

(2006) 11 GUJ CK 0092

In the Gujarat High Court

Case No : First Appeal No"s. 3341 to 3353 of 2006

Spl. LAQ Officer and Another

APPELLANT

Vs

Toyabhai Motibhai and Another

RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

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

Citation : (2006) 11 GUJ CK 0092

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

Bench : Division Bench

Advocate : L.R. Pujari, AGP, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—All these appeals, which are 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 December 10, 2003, rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Navrangpura, in Land Acquisition Cases No. 159 of 2001 to 171 of 2001, by which the claimants have been awarded additional compensation at the rate of Rs. 27.90 ps. 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. 1.90 ps. per sq.mt. by his award dated June 14, 1999.

2. The Executive Engineer, Narmada Yojana, Division No. 8, Dholka made a proposal to the State Government to acquire agricultural lands of village Koth, Taluka : Dholka, 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 Koth 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 April 23, 1998. The owners of the lands were

served with notices u/s 4 of the Act. The owners opposed the proposed acquisition. After considering their objections, the Land Acquisition Officer forwarded his report u/s 5A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Koth, 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 October 5, 1998. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 50/- per sq.mt. However, having regard to the material placed before him, the Land Acquisition Officer by his award dated June 14, 1999 offered compensation to the claimants at the rate of Rs. 1.90 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was totally inadequate. Therefore, they filed 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 appropriate amount of compensation. Accordingly, the references were made to the District Court, Ahmedabad (Rural) where they were registered as Land Acquisition Cases No. 159 of 2001 to 171 of 2001.

3. On behalf of the claimants, witness Lalubhai Jasmatsang was examined at Exh.31. Over and above stating that the lands acquired were fertile and that each claimant was earning net agricultural income of Rs. 50,000/- per Bigha per year 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 of the claimants for enhanced compensation. It was mentioned by the witness in his testimony that the lands, which were acquired earlier from this very village, were similar, in all respects, to the lands acquired in the instant case. In order to establish that the lands acquired were highly fertile, the witness produced village Forms No. 7/12 at Exhs.16 to 28. The previous award of the Reference Court relating to the lands of this very village was produced by the said witness at Exh.29. The witness also produced judgment of the High Court delivered in First Appeal No. 201 of 1988 at Exh.30 to establish that the previous award of the Reference Court was confirmed by the High Court. On behalf of the appellants, no witness was examined, nor any documentary evidence was produced at all.

4. On appreciation of evidence adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village furnished good guidance and was relevant for the purpose of determining the market value of the lands acquired in the instant case. The learned Judge noticed that in the earlier case, for acquiring lands from this very village, notification u/s 4(1) of the Act was published in the Official Gazette on June 21, 1983; whereas in the instant case, notification issued u/s 4(1) of the Act was published in the Official Gazette on April 23, 1998 and in

view of the time-gap, the claimants were entitled to reasonable rise in price of land at the rate of 10% per annum. In the ultimate analysis, the Reference Court has come to the conclusion that the claimants are entitled to additional amount of compensation at the rate of Rs. 27.90 Ps. per sq.mt. by the impugned judgment and award, giving rise to the above-numbered appeals.

5. This Court has heard Mr. L.R. Pujari, learned Counsel for the appellants and has also perused the documents produced by him for consideration of the Court.

6. From the record of the case, it is evident that though it was claimed by the witness for the claimants that each claimant was earning net income of Rs. 50,000/- per Bigha per year from the sale of agricultural produces, no evidence was produced to substantiate the same. The record does not indicate that the claimants had claimed enhanced compensation on yield basis, nor the claimants had produced comparable sale instances in support of their claim for enhanced compensation. What was relied upon by the claimants was the previous award of the Reference Court relating to the lands of this very village. As noticed earlier, the previous award of the Reference Court relating to the lands of this very village was produced by the claimants at Exh.29. It indicates that different survey numbers of village Koth were acquired for the public purpose of construction of G.E.B. Sub-Station pursuant to publication of notification u/s 4(1) of the Act in Official Gazette on June 21, 1983. Therein, the Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs. 3.50 Ps. per sq.mt. Feeling aggrieved, the claimants had sought references and the Reference Court had awarded total compensation to the claimants at the rate of Rs. 12/- per sq.mt. Exh.30 is the judgment of the High Court rendered in First Appeal No. 201 of 1988 and other cognate matters. It indicates that the award of the Reference Court relating to the lands of village Koth, which was produced at Exh.29, was confirmed by the High Court. It is well settled that previous award of the Reference Court, as confirmed by the High Court, can always be relied upon as good piece of evidence for the purpose of determining market value of the lands subsequently acquired from the same village. The fact that the previous award of the Reference Court as confirmed by the High Court has attained finality, is not disputed by the learned Counsel for the appellants. In the previous case, notification u/s 4(1) of the Act was published in the Official Gazette on June 21, 1983; whereas in the instant case, notification issued u/s 4(1) of the Act was published in the Official Gazette on April 23, 1998. It is well settled that if there is gap of time in publication of notifications u/s 4(1) of the Act, the claimants would be entitled to reasonable rise in price of land at the rate of 10% per annum. Therefore, this Court is of the opinion that the Reference Court did not commit any error in granting rise in price of the lands at the rate of 10% per annum, to the claimants. On reappraisal of evidence adduced by the claimants, 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 Counsel for the appellants could not point out any error in the award impugned in the appeals so as to warrant interference of this Court.

The net result of the above discussion is that there is no merits in any of the appeals filed by the appellants and, therefore, they deserve to be dismissed.

7. For the foregoing reasons, all the appeals fail and are dismissed. The Registry is directed to draw decree in terms of this judgment as early as possible.