

(2006) 10 GUJ CK 0014
In the Gujarat High Court

Case No : First Appeal No"s. 1943 to 1954 of 2006

Special LAQ Officer and Another

APPELLANT

Vs

Kantibhai Bhagvasdas Patel and Another

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 18, 4, 4(1), 54, 5A(2)

Citation : (2006) 10 GUJ CK 0014

Hon'ble Judges : J.M. Panchal, J;Abhilasha Kumari, J

Bench : Division Bench

Advocate : S.S. Shah, Government Pleader in First Appeal Nos. 1943 to 1948 of 2006 and L.R. Pujari, Assistant Government Pleader in First Appeal Nos. 1949 to 1954 of 2006, for the Appellant; A.J. Patel, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—The above numbered appeals filed u/s 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated February 7, 2005 rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Ahmedabad, in Land Acquisition Case Nos.143 of 1999 to 154 of 1999 by which the claimants are awarded additional compensation at the rate of Rs. 25.30 ps. per square metre for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs. 1.50 ps. per square metre, by his award dated July 30, 1998.

2. A proposal was received by the State Government from the Executive Engineer, Construction Division No. 4/4, Narmada Canal, Mehsana, to acquire agricultural lands of Village Ghelada, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the lands of Village Ghelada

were likely to be needed for the said public purpose. Therefore, a notification u/s 4 of the Act was issued, which was published in the official gazette on May 27, 1996. The landowners were served with the notices u/s 4 of the Act and they opposed the proposed acquisition. After considering their objections, a report u/s 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village Ghelada specified in the notification published u/s 4(1) of the Act were needed for the public purpose of Narmada Canal. Therefore, a declaration u/s 6 of the Act was made, which was published in the official gazette on January 6, 1997. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs. 50/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs. 1.50 ps. per square metre by his award dated July 30, 1998. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications u/s 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Ahmedabad (Rural) at Ahmedabad, where they were registered as Land Acquisition Case Nos.143 of 1999 to 154 of 1999.

3. On behalf of the claimants, witness Patel Vinubhai Harjivandas was examined at Exhibit 34. Over and above stating that the lands acquired were highly fertile and that each claimant was earning net income of Rs. 35,000/- to Rs. 40,000/- per year per vigha from the sale of agricultural produces, the witness produced two previous awards for consideration of the Court. One award related to the lands of Village Madrisana whereas another related to the lands of Village Fatehpura. The witness mentioned in his testimony before the Court that the lands, which were subject matters of previous two awards relating to Village Madrisana and Village Fatehpura, were similar in all respects to the lands acquired in the instant case from Village Ghelada. He also produced 7/12 extracts of the lands acquired, at Exhibits 16 to 31 to establish that the lands acquired were irrigated lands. Though the witness was cross-examined at length by the learned District Government Pleader for the appellants, nothing could be elicited to doubt his assertion that the lands, which were subject matter of the previous acquisition from Village Madrisana and Village Fatehpura were similar in all respects to the lands acquired in the instant case.

4. On behalf of the appellants, witness Patel Ambalal Bechardas, who was then discharging duties in Ahmedabad Division, was examined at Exhibit 36. In his cross-examination, the witness had to admit that the boundary of Village Ghelada was touching the boundary of Village Madrisana. It was also admitted by this witness that crops like juvar, bajra, cereals, etc. were being grown on the

lands acquired and that similar crops were also being raised on the lands of Village Madrisana, which were acquired earlier.

5. On the basis of evidence adduced by the parties, the Reference Court in the instant case was of the opinion that two previous awards relating to the lands of Village Madrisana and Village Fatehpura were relevant and furnished goods guidance for the purpose of determination of market value of the lands acquired in the instant case. The Reference Court noticed that notification u/s 4(1) of the Act was published in the official gazette on June 20, 1995 for the purpose of acquiring the lands of Village Madrisana whereas notification u/s 4(1) of the Act was published in the official gazette on September 5, 1992 for acquiring the lands from Village Fatehpura and as there was time gap of about one year in publication of notifications, which were subject matter of previous awards and notification issued in the instant case, the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum. On the basis of this principle, the Reference Court has awarded additional compensation to the claimants at the rate of Rs. 25.30 ps. per square metre by the impugned award, giving rise to the instant appeals.

6. This Court has heard Mr.L.R.Pujari, learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned Counsel for the claimants, in each appeal. This Court has also considered the paper-book supplied by the learned Counsel for the claimants, which contains oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though it was claimed by the witness for the claimants that the lands acquired in the instant case were highly fertile and that each claimant was earning net income of Rs. 35,000/- to Rs. 40,000/- per year per vigha from the sale of agricultural produces, no documentary evidence could be adduced to substantiate the said claim. The record does not indicate that the claim of the claimants for enhanced compensation was based on the yield or on the basis of comparable sale instances. What was relied upon by them was two previous awards of the Reference Court, one of which was relating to the lands of Village Madrisana and another was relating to the lands of Village Fatehpura. The previous award relating to the lands of Village Madrisana is produced at Exhibit 32. It indicates that the lands of Village Madrisana were acquired for public purpose of construction of Narmada Canal pursuant to publication of notification u/s 4 of the Act in the official gazette on June 20, 1995. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs. 2.10 ps. per square metre by his award dated September 30, 1996. Feeling aggrieved, the references were sought and the Reference Court by judgment and award dated August 31, 2004, awarded compensation to the claimants at the rate of Rs. 25.10 ps. per square metre. Again, Exhibit 33, which is a previous award of the Reference Court relating to the lands of Village Fatehpura indicates that the lands of Village Fatehpura were acquired for the public purpose of construction of Narmada Canal pursuant to publication of notification issued u/s

4(1) of the Act in the official gazette on September 5, 1992. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs. 1.25 ps. per square metre by his award dated August 16, 1994. Feeling aggrieved, the references were sought and the Reference Court by judgment and award dated November 12, 2002 awarded compensation at the rate of Rs. 20/- per square metre. It may be mentioned that for acquiring the lands of Village Madrisana, notification u/s 4(1) of the Act was published on June 20, 1995 and notification u/s 4(1) of the Act for acquiring the lands of Village Fatehpura was published in the official gazette on September 5, 1992 whereas in the instant case, notification u/s 4(1) of the Act was published in the official gazette on May 27, 1996. In view of the time gap between the publication of notifications in the official gazette, this Court is of the opinion that the Reference Court was justified in granting rise in price of the lands to the claimants at the rate of 10% per annum. The calculation of compensation payable to the claimants on the basis of the previous two awards of the Reference Court relating to the lands of Village Madrisana and Village Fatehpura is not disputed by the learned Counsel for the appellants. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court, to which settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a different view than the one, which is taken by the Reference Court. This Court is of opinion that the appeals, which lack merits, deserve to be dismissed.

For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.