

(2011) 04 GUJ CK 0175

In the Gujarat High Court

Case No : First Appeal No"s. 1231 to 1233 of 2011

Spl Land Acquisition Officer and Another

APPELLANT

Vs

Chhanabhai Dahyabhai Patel

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 23(1A), 23(2), 28, 4

Citation : (2011) 04 GUJ CK 0175

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : Shachi Mathur, AGPs 1 - 2, for the Appellant; Yatin Soni and Hitesh B. Patel for Defendants 1, for the Respondent

Judgement

J.C. Upadhyaya, J.

Appeals are admitted.

1. Considering the facts and circumstances of the case and since both the learned Counsel, namely Ms. Shachi Mathur, Ld. AGP for the Appellants and Mr. Yatin Soni, Ld. Advocate for the Respondents requested that these appeals may be finally heard and disposed of since the entire controversy rests upon the calculation of amount of compensation, these appeals are heard and are being disposed of by this common judgment.

2. In these appeals, the common judgment and award dated 20/2/2007 rendered by the Ld. Principal Sr. Civil Judge, Gandhinagar [for short "the Reference Court"] in L.A.R. Nos. 295/1998 to 297/1998 [Main L.A.R. No. 295/1998] are challenged by the Appellants, whereby the Reference Court fixed the market value of the lands acquired belonging to the Respondents - claimants @ Rs. 353/- per sq. mtr.

3. The lands owned by the Respondents situated at village Pethapur, Taluka & District Gandhinagar were proposed to be acquired for public purpose of construction of cross road and pursuant to that, a notification u/s 4 of the Land

Acquisition Act [for short "the Act"] was published on 7/3/1996 and notification u/s 6 of the Act was published on 25/6/1996. The Special Land Acquisition Officer passed award u/s 11 of the Act and determined the amount of compensation @ Rs. 10/- per sq.mtr. The Respondents - claimants felt that the amount awarded by way of compensation was too meager and inadequate and, therefore, they applied for references, wherein the claimants claimed compensation @ Rs. 500/- per sq. mtr. Before the Reference Court, oral and documentary evidence was produced and the Reference Court relied upon certified copy of judgment passed earlier by the Reference Court in L.A.R. No. 17/2002 pertaining to the lands of same village i.e. Pethapur, produced at ex. 26 and came to the conclusion that in the instant case, the Respondents - claimants are entitled to recover the additional amount of compensation @ Rs. 343/- per sq. mtr., meaning thereby that the Reference Court determined the market value of the acquired land @ Rs. 353/- per sq. mtr.

4. Having considered the submissions advanced on behalf of both the sides, so also considering the impugned judgment and award rendered by the Reference Court and more particularly considering the discussions made by the Reference Court regarding the earlier award passed in L.A.R. 17/2002, it transpires that in the said case, the notification u/s 4 of the Act was published on 29/6/1999. Though the lands acquired in said case, were situated in the same village i.e. village Pethapur and the Reference Court in said award, determined the market value of the acquired lands of Pethapur @ Rs. 353/- per sq. mtr., the Reference Court in para. 24 in the impugned judgment and award, while considering the previous award exh. 26, observed that the lands of the claimants are situated almost in Gandhinagar town itself and relied upon the evidence of witness Ahmedhusen Adambhai Malvat, examined at exh. 34, who deposed that even before 10 years there was development in the village and, therefore, the Reference Court came to the conclusion that even in the instant case, the Respondents - claimants were entitled to claim just and reasonable amount of compensation @ Rs. 353/- per sq. mtr.

5. It is pertinent to note that in the previous award exh. 26, the notification u/s 4 of the Act was published on 29/6/1999, whereas in the instant case, notification u/s 4 of the Act was published approximately 3 years prior to that date i.e. 7/3/1996. The Reference Court came to the conclusion that the formula of 10% decrease per annum should not be applied in the instant case because if said formula would be applied, then after 10 years, there would be zero market value. However, considering the facts and circumstances of the case, the reasoning assigned by the Reference Court cannot be accepted for the simple reason that in the instant case, the time gap is not of 10 years. The time gap is only of 3 years and considering 10% of Rs. 353/-, it comes to Rs. 35-30 ps. If that amount accordingly is multiplied by 3 years, it would come to Rs. 105-90 ps., rounded off as Rs. 106/-, which amount is required to be deducted from Rs. 353/- and it comes to Rs. 247/-, rounded off as Rs. 250/- per sq. mtr. In the instant case, therefore, the just and reasonable amount of compensation, which the Reference

Court should have fixed, would be @ Rs. 250/- per sq. mtr. The appeals are, therefore, deserve to be allowed in part.

6. For the foregoing reasons, the appeals are partly allowed. The impugned common judgment and award dated 20/2/2007 rendered by the Ld. Principal Sr. Civil Judge, Gandhinagar, in L.A.R. Nos. 295 to 297 of 1998 is modified and it is hereby directed that the Respondents - claimants are entitled to recover just and fair amount of compensation @ Rs. 250/- per sq. mtr., less the amount already awarded by the Special Land Acquisition Officer. The other statutory increases, namely benefits u/s 23[1-A] of the Land Acquisition Act as well as solarium as provided u/s 23[2] of the Act and the running interest as awarded u/s 28 of the Act by the Reference Court, are not interfered with, but the said statutory benefits shall be available to the Respondents - claimants on the modified amount of compensation determined by this Court in this judgment. There shall be no order as to costs.

The Appellants are directed to deposit the awarded amount before the Reference Court within 9 [nine] weeks hereof.