluka Visnagar were acquired for the project Dharoi Scheme under the Land Acquisition Act (hereinafter referred to as "the Act"). The notification u/s 4 of the Act was published on 30.6.2003 and the notification u/s 6 of the Act was published on 3.10.2003. The award was passed by the Special Land Acquisition Officer u/s 11 of the Act, whereby he granted compensation at Rs. 11.70 per sq. mtrs., for the land in question. As the original claimants were not satisfied with the compensation, they raised the dispute u/s 18 of the Act, demanding the compensation of Rs. 500/- per sq. mtrs. The said disputes were referred to Reference Court for adjudication being Land Reference Case No. 146 of 2008 to 161 of 2008. The Reference Court at the conclusion of the reference, awarded the additional compensation at Rs. 250/- per sq. mtrs., plus statutory benefits under Sections 23(1-A), solatium u/s 23(2) and interest u/s 28 of the Act. It is

under these circumstances, the present appeals before this Court.

3. We have heard Ms. Moxa Thakkar, learned AGP for the Appellant and Mr. A.V. Prajapati for original claimants in all the matters.

4. The perusal of the judgment and award of the Reference Court shows that the Reference Court has mainly considered the aspects of valuation made of the land allotted to the Visnagar Municipality by the Government for the project of Water Works of Visnagar Municipality and on the basis of the same, the Reference Court has arrived at the valuation after deduction of N.A. factor. However, the Reference Court has lost sight of the important aspects that it is not only N.A., factor to be taken into consideration while assessing the market price, but it has also to take into consideration the distance between the location of the land in the Municipality area and the location of the land in the village area. We may record that on the basis of the similar reasoning the award passed by the Reference Court for acquisition of the land at Village Gaghreth for the very project and the Reference Court had awarded additional compensation of Rs. 210 per sq. mtrs. Plus statutory benefits. The matter was carried in the appeal being First Appeal Nos. 1675 of 2010 to 1680 of 2010 before this Court, which came to be decided on 31.3.2010 and this Court observed thus:

4. It appears from the reasons recorded by the Reference Court in the impugned judgment that the Reference Court was mainly guided by the valuation of the land allotted for water works at Visnagar to the Visnagar Municipality by the Government. The Reference Court has found that the valuation made was of Rs. 400/- and thereafter, as there is a time gap between the date of valuation and the date of the notification u/s 4 of the Act in the present case, taking the base of 10% p.a. as appreciation, has added Rs. 40/- and keeping in view the fact that Rs. 500/- was claimed as additional compensation, after deducting Rs. 12.90 from the amount of Rs. 500/-, it has arrived at the compensation at Rs. 487.10. Thereafter, it has deducted Rs. 277.10 comprising of Rs. 200/- for NA factor and Rs. 77.10 towards distance from Visnagar, it has arrived at additional compensation at Rs. 210/- for the purpose of passing the Award.

5. We may record that if the approach on the part of the Reference Court is to rely upon the valuation of the land made by the Government for the purpose of allotment to its citizen or any public body, such an approach cannot be said to be erroneous in view of the decision of the High Court in the case of State of Gujarat v. Amaji Mohanji Thakore reported at 2010 (3) GLH 447. In the said decision, at paras 21 to 28, it was observed thus -

21. In any welfare State, Government cannot have a dual stand for the same subject. If the land of a citizen is to be acquired, Government has to pay the market price of the land as per the provisions of the Act. Government cannot contend that it shall not pay the market price, since as per the Act it is obligatory on the part of the Government or the acquiring Body to pay the market price as per the provisions of the Act. Similarly when the Government is to allot the land

to the citizen or any organization, may be for private or public purpose, it has to be the market price, unless the allotment is for a specific public purpose or by way of a separate class, where a specific concession in the market price is made permissible. In any case, where the reduction of the market price for a specific rate is made permissible, such would be lesser than the market price. These cases where the concession or reduction is to be made, would not exceed the market price. Therefore, it is clear that unless the land is allotted at a concessional price, in normal circumstances when the Government is to allot the land to its citizen or to any body, the price would be the market prices to be fixed by the competent authority by the Government. Hence, we cannot countenance the stand on the part of the learned Addl. Government Pleader that if the Government is to allot the land to any citizen or a body, higher price shall be fixed as the market price, whereas if the Government is to acquire the land belonging to any citizen or any organization, it shall pay lesser price of the land. To say in other words, if the Government is to allot ''A'' land belonging to it to any citizen or to any organization, it will charge ''B'' price, but if the very ''A'' land is belonging to the citizen and the Government is to acquire under the Land Acquisition Act, the Government shall pay price lesser than the ''B'' price to the citizen or the organization. If such is permitted, in our view, it would result into discriminatory and arbitrary approach on the part of the State Government, which cannot be countenanced by the constitutional Court in a welfare State. As observed earlier, if the very ''A'' land is acquired belonging to the citizen by the Government, the Government would be required to pay the price, in any case, not less than ''B'' price and to be more specific, Government would be required to pay the price, in any case, not lesser than the price fixed by it for the purpose of allotment of the land to any citizen or organization, of course, subject to the change in the nature and character of the land, if any.

22. Even if the matter is to be examined in light of the aspect as to whether the price determined by the competent authority of the Government for allotment of the government land to any citizen or organization can be said as in exercise of statutory power or authority of the statute or not, it appears that the provisions of the Land Revenue Code are clear. Section 62 under the Bombay land Revenue Code, 1879 (hereinafter referred to as ''Code'') reads as under:

Section 62. Unoccupied land may be granted on conditions.- It shall be lawful for the Collector subject to such rules as may from time to time be made by the State Government in this behalf, to require the payment of a price for unalienated land or to sell the same by auction and to annex such conditions to the grant as he may deem fit, before permission to occupy is given u/s 60. The price (if any) paid for such land shall include the price of the Government right to all trees not specially reserved under the provisions of Section 40 and shall be recoverable as an arrear of land revenue.

23. Rule 37 of Gujarat Land Revenue Rules (hereinafter referred to as the ''Rules'') provides for manner of disposal of agricultural land, whereas Rule 42

provides for disposal of the land for building and other purposes. Rule 37 and Rule 42 read as under:

37. Survey numbers how to be disposed of.- (1) Any unoccupied survey number not assigned for any special purpose may, at the Collector''s discretion, be granted for agricultural purposes to such person as the Collector deems fit, either upon payment of a price fixed by the collector, or without charge, or may be put up to public auction and sold subject to his confirmation to the highest bidder.

(2) In the case of such grants an agreement in Form F shall ordinarily be taken from the person intending to become the occupant. (3) When the land is granted on inalienable tenure the clause specified in Form I shall be added to the agreement. (4) When the land is granted on impartible tenure an agreement in Form F(1), and, when it is also granted in alienable tenure an agreement in Form I(1), shall ordinarily be taken from the person intending to become the occupant. (5) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village accountant of the village in which the land is situate.

42. Disposal of land for holding and other purposes.- Unoccupied land required of suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots by action to the highest bidder whenever the Collector is of opinion that there is a demand for land for any such purpose, but the Collector may in his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him or without charge, as he deems fit.

24. The aforesaid shows that as per Rule 37 an unoccupied land can be granted for agricultural purpose to any person by the Collector and such grant of the land can be either upon the price fixed by the Collector or by public auction and can be without charge also. In the same manner Rule 42 provides that the land can be allotted for non-agricultural purpose by the Collector to the highest bidder unless the Collector in his discretion decides to dispose of the land by private arrangement, either upon the price fixed by him or without charge.

25. In the present matters, we are not required to examine the aspect of exercise of the powers by the Collector without charge or by private negotiation for disposal of the land for agricultural or non-agricultural purpose, therefore, no discussion is required on the said aspect, but the in the present matter, the aspect of power with the Collector for disposal of the land upon the payment of the price to be fixed by him (other than concessional charge) is to be taken into consideration. If the collector has to allot the land as per Section 62 read with Rule 37 or Rule 42 of the Rules, the same shall be at the price to be fixed by him. He has to determine the price of such land before taking decision for allotment of the land. In the case of Ghunshabhai Govindbhai Pancholi v. State of Gujarat and Anr., reported in 1995 (1) GLH 792, the question arose for consideration about the fixation of the price by the Collector u/s 62 of the code

read with Rule 37 of the rules and this Court observed that the Collector has the authority to fix the price to be paid for the land which he grants to a person for agricultural purpose and such price has to be fair, reasonable and just and should not be arbitrary or whimsical and he has also to take into consideration the submissions or the material, which may be submitted by the allottee or the person, who is to be allotted the land. Therefore, it is not possible to accept the contention of the learned Additional Government Pleader that when a price is fixed by the Collector for allotment of the land to any citizen or organization under the Bombay Land Revenue Code read with the Rules, such action for fixation of the price is not in exercise of the statutory powers. Be it noted that the Collector has to exercise the power subject to general orders of the State Government for the mode and manner of fixation of the valuation and the Collector, therefore, while fixing the market price has to take into consideration the view of an expert body, which is the Valuation Committee and thereafter to take final decision. Therefore, it is not a matter where the exercise of the power by the Collector is not in discharge of the statutory function for fixation of the market price. At this stage, it may also be recorded that even under the provisions of Bombay Tenancy and Agricultural Lands Act, 1948, more particularly Section 43 of the said Act, while granting permission to transfer the land, which is held by the agriculturist, who was originally allotted the land as agricultural tenant under the said Act, has to exercise the power for grant of permission upon payment of the premium. At the time when the premium is to be fixed the marked price of the land is to be ascertained by the Valuation Committee of the Government and the opinion is to be considered by the Collector of the valuation made. Therefore, it is not possible for us to accept the contention of the learned Addl. Government Pleader that the valuation made by the Valuation Committee of the Government of the nearby land for the purpose of allotment of the land to any citizen by the Collector cannot be taken into consideration by the Reference Court. Under these circumstances, the contention of the learned Addl. Government Pleader deserves to be rejected, therefore, rejected.

26. The reliance placed upon the decision of the Apex Court in the case of Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, in the case of Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another, are for the view that the fixation of the valuation in the valuation register for the stamp Act purpose cannot form as a basis for determination of the market value. Such is not the fact situation in the present case.

27. The Apex Court in the case of Lal Chand Vs. Union of India (UOI) and Another, on the contrary at paragraph 44 has observed as under:

44. One of the recognised methods for determination of market value is with reference to the opinion of experts. The estimation of market value by such statutorily constituted Expert Committee, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a

relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We, however, hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by the statutorily appointed Expert Committees, in accordance with the prescribed procedure.

28. In the present case, the valuation has been made by the Valuation Committee for giving opinion to the District Collector in exercise of the statutory power. The Valuation Committee is comprising of the expert body in the field of valuation, including the District Collector himself, T.P. Authority, etc. Therefore, there is no reason why the valuation made by the Valuation Committee of the Government for fixation of the price for allotment of the land at the very village by way of sale instance or price fixed by the Government for allotment of a land to an organization should not be taken into consideration.

6. Therefore, no fault can be found with the Reference Court if the aspects of allotment of the land by the Government to Visnagar Municipality and more particularly the valuation thereof is taken into consideration. But the pertinent aspect is that as per the Reference Court, the valuation was found at Rs. 500/- for the land in question by treating at par with the valuation of the land allotted at Visnagar city. The important aspect which appears to have been not considered by the Reference Court is that the said was the valuation for the allotment of the land at Visnagar City in the municipal area, whereas the land in question was located at village Gaghreth in a gram panchayat area. It is also stated that the distance between Visnagar city and village Gaghreth is about 5 km. Under these circumstances, the comparison based on the valuation as it was could not have been considered by the Reference Court. Normally, even if the village is adjacent to the city area, the valuation of the land at village would not be the same as that of the city area since the basic facilities including infrastructures like lights, road, water, transportation, etc. would be altogether different in the city, whereas such may be lacking in the village or at least not equally available. Therefore, broadly it can be said that under such circumstances, the market value of the land would be 50% in case of village in comparison to city even if the village is located near to the city area.

7. Under these circumstances, the basis taken by the Reference Court at Rs. 500/- being the market value of the land cannot be accepted and it deserves to be reduced to 50% on account of the fact that the lands were located at village Gaghreth outside the limits of Visnagar city. We may record that this aspect is to be considered in light of the peculiar circumstances that it is not the valuation made by the earlier or any Reference Court which was followed by the Reference Court in the present matter but was a valuation made by the Valuation Committee. Therefore, keeping in view the said aspects for the purpose of assessment of the market price, it can be said that for the land at village Gaghreth, it will be 50% less than the market price of the land at Visnagar city. Such figure would come to Rs. 250/- per square metre.

8. It is an admitted fact that the land acquired was an agricultural land, whereas the land which has been allotted to the Visnagar Municipality is a non-agricultural land. Therefore, the aspects of NA factor and also the size of the acquisition and the allotment of the land is required to be considered. This Court in the case of State of Gujarat (supra), had observed at para 30 as under:

30. The order of the Collector dated 31.3.2006 for allotment of the land is of Block No. 1724 admeasuring 1 Hectre - 00 Are in favour of the Water Supply and Sewerage Board. The said order shows that the Valuation Committee has made the value of the land of the very village Kherwa on 10.5.2004 at Rs. 200/- per sq. mtrs. Further, the allotment of the land is for non-agricultural purpose for construction of Head Works in the Water Supply Project, whereas the land in question has been acquired as per the Notification u/s 4 of the Act on 1.12.2005 and the nature of the land was agricultural land and not non-agricultural land. If the area and the size of the different portions of the agricultural land acquired in the present case is considered claimant/owner-wise, in majority of the acquisition the area is less than 1 hectre. Therefore, so far as the area is concerned and as the land allotted is 1 hectre and the acquisition of the majority of the land is less than 1 hectre per claimant/owner-wise there would not be any change or reduction in the valuation of the land of larger size acquisition as against the price fixed for a smaller area. The nature of the land or the character of the land under acquisition and the land which is allotted by the Direct Collector appears to be different inasmuch as the land under acquisition is acquired as agricultural land, whereas the land allotted by the Director Collector is though waste land, but for non-agricultural purpose. If any agricultural land is to be converted for non-agricultural purpose, there will be about 25% deduction in the area itself and further the conversion charges of agricultural land will have to be paid for non-agricultural use and such expenses for conversion would also be roughly 5%, by way of a burden upon the agricultural land. Therefore, it appears to us that if the aforesaid two circumstances are taken into consideration, the difference between the market price of the agricultural land and the market price of the non-agricultural land shall be minimum 30%. To say in other words, the agricultural land shall be less by 30% as against the price of the non-agricultural land.

9. The aforesaid shows that the valuation of the agricultural land shall be less by 30% as against the price of the non-agricultural land. Under these circumstances, the market value of the land under acquisition would be reduced by 30%, which would come to Rs. 75/-. Accordingly, the net market value would come to Rs. 175/- per square. Out of the amount of Rs. 175/- per square metre, Rs. 12.90 has already been paid as compensation. Therefore, the net amount would come to Rs. 162.10 and if rounded of, it would come to Rs. 162/- per square metre. So far as the other benefits which are in the nature of statutory benefits are concerned, they are to follow as per the provisions of the Act and the observations made by the Reference Court are not required to be interfered with qua the same, save and except to the extent that in the operative portion,

on account of the reduction of the principal amount of compensation, such statutory benefit would proportionately stand reduced.

5. Same criteria would apply for the assessment of the market price of the land in question and the reason being that the land in question at Village Kada are located at the same situation namely; adjacent to Visnagar City. However, the distinction in the nature of land as was considered by the Special Land Acquisition officer in the matter of land at Village Gaghreth and the acquisition of the land in the present case is an additional aspect, which is required to be taken into consideration and the reason being that by the award for the acquisition of the land at Village Gaghreth Rs. 12.90 per sq. mtrs., was awarded as compensation, whereas in the present case, Rs. 11.70 per sq. mtrs., has been awarded as compensation by the Special Land Acquisition Officer, keeping in view the difference in the nature of the land even though both the lands are located more or less in the nearby area. Therefore, it appears to us that as per the above referred Judgment, if for the acquisition of the land at Village Gaghreth, the market value was fixed at Rs. 175 per sq. mtrs., on account of the difference in the nature of the land as was found by the Special Land Acquisition Officer while passing the award and consequently while awarding the compensation, is required to be considered and as a result thereof the amount of Rs. 175/- being the market value that the land at Village Gaghreth is required to be proportionately reduced for assessment of the market value of the land in question, which is located at Village Kada. Under these circumstances, proportionate value for the acquisition of the land at Village Kada would come to Rs. 158.72 being the market value, keeping in view the valuation of the land at village Gaghreth.

6. We may additionally mention that if the distance is to be considered by the location, the land at Village Kada is comparatively at a distant place than the land at Village Gaghreth.

7. Further, out of the aforesaid amount of Rs. 158.72, Rs. 11.70 is already paid as the compensation, the net amount would come to Rs. 147.02 and if it is rounded off, it would come to Rs. 147/- per sq. mtrs., being the additional compensation. So far as the other benefits, which are in the nature of statutory benefits, are concerned, they are to follow as per the provisions of the Act and the observations made by the Reference Court are not required to be interfered with qua the same, save and except to the extent that in the operative portion, on account of the deduction of the principal amount of compensation, such statutory benefits would proportionately stand reduced.

8. In view of the above observations and discussions, the judgment and award passed by the Reference Court for awarding additional compensation exceeding Rs. 147/- per sq. mtrs., is quashed and set aside.

9. The other statutory benefits granted by the Reference Court u/s 23(1-A), u/s 23(2) and u/s 28 of the Act and the portion of the award for no deduction of any

amount towards new tenure or old tenure are not required to be interfered with, save and except that on account of the reduction of the principal amount of compensation, such statutory benefits would automatically stand proportionately reduced.

10. The appeals are partly allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs. Decree accordingly.

