(2007) 09 GUJ CK 0031

In the Gujarat High Court

Case No : First Appeal No''s. 4232 and 4234 of 2007

Spl. Land Acqo. Officer and Another — APPELLANT

Vs

Ambalal Mithabhai Patel — RESPONDENT

Date of Decision : 17-09-2007

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 18, 4(1), 54, 5A(2)

Citation : (2007) 27 GLH 472

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

Bench : Single Bench

Advocate : Sunit Shah, GP in FA No. 4232 of 2007 and Ms. Reeta Chandarana, AGP 1-2 in FA No. 4233 to 4234 of 2007, for the Appellant; K.M. Shah, 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, District-Baroda, appellants-original opponents have filed these appeals u/s 54 of the Land Acquisition Act, 1894 against the judgment and award dated 27/1/2005 passed by the learned Civil Judge (SD), Bharuch in Land Acquisition Reference Case No.2091 of 1998 to 2093 of 1998, Main case No.2093 of 1998. By the impugned judgment, the learned judge was pleased to partly allow the reference applications for proportionate costs. The learned Judge has held that the applicants are entitled to receive market price of their acquired land at the rate of Rs.32.50 per sq. mtr. as additional amount of compensation in Compensation Case No. 34 of 1994 over and above compensation of Rs.3.90 per sq. mtr. which was awarded by the Special Land Acquisition Officer. So in all the learned Judge awarded in all Rs.36.40 per sq. mtr. 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 Minor Canal of Narmada

Yojna which is for the public purpose. On perusal of the said proposal, the State Government was satisfied that the lands of village Sarbhan 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 5/7/1996. After issuance of 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 for hearing of objections, to the State Government. Considering the said report, the State Government was satisfied that the land of village Sarbhan were needed for the purpose of construction of Sarbhan 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 18/1/1997. 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 has passed an award on 29/11/1997 u/s 11 of the Act which provides for inquiry and award by Collector. The Special Land Acquisition Officer has awarded compensation at the rate of Rs.3.90 per sq. mtr. to the claimants.

3. As the claimants were of the opinion that the amount of the compensation awarded 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 for 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 matters reached before the learned Judge i.e. Land Reference Court, the Court gave the number as Reference Nos.2091 to 2093 of 1998. Before the Reference Court, the claimants claimed compensation at the rate of Rs.50/- per sq. mtr.

5. Before the Reference Court, the claimants have filed a documentary evidence and also placed oral evidence. Before the Reference Court, the claimants examined following witnesses:

(1) Vimalkumar Chunilal who is happened to be claimant of the land in question at Exh.125.

(2) Mahendra Nanubhai Nanavati who is happened to be Assistant Secretary, APMC. Bharuch at Exh.127.

(3) Saiyad Yakubbhai who is happened to be Accountant of Shree Ganesh Khand Udhyog Sahakari Mandali at Exh.129.

(4) Govindbhai Ranchhodbahi who is happened to be Assistant Secretary in the

Sarbhan Co. Operative Agricultural Produce and Processing Marketing Society at Exh.131.

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 lands at Exh.15 to 18, extract of wells at Exh.19 to 123, village form no.6 at Exh.124, average price list of the crops of APMC, Bharuch at Exh.130 and copies of the price of the cotton which have been shown at Exh.132 and 135.

8. Before the Trial Court, Vimalkumar Chunilal has been examined at Exh.125. He has deposed that he has produced the evidence on behalf of the other claimants as all the 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 land and having facility of irrigation. Some of the claimants were growing cotton, sugarcane and ladyfinger and some of the claimants were growing crops of pigeon pea and ladyfinger. The claimants have also produced extract of 7/12. He has 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 APMC, Bharuch and other private traders. The claimants have also produced average price list of APMC, Bharuch showing the price of the said crops for the particular year.

9. In the deposition he has also deposed that they were receiving from the crops of cotton Rs.52,400/- per acre and after deducting 35% cultivation expenses, they were getting Rs.34.100/- per acre as net annual income. After taking crops of cotton, they were taking crops of ladyfinger in second season and obtained 150 quintals of ladyfinger which they used to sell it to APMC. Bharuch and other private traders. He has stated that after deducting 35%, they were getting Rs.73,400/- per acre from the crop of ladyfinger. He has deposed that they were getting the crops of sugarcane of 80 quintals per acre and that they used to sell to Reva Khand Udyog, Amod and other private traders. He further stated that from the crops of sugarcane they were getting Rs.76,800/- per acre and they were getting net annual income of Rs.50,000/- per acre from sugarcane annually after deducting 35% towards cultivation costs. He further stated that the acquired land was having irrigation facility. To show the said facts, claimants produced extracts of 7/12 at Exh. 19 to 123 which indicates that there were 100 wells for irrigation. The claimants have also produced copies of the price of cotton of Sarbhan Co. Op. Agricultural Produce Processing and Marketing at Exh. 132 and 135. He also deposed that their acquired land is three to five kms. away from place of Amod taluka and surrounding to their lands, the lands are having high potentiality of industrial and residential. Surrounding to their lands, there are industries of sugarcane and gin of cotton. The said land is used for both residential and industrial purposes and for ginning of cotton also. He has also

deposed that they were having amenities of transport like motor and truck, having facility of telephone, water, academic, education, electricity, cooperative societies, railway track etc. The lands were adjacent to State Highway. He has therefore, deposed that they are entitled for Rs.50/- per sq. mtr. as compensation.

10. The claimants have also examined one Mahendrabhai Nanubhai Nanavati at Exh. 127 who happened to be Assistant Secretary in APMC, Bharuch. The said witness produced price list of APMC, Bharuch to show at what price, the crop is selling in the market. The said witness has also deposed that the price list has been issued after verifying the record of APMC, Bharuch. The claimant has also examined Shri Saiyad Yakubbhai at Exh. 129 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, examined at Exh. 135 who happened to be the Assistant Secretary of Sarbhan Co. Op. Agricultural Produce Processing and Marketing Society Ltd., Sarbhan has also produced price list of the society.

10.1. On the other hand, on behalf of the opponents, opponents have also examined one Chandrakant Shanabhai Solani who happens to be Special Land Acquisition Officer at Exh. 144. They have produced award of Reference Court in LAR No.360 of 1992 at Exh. 146. They have also produced a copy of the extract of 7/12 at Exh. 148. They have also produced a copy of the award of the Land Acquisition Officer in LAR No.341 of 1995 at Exh. 142.

11. The Reference Court noted that in this case, the claimants have claimed enhanced compensation on yield basis. On appreciation of evidence adduced namely extract of 7/12 produced by the claimants and documentary evidence which this Court has also referred, 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 sugarcane and ladyfinger 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.32/- per sq. mtr. as income. The same would be just and proper. The learned Judge has taken into consideration the income from the crop of cotton comes to Rs.65/- per sq. mtr. After deducting 50% gross income towards cultivation expenses against the income of Rs.52,400/- of cotton crops, the same is to come at Rs.26,200/- and if we divide the net income of Rs.26,200/- by 4000/- sq. mtr., it will come to Rs.6.55 per sq. mtr. 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.65.50 per sq. mtr. and therefore, ultimately the Reference Court came to the conclusion that the claimants would be entitled to Rs.32.50 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.32.50 per sq. mtr. to the claimants by a common judgment and award dated 27/1/2005 which has given rise to the above numbered appeals.

12. The learned AGP for the appellants in these appeal contended that the award passed by the learned Judge is unjust and he 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.

13. On the other hand, learned advocate Mr.K.M.wSheth appearing for the claimants 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 evidence in this behalf particularly the crops of cotton, sugarcane, ladyfinger grown on the land acquired as well as the price fetched by the sale of the same to APMC, Bharuch, Sarbhan Co. Op. Society etc. He has further stated that 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 quintals of cotton on the acquired land and the rate indicated at Exh.Exh.130 as well as Exh. 132 and 135 should accepted by this Court in view of the principal (sic) 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 consider the oral evidence to great scrutiny and evaluate the evidence objectively, and dispassionately to reach a finding on compensation. Multiplier 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.

14. This Court has heard both the learned advocates and also gone through the evidence on record and paper-book produced by learned advocate Mr.K.M.Sheth, appearing for the claimants in this behalf.

15. Learned AGP Ms.Reeta Chandarana has relied upon the recent judgment of the Hon''ble 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.

16. 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.32.50 per sq. mtr. after applying multiplier of 10.

17. I have gone through the evidence of Vimalkumar Chunilal produced at

Exh.125 and further relevant documentary evidence produced by the other witnesses in this behalf. After going through the same, it is established that the claimants are entitled to Rs.32.50 per sq. mtr. from the crop of cotton instead of Rs.65/- per sq. mtr.

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. 1,873/-produced at Exh.130 and 132 to 135 which is the price list of APMC, Bharuch and other co-operative societies which has been produced by the claimants. From that, this Court is of the view that each of the claimant was able to realize income of Rs.29,900/- per year, 50% is deducted towards cost of cultivation it will come to Rs. 14,950/- 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, (Para 7, Page 777), wherein the Hon''ble Apex Court has held that 50% should be deducted towards the costs of cultivation. If 50% is deducted from Rs.29,900/- the net income which would come to Rs. 14,950/- per year per acre from the sale of cotton. An acre is equivalent to nearly 4000 sq. mtr. Therefore, in order to arrive at income from agricultural produce per sq. mtr. the figure of Rs. 14,950/- will have to be divided by 4000 sq. mtr. which will bring the price of the land acquired at Rs.3.73 per sq. mtr.

20. As indicated above, for the agricultural income the basis of the capitalization principle, proper multiplier to be applied. It multiplier of 10 is applied then income derived from sale of cotton would be Rs.37/- per sq. mtr. The Reference Court in this case has awarded compensation payable to the claimants at the rate of Rs.32.50 per sq. mtr. as additional compensation and the Special Land Acquisition Officer has awarded Rs.3.90 per sq. mtr. Thus, total amount awarded to the claimants is Rs.36.40 per sq. mtr. which cannot be regarded as excessive at all. 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 sq. mtr. is just and correctly arrived at after applying the principle laid down by the Hon''ble Apex Court. Thus, these appeals 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.