

(2006) 10 GUJ CK 0013
In the Gujarat High Court

Case No : First Appeal No"s. 2212 to 2215 of 2006

Spl. LAQ Officer

APPELLANT

Vs

Parshottambhai Motibhai Patel and Others

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

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

Citation : (2006) 10 GUJ CK 0013

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

Bench : Division Bench

Advocate : S.S. Shah, Government Pleader in FA 2212/06 and 2213/06 and L.R. Poojari, AGP in FA 2214/06 and 2215/06, for the Appellant; A.J. Patel, for the Respondent

Judgement

J.M. Panchal, J.—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 the common judgment and award dated August 31, 2004, rendered by the learned Third Extra Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) at Navarangpura, Ahmedabad in Land Acquisition Case No. 721 of 1998 to Land Acquisition Case No. 724 of 1998, by which, the claimants are awarded additional compensation at the rate of Rs. 23/- per sq.mt. over and above the amount of compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs. 2.10 ps. per sq.mt., by his award dated September 30, 1996, for their acquired lands.

2. The Executive Engineer, Narmada Yojana, Division No. 18, Mehsana, proposed to the State Government to acquire certain lands of village Madrisana, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On consideration 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 June 20, 1995. The land owners

were thereafter served with notices u/s 4 of the Act and they opposed the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. 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 December 13, 1995. The interested persons were thereafter served with the notices u/s 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 25/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated September 30, 1996, 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 preferred applications u/s 18 of the Act requiring the Special Land Acquisition Officer to refer the matter 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 (R), where they were registered as Land Acquisition Case No. 721 of 1998 to Land Acquisition Case No. 724 of 1998.

3. On behalf of the claimants, witness Manibhai Motidas Patel was examined at Ex.24. Over and above stating that the lands acquired were highly fertile and that each claimant was earning the net profit of Rs. 35,000/- to Rs. 40,000/- per Vigha per year from the sale of agricultural produces, he produced three previous awards of the Reference Court relating to the lands of village Moti Rantai, Nani Rantai and Fatehpura in support of the claim of the claimants for enhanced compensation. He also produced copy of judgment of the High Court delivered in First Appeal No. 1842 of 2000 on January 18, 2001 to indicate that the award of the Reference Court relating to the lands of village Moti Rantai was confirmed by the High Court. It was claimed by the said witness that the lands of village Madrisana were similar in all respects to the lands of village Moti Rantai, Nani Rantai and Fatehpura, which were acquired earlier. Though this witness was cross-examined by the learned District Government Pleader on behalf of the appellant, nothing could be elicited so as to doubt his assertion that the lands of village Madrisana were similar in all respects to the lands of village Moti Rantai, Nani Rantai and Fatehpura, which were acquired earlier.

4. On behalf of the appellant, witness Rameshbhai Ranchodbhai Rajpal, who was then discharging duties as Deputy Executive Engineer, Narmada Nigam, was examined at Ex.28. It was asserted by this witness that the Special Land Acquisition Officer had determined the amount of compensation payable to the claimants after taking into consideration the relevant factors and therefore, the claimants were not entitled to enhanced compensation. However, in his cross-examination, the witness had to admit that villages Moti Rantai, Nani Rantai and

Fatehpura were under his jurisdiction and that the lands of these villages were almost similar. It was also admitted by the witness that the boundary of village Fatehpura and village Madrisana was common.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous awards of the Reference Courts relating to the lands of village Moti Rantai, Nani Rantai and Fatehpura etc. were relevant and furnished good guidance for the purpose of determining the market value of the lands acquired from village Madrisana. The learned Judge noticed that in earlier cases relating to the lands of village Moti Rantai, Nani Rantai and Fatehpura, etc., Notifications u/s 4 of the Act were issued either in the month of November, 1992 or in the month of December 1992, whereas in the present case, Notification u/s 4(1) of the Act was published in the official gazette on June 20, 1995 and in view of gap of time between issuance of Notifications u/s 4 of the Act, the claimants were entitled to reasonable rise in price of lands at the rate of 10% p.a. Calculating the amount of compensation payable to the claimants in the instant case on the basis of price of lands indicated in the previous awards and granting rise in price of lands at the rate of 10% p.a., the Reference Court in the instant cases, has awarded additional amount of compensation at the rate of Rs. 23/- per sq.mt. over and above what is awarded to the claimants by the Special Land Acquisition Officer vide judgment and award dated August 31, 2004, giving rise to the abovenumbered Appeals.

6. This Court has heard Mr.S.S.Shah, learned Government Pleader with Mr. L.R. Pujari, learned Assistant Government Pleader for the appellant as well as Mr. A.J. Patel, learned Counsel for the claimants in each Appeal. This Court has also considered the paper-book supplied by the learned Counsel for the claimant which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though it was claimed by the witness for the claimants that the lands acquired in the instant case were highly fertile and that each claimant was earning income of Rs. 35,000/- to Rs. 40,000/- per Vigha per year from the sale of agricultural produces, no evidence could be adduced by the claimants to substantiate the said claim. The record does not indicate that the claimants had claimed enhanced compensation either on the basis of comparable sale deeds or on yield basis. What was relied upon on behalf of the claimants was three previous awards of the Reference Court relating to the lands of village Moti Rantai, Nani Rantai and Fatehpura.

8. Exhibit 16 is copy of the judgment and award dated December 8, 1999, rendered by the Reference court in Land Acquisition Case Nos.708/96 to 718/96. It indicates that the lands of village Moti Rantai, Taluka: Viramgam, District: Ahmedabad, were acquired for the public purpose of construction of Narmada Project Khara Ghoda Branch Canal pursuant to publication of Notification issued u/s 4(1) of the Act in the official gazette on December 19, 1992. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the

rate of Rs. 1.50 ps. per sq.mt. Feeling aggrieved, the claimants had sought References and the Reference Court, by judgment and award dated December 8, 1999, awarded additional compensation at the rate of Rs. 18.50 ps. per sq.mt. Thus, the claimants, whose lands were acquired from village Moti Rantai, were awarded compensation in all at the rate of Rs. 20/- per sq.mt.

9. Exhibit 17 is copy of judgment dated January 18, 2001, rendered by the High Court in First Appeal Nos.1842 of 2000 to 1851 of 2000, which indicates that the judgment and award dated December 8, 1999, rendered by the learned Second Extra Assistant Judge and Special Judge (LAR) Ahmedabad (R), Navrangpura, in Land Acquisition Case Nos.708/96 to 718/96, was confirmed.

10. Further, Exhibit 18 is the judgment of the Reference Court dated April 26, 2002, rendered in Land Acquisition Case No. 736/96 to 738/96 and other cognate matters. It indicates that the lands of village Nani Rantai were acquired for the public purpose of construction of Narmada Project Khara Ghoda Canal pursuant to publication of Notification issued u/s 4 of the Act in the official gazette on November 12, 1992. Therein, the Special Land Acquisition Officer, by his award dated January 18, 1995, had offered compensation to the claimants at the rate of Rs. 1.50 ps. per sq.mt. for irrigated lands and Re.1/- per sq.mt. for non-irrigated lands. Feeling aggrieved, the claimants had sought References and the Reference Court, by judgment and award dated April 26, 2002, had awarded compensation to the claimants at the rate of Rs. 18.50 ps. per sq.mt., meaning thereby, the claimants whose lands were acquired from village Nani Rantai were awarded in all compensation at the rate of Rs. 20/- per sq.mt.

11. Again, Exhibit 19, which is the judgment and award of the Reference Court dated November 12, 2002, rendered in Land Acquisition Case Nos.131/96 to 134/96, indicates that the lands of village Fatehpura 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 September 5, 1992. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs. 1.25/- per sq.mt. by his award dated August 16, 1994. Feeling aggrieved, the claimants had sought References and the Reference Court, by judgment and award dated November 12, 2002, awarded additional compensation to the claimants at the rate of Rs. 18.75 ps. per sq.mt., which means that the claimants, whose lands were acquired from village Fatehpura, were awarded in all compensation at the rate of Rs. 20/- per sq.mt.

12. The record shows that the Reference Court in the instant case had also relied upon Exhibit 20 which is the previous award of the Reference court dated November 14, 2003, rendered in Land Acquisition Case Nos.92/99 to 100/99, which indicates that the lands of village Fatehpura were acquired for the public purpose of construction of Narmada Canal pursuant to publication of Notification issued u/s 4 of the Act which was published in the official gazette on September 3, 1996. It may be mentioned that in the instant case, Notification u/s 4(1) of the Act was published in the official gazette on June 20, 1995, and therefore, this

Court is of the firm opinion that Ex.20 could not have been relied upon for the purpose of determining the market value of the lands acquired in the instant case.

13. However, there is no manner of doubt that three other previous awards one of which was confirmed by the High Court, furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case because the assertion made by the witness for the claimants that the lands of village Madrisana were similar in all respects to the lands of village Moti Rantai, Nani Rantai and Fatehpura which were previously acquired, could not be demonstrated to be untrue. As observed earlier, the witness for the appellant has also admitted in his testimony before the Court that the lands of village Moti Rantai, Nani Rantai and Fatehpura were similar in all respects. The previous awards of the Reference Court relating to the lands of village Moti Rantai, Nani Rantai and Fatehpura would indicate that the lands from these villages were acquired pursuant to publication of Notifications issued u/s 4(1) of the Act which were published either in the month of November, 1992, or in the month of December, 1992, whereas in the present case, Notification u/s 4(1) of the Act was published in the official gazette on June 20, 1995. In view of the time gap of two years and six months, this Court is of the view that the Reference Court was justified in granting rise in price of lands to the claimants at the rate of 10% p.a.

14. On reappraisal of the evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been arrived at by the Reference Court to which settled principles of law have been applied for the purpose of determining the market value of the lands acquired in the instant case. It is well settled that Court of Appeal will interfere only if there is wrong application or mis-application of the relevant factors on principles of compensation. However, this Court finds that in ultimate analysis, the Reference Court has awarded to the claimants, compensation at the rate of Rs. 25.10 ps. per sq.mt. though the claim of the claimants was Rs. 25/- per sq.mt. It is well settled that when claimant claims compensation at a particular rate assessed by him, the Court cannot grant compensation higher than claimed by him. This is so in view of the decision of Supreme Court in Ujjain Vikas Pradhikaran Vs. Tarachand and another etc., Therefore, the award granting compensation at the rate of Rs. 25.10 ps. per sq.mt. to the claimants will have to be modified and it will have to be held that the claimants would be entitled to compensation at the rate of Rs. 25/- per sq.mt.

15. For the foregoing reasons, the Appeals partly succeed. The judgment and award dated August 31, 2004, rendered by the learned Third Extra Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) at Navarangpura, Ahmedabad in Land Acquisition Case No. 721 of 1998 to Land Acquisition Case No. 724 of 1998, awarding in all compensation to the claimants at the rate of Rs. 25.10 ps. per sq.mt. for their acquired lands is hereby modified and it is held that the claimants would be entitled to compensation at the rate of Rs. 25/- per sq.mt. The rest of the directions contained in the impugned award and judgment are not

interfered with at all and are hereby confirmed. The Appeals are allowed only to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.