(2007) 07 GUJ CK 0030

In the Gujarat High Court

Case No : First Appeal No''s. 2751 to 2768 of 2007

Special Laq Officer and Another APPELLANT

Vs

Ranchhodbhai Fulabhai Patel RESPONDENT

Date of Decision : 02-07-2007

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

Citation : (2007) 07 GUJ CK 0030

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

Bench : Division Bench

Advocate : Pathik Acharya, AGP, for the Appellant; J.M. Patel and Trilok J. Patel, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—Admitted. Mr. Trilok J. Patel, learned Counsel, waives service of notice on behalf of the claimant/ claimants in each Appeal. Having regard to the facts of the case, the Appeals are taken up for final disposal today.

2. By filing these Appeals u/s 54 of the Land Acquisition Act, 1894 (?the Act? for short), read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of common judgment and award dated December 12, 2005, rendered by the learned 8th Additional Senior Civil Judge, Vadodara, in Land Reference Cases No. 799/1992 to 809/1992, 319/1992, 320/1992, and 509/1995 to 513/1995 by which the claimants have been awarded additional amount of compensation at the rate of Rs. 92/- per sq.mt. for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs. 4/- per sq.mt. by his award dated May 20, 1989.

3. The Executive Engineer, Narmada Yojana Canal Division No. 8, Dabhoi, District: Vadodara, proposed to the State Government to acquire the lands of village Dabhoi situated at Dabhoi-Tilakwada Highway and Dabhoi-Karjan road for

the public purpose of construction of a canal at village Por under the Narmada Project. On consideration of the said proposal, the State Government was satisfied that the lands of village Dabhoi mentioned therein 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 December 15, 1986. The owners of the lands were thereafter served with notices u/s 4 of the Act and an inquiry was made. On completion of inquiry, necessary report, as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the said report, the State Government was satisfied that the lands of village Dabhoi specified in the notification published u/s 4(1) of the Act were needed for the public purpose of construction of a canal at village Por under the Narmada Project. Therefore, a declaration u/s 6 of the Act was made which was published in the Government Gazette on March 19, 1987. Thereafter, the interested persons were served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 150/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated May 20, 1989, offered compensation to the claimants at the rate of Rs. 4/- per sq.mt. for irrigated lands and Rs. 3/- per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications u/s 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Vadodara, where they were numbered as noticed earlier.

4. On behalf of the claimants, witness Mr. Mahendrabhai Ranchhodbhai Patel, who was holding the Power of attorney of the claimant Mr. Ranchhodbhai Fuljibhai Patel, was examined at Ex.17. After giving particulars of the lands acquired, the witness mentioned that the lands acquired were irrigated and highly fertile. According to the said witness, each claimant was able to raise crops of Paddy, Tuver, Cotton, Wheat, etc. and that each claimant was able to earn substantial income from the sale of agricultural produces. The witness further stated that the lands acquired were situated in the Sim of village Dabhoi and were within half kilometer of radius from the office of Dabhoi Nagarpalika. After mentioning that Dabhoi is main Taluka place, it was stated by him that Dabhoi Town had all facilities such as establishment of Civil Court, Post Office, telephone exchange, GEB Sub Station, nationalized banks, Government hospitals, various Government offices, Talkies, industrial estates, high-schools, colleges, ITI, over and above Asia''s biggest narrow guage Railway Station. According to this witness, prior to the acquisition of lands from village Dabhoi in the instant case, certain sale-deeds were executed and that the market value of the lands acquired should be determined on the basis of those sale-deeds. After stating that the sale-deed relating to Revenue Survey Nos. 323 and 325 was

executed on March 29, 1978, the witness claimed that in view of gap of time between the date of execution of sale-deed and the date on which notification u/s 4(1) of the Act was published, the claimants should be granted benefit of rise in price of lands at the rate of 85% p.a.

5. Though this witness cross-examined on behalf of the acquiring authorities, nothing substantial could be elicited nor it could be suggested to the witness that the sale-deeds which were sought to be relied upon by the claimants for the purpose of claiming enhanced compensation were irrelevant and of no help to the claimants.

6. On behalf of the claimants, another witness namely Mr. Rajendrabhai J. Patel, who was a Government approved Valuer and registered Architect, was examined at Ex.25. The said witness deposed before the Court that he was appointed as Government approved Valuer in the year 2003 and had assessed value of several lands. The witness mentioned before the Court that he had assessed the market value of the lands acquired after taking into consideration relevant sale-deeds as well as the order of the Collector, Vadodara, relating to land bearing Survey No. 1525A, the development which had taken place near the lands acquired, the potentiality of the lands acquired, etc. However, in cross-examination by the learned Counsels for the acquiring authorities, it was admitted that mainly he had prepared his report on the basis of sale-deed of the nearest land which was situated within the radius of half kilometer from the acquired lands.

7. On behalf of the acquiring authorities, witness Mr. Manojkumar H. Gajre was examined at Ex.28. Initially, this witness asserted before the Court that just and adequate compensation was determined by the Special Land Acquisition Officer and therefore the claimants were not entitled to enhanced compensation. However, in his cross-examination by the learned Counsel for the claimants, he had to admit that he had no personal knowledge about the fertility or geographic situation of the acquired lands. He also admitted that he was deposing before the Court on the basis of official record made available to him.

8. The acquiring body also examined another witness, i.e. Mr. Madhukant Motibhai Patel at Ex.31. At the relevant time, the said witness was serving as Deputy Engineer in the Narmada Canal Project, Dabhoi. This witness had also to admit in his cross-examination that the lands of the claimants were situated on Dabhoi-Tilakwada Highway and Dabhoi-Karjan road and that a petrol pump was also situated near the lands acquired which was in existence since 15 to 20 years. The witness had further to admit that the colleges, residential societies, and shopping centers were also situated near the lands acquired.

9. On the basis of evidence adduced by the parties, the Reference Court was of the opinion that the sale-deeds produced by the claimants were relevant and furnished good guidance for the purpose of determining the market value of the lands acquired. After considering the effect of the sale-deeds produced at Ex.20 to 23, the Reference Court was of the opinion that on the basis of those sale-

deeds, the claimants were entitled to compensation at the rate of Rs. 120/- per sq.mt. However, the Reference Court noticed the principle laid down by the Supreme Court in Kasturi and Others Vs. State of Haryana, wherein it is laid down that normally 20% towards development charges should be deducted while determining the market value of the agricultural lands on the basis of non-agricultural lands. After deducting 20%, the Reference Court came to the conclusion that the claimants are entitled to enhanced compensation at the rate of Rs. 92/- per sq.mt. for their acquired lands by the impugned common award giving rise to the abovenumbered Appeals.

10. This Court has heard Mr. Pathik Acharya, learned Assistant Government Pleader for the appellants and Mr. J.M. Patel, learned Senior Advocate with Mr. Trilok J. Patel, learned Counsel for the claimant/ claimants in each Appeal at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

11. The record does not indicate that the claimants had ever claimed compensation either on the basis of yield or on the basis of the previous award of the Reference Court. The claimants had relied upon four sale instances in support of their claim that they were entitled to compensation at the rate of Rs. 150/- per sq.mt. for their acquired lands. The principles governing determination of market value of the lands acquired are well-settled. In Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, , the Supreme Court has emphasized that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of notification u/s 4(1) of the Act. What is ruled therein is that the methods of valuation are (1) opinion of experts, (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages and (3) a number of years'' purchase of the actual or immediately prospective profits of the lands acquired. The Supreme Court has cautioned that normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years'' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value.

12. Applying these principles to the facts of the instant case, this Court finds that the claimants have not only led evidence of an expert, but have also produced relevant sale-deeds to enable the Court to determine the market value of the lands acquired. The substance of the evidence tendered by the expert is already extracted above. The report of the Valuer is to be found at Ex.26. As per the said report, the lands acquired were situated on Dabhoi to Karjan District Road. What is mentioned in the said report is that though the lands acquired were agricultural lands, they were situated in proposed residential zone of the Town Development Authority and were free-hold lands. While preparing the valuation report, the expert took into consideration the comparable sale instances as well

as potentiality of the lands acquired and the value of land bearing Survey No. 1585/A determined by the Collector and thereafter concluded that the value of the lands acquired was Rs. 157.59 ps. per sq.mt. as on the date of publication of notification issued u/s 4(1) of the Act.

13. As far as the sale-deeds are concerned, Ex.20, which is a deed dated March 29, 1978, executed between Mr. Prabhudas Lallubhai Patel and Dabhoi Branch of Life Insurance Corporation of India, indicates that the lands bearing Revenue Survey No. 323 Paiki and 325 of village Dabhoi and that the lands were sold at the rate of Rs. 64.56 ps. per sq.mt. Again, Ex.21, which is a sale-deed executed on January 14, 1980, indicates that part of the land bearing Survey No. 323 of village Dabhoi was sold by Mr. Prabhudas Lallubhai Patel to Dabhoi Branch of Life Insurance Corporation of India at the rate of Rs. 75.31 ps. per sq.mt. Further, a perusal of Ex.22 makes it very clear that part of land bearing Survey No. 1618 of village Dabhoi was sold by Lohana Hariram to Shaikh N.H. at the rate of Rs. 108.33 ps. per sq.mt. As observed earlier, relevancy of the sale-deeds stands satisfactorily established by the reliable testimony of witnesses examined by the claimants. The evidence on behalf of the claimants establishes that the sale-deeds were proximate in point of time to the notification published u/s 4(1) of the Act. The evidence further shows that they were bona fide transactions of purchase and sale of the lands and that the lands covered by those sale-deeds were adjacent to those acquired and possessing similar advantages. What is relevant to notice is that as observed by the expert, lands acquired were proposed to be placed in residential zone. Therefore, the lands acquired had high potential value. However, the impugned common award does not indicate that any additional amount was awarded by the Reference Court on the ground that potential value of the lands acquired was high. What is done by the Reference Court is to deduct 20% from the price of lands indicated in the sale-deeds while determining the market value of the lands acquired and this exercise was done in view of the decision of the Supreme Court noticed earlier.

14. On re-appreciation of 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 well-settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one taken by the Reference Court on the basis of evidence adduced by the parties before it. Therefore, the Appeals, which lack merits, deserve to be dismissed.

15. For the foregoing reasons, all 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 immediately.