

(2006) 11 GUJ CK 0085

In the Gujarat High Court

Case No : First Appeal No"s. 4244 to 4254 of 2006

Special LAQ Officer

APPELLANT

Vs

Punjabhai Dhulabhai Nadiya and Another

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 18, 4(1), 54, 5A(2), 6

Citation : (2006) 11 GUJ CK 0085

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

Bench : Division Bench

Advocate : S.S. Shah, Government Pleader in First Appeal Nos. 4244 to 4248 of 2006, Krina P. Callia, A.G.P. in First Appeal Nos. 4249 to 4251 of 2006 and Tanuja N Kachchhi, A.G.P. in First Appeal Nos. 4252 to 4254 of 2006, for the Appellant; A.J. Patel, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—Admitted. Mr. A.J. Patel, learned Counsel, waives service of notice on behalf of the claimant/s in each appeal. Having regard to the facts of the case, the appellants are finally heard today.

2. The abovenumbered 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 April 5, 2005, rendered by the learned Assistant Judge and Special Judge (L.A.R), Ahmedabad (Rural) at Ahmedabad, in Land Acquisition Cases Nos. 522 to 532 of 1999, by which the claimants have been awarded additional amount of compensation at the rate of Rs. 27.60 Ps./- per sq.mt. for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs. 2.10 Ps. per sq.mt. for irrigated lands by his award dated June 24, 1999.

3. The Executive Engineer, Construction Division-16, Narmada Project, Mehsana proposed to the State Government to acquire lands of village Madrisana, Taluka :

Detroj, 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 Madrisana were likely to be needed for the said public purpose. Therefore, a notification u/s 4(1) of the Act was issued, which was published in the Official Gazette on September 5, 1997. Thereafter the owners of the lands were served with notices issued u/s 4(1) of the Act and they opposed the proposed acquisition. After considering their objections, the 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 Madrisana, which were specified in the Notification published u/s 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration u/s 6 of the Act was made, which was published in the Official Gazette on May 25, 1998. 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 compensation at the rate of Rs. 42- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his Award dated June 24, 1999 offered compensation to the claimants at the rate of Rs. 2.10 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they filed applications u/s 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad, where they were registered as Land Acquisition Case Nos. 522 to 532 of 1999.

4. On behalf of the claimants, witness Gabhaji Ravaji was examined at Exh.17. 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 Bigha from the sale of agricultural produces, the witness produced previous award of the Reference Court relating to the lands of this very village in support of the claim for enhanced compensation advanced by the claimants. The witness also mentioned before the Court that the lands, which were previously acquired from village Madrisana, were similar, in all respects, to the lands which were acquired in the instant case. Though this witness was cross-examined on behalf of the appellants, nothing substantial could be elicited, nor the assertion made by the witness that the lands acquired earlier from this very village were similar, in all respects, to the lands acquired in the instant case, could be demonstrated to be untrue.

On behalf of the appellants, witness Ghanshyamdas Omprakash Gupta, who was then discharging duties as Deputy Executive Engineer, was examined at Exh.19. In his examination-in-chief itself, the witness had to admit that the claimants were able to raise mainly the crops of millet & castor and that he himself was not personally acquainted with the acquisition proceedings.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village, was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The learned Judge noticed that in earlier cases, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs. 2.10 Ps. per sq.mt., but, the Reference Court by judgment and award dated August 31, 2004 had awarded additional compensation to the claimants in those cases at the rate of Rs. 23/- per sq.mt. In view of time-gap of about two years between publication of notifications issued u/s 4 of the Act in the two cases, the Reference Court was of the opinion that the claimants were entitled to reasonable rise in price of the acquired lands at the rate of 10% per annum. Placing reliance on the said previous award, the Reference Court in the instant cases, has awarded additional amount of compensation to the claimants at the rate of Rs. 27.60 Ps. per sq.mt., by judgment and award dated April 5, 2005, giving rise to the above numbered appeals.

6. This Court has heard Mr. S.S. Shah, learned Government Pleader for the appellants, and Mr. A.J. Patel, learned Counsel for the claimants in detail. 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 witness for the claimants 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 Bigha from the sale of agricultural produces, no evidence was adduced to substantiate the same. The record does not indicate that the enhanced compensation was claimed by the claimants on yield basis or on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was the previous award of the Reference Court relating to the lands of this very village and the said award was produced at Exh.30. Exh.30 indicates that the lands of village Madrisana 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 June 20, 1995. Therein, the Special Land Acquisition Officer by his award dated September 30, 1996 had offered compensation to the claimants at the rate of Rs. 2.10 Ps. per sq.mt. Feeling aggrieved by the said offer, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad, where they were registered as Land Acquisition Cases No. 721 of 1998 to 724 of 1998. After appreciating the evidence adduced in those cases, the Reference Court by judgment dated August 31, 2004 awarded additional amount of compensation to the claimants at the rate of Rs. 23/- per sq.mt. During the hearing of these appeals, the learned Counsel for the claimants has produced a simple copy of judgment dated October 30, 2006 rendered by this Court in First Appeals Nos. 2212 to 2215 of 2006. A perusal of the said judgment indicates that the judgment of the Reference Court dated

August 31, 2004 rendered in Land Acquisition Cases No. 721 to 724 of 1998 was challenged by the acquiring authority and the award of the Reference Court was confirmed by the High Court. Thus, there is no manner of doubt that the previous award of the Reference Court relating to the lands of this very village, which was relied upon by the claimants in support of their claim for enhanced compensation, has attained finality. It is worth noticing that notification issued u/s 4(1) of the Act was published on June 20, 1995 for acquiring the lands which were subject matter of Land Acquisition Reference Nos. 721 to 724 of 1998; whereas in the instant cases, notification u/s 4(1) of the Act was published in the Official Gazette on September 5, 1997 and in view of time-gap of about two years, this Court is of the opinion that the claimants were entitled to reasonable rise in price of land at the rate of Rs. 10/- per annum. On the basis of the previous award of the Reference Court, the Reference Court in the instant cases has awarded additional amount of compensation to the claimants at the rate of Rs. 27.60 Ps. per sq.mt. It is well settled that the previous award of the Reference Court, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of the lands acquired subsequently from the same village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of this very village for the purpose of determining market value of the lands acquired in the instant case. The reappraisal of evidence on record makes it very clear that the Reference Court has recorded correct findings of facts, to which settled principles of law have been applied. The learned Counsel for the appellants could not persuade this Court to take a view different than one which is taken by the Reference Court on appreciation of evidence. As the Court does not find any merits in any of the appeals filed by the appellants, the same deserve to be dismissed.

8. 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 as early as possible.