(2011) 05 GUJ CK 0152

In the Gujarat High Court

Case No : First Appeal No''s. 808 to 826 of 2010 and Cross Objection No. 138 of 2011 in First Appeal No''s. 808 of 2010 to Cross Objection No. 156 of 2011 and First Appeal No''s. 1687 to 1705 of 2010 and Cross Objection No. 158 of 2011 in First Appeal No. 1687 to C

State of Gujarat and Another APPELLANT

Vs

Jethabhai Devabhai RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 23(2), 28

Citation : (2011) 05 GUJ CK 0152

Hon'ble Judges : Jayant Patel, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : Moxa Thakkar, AGP, for the Appellant; M.D. Vakil, for Defendant 1, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—As in all the matters, common question arises for consideration, they are being considered by this common judgment.

2. The relevant facts are that in the group of First Appeals No. 808 to 826/10 with Cross Objections No. 138/11 to 156/11, the lands were acquired at village Malvan for the project of Branch of Narmada Canal under the Land Acquisition Act (hereinafter referred to as ''the Act''). The notification u/s 4 of the Act was published on 30.08.1991 and the notification u/s 6 of the Act was published on 12.04.1993. The Land Acquisition Officer had passed the award on 26.12.1994 u/s 11 of the Act, whereby he granted compensation at Rs. 0.75 for non-irrigated land and Rs. 1.12 ps for irrigated land. As the claimants were not satisfied with the compensation, they raised the dispute u/s 18 of the Act demanding Rs. 100/- per square metre. The said disputes were referred to the Reference Court for adjudication being Land Reference Case Nos. 565/99 to 563/99. The Reference Court at the conclusion of the Reference assessed the market price of the land at

Rs. 10/- per square metre and awarded the compensation accordingly. The Reference Court awarded additional compensation of at Rs. 8.75 for irrigated land and Rs. 9.25 for non-irrigated land. Additionally, the Reference Court awarded statutory benefit of increase in the price u/s 23(1A) of the Act, solatium u/s 23(2) of the Act and interest u/s 28 of the Act. It is under these circumstances, the present appeal before this Court. We may record that the original claimants have preferred Cross Objections in the present appeals being Cross Objections No. 138/11 to 156/11 for enhancement of compensation.

3. In the group of First Appeals No. 1687/10 to 1705/10 with Cross Objections No. 158/11 to 176/11, the relevant facts are that the land at village of Akhiyana for the very project was acquired under the Land Acquisition Act. The notification u/s 4 of the Act was published on 20.08.1992 and notification u/s 6 of the Act was published on 16.07.1993. The award was passed by the Land Acquisition Officer on 11.08.1994 u/s 11 of the Act and he awarded compensation at Rs. 0.56 for non-irrigated land and Rs. 0.84 for irrigated land. As the owners of the lands/original claimants were not satisfied with the compensation, they raised the dispute u/s 18 of the Act and demanded compensation of Rs. 70/- per square metre. The said disputes were referred to the Reference Court for adjudication being Land Reference Case Nos. 481/99 to 499/99. The Reference Court at the conclusion of the Reference awarded compensation at Rs. 9.16 for irrigated land and Rs. 9.44 for non-irrigated land and additionally the Reference Court has awarded statutory benefit u/s 23(1A) of the Act for increase in the price, solatium u/s 23(2) of the Act and the interest u/s 28 of the Act. It is under these circumstances, the present appeal before this Court. The original claimants have preferred Cross Objections No. 158/11 to 176/11 for enhancement of compensation.

4. We have heard Ms. Thakkar, learned AGP appearing for the Appellants in all the First Appeals as well as for the Special Land Acquisition Officers and State in the Cross Objections. We have also heard M.D. Vakil, learned Counsel appearing for the original claimants who are Respondents in First Appeals and who have preferred Cross Objections in the connected First Appeals.

5. As such, both the group can be broadly be classified into two category, one is for acquisition of the land at village Malvan and another is for acquisition of the land of village Akhiyana.

6. The perusal of the judgment and the reasons recorded by the Reference Court shows that on behalf of the original claimants/land owners, major reliance was placed upon the decision of the Reference Court in the Land Reference Case No. 30/87, whereby the Court of Extra Assistant Judge, Surendranagar had fixed the market price at Rs. 28/- per square metre for the acquisition of the land at village Malvan. In the said acquisition of the land at village Malvan, the land was acquired for construction of PWD Store Room of the District Panchayat. The copy of the judgment was also produced. The Reference Court has recorded in the judgment that the said land was located at Dhrangadhra Ahmedabad highway,

Malvan, whereas the land in question is at a distance of about 1 km. The evidence of the witnesses in this regard was also considered. However, the pertinent aspect is that the land under acquisition in the present matter are at the very village Malvan. The distinction is required to be taken into consideration on the ground that the acquisition of the land at village Malvan in the above referred Land Reference Case, whereby the price was fixed at Rs. 28/- was pertaining to smaller area, whereas the land under acquisition is of a larger area. Further, the aspect that the earlier acquisition whereby the price was fixed at Rs. 28/- per square metre was of the land nearby the highway whereas the present land is interior to the highway though may be having the survey number of village Malvan. We may record that the similar reasoning of the Reference Court in respect of its decision in the Land Reference Cases for acquisition of the land at village Sedla and Pipli was considered by us in the group of First Appeal No. 2869/10 and allied matters decided on 03.05.2011 and it was observed by the Court at paragraph 14 as under:

14. It appears to us that if no proper reasons are recorded for arriving at the figure of Rs. 10/- by the Reference Court, such can be said as an error committed by the Reference Court in fixation of the amount of compensation or to assess the market value of the land in question. As observed earlier, we have also considered the record and proceedings of the Reference Court and we have also gone through the decision of the Reference Court for acquisition of the land at Village Malvan. It is by now well settled that if for the purpose of determining the compensation under the Land Acquisition Act, there are decision of the same Court or of any other Court for the land, which are adjacent to or nearby area, the same can be taken into consideration for the purpose of fixation of market price. Therefore, it appears to us that the Reference Court was not right in discarding the evidence, which came on record for the acquisition of the land at Village Malvan and the decision of the another Reference Court for fixation of the price at Rs. 28/- per sq. mtrs. The perusal of the judgment of the Reference Court in respect of the Land Reference Case No. 30/1987 for Village Malvan shows that it was a case of single acquisition, which was the subject matter of only one Land Reference Case No. 30/1987. The Reference Court in the said decision for Village Malvan has taken into consideration the location of the land, but the pertinent aspect is that the Reference Court in that case had taken into consideration that for another non-agricultural land in the same vicinity the Special Land Acquisition Officer, in respect of other acquisition had assessed the value at Rs. 25 per sq. mtrs., in a case where the award was passed on 12.3.1984. The Reference Court in the said matter of Village Malvan, thereafter had taken into consideration the appreciation and other aspects and ultimately has arrived at the conclusion for the assessment of the compensation at Rs. 28 /- per sq. mtrs. In our view the said decision for the acquisition of the land at Village Malvan is one of the vital evidence on record, which could not have been discarded by the Reference Court while deciding the Land Reference Cases in the present matter. But at the same time it does appear that the acquisition for the

land at Village Malvan was a small portion of the land of an acquisition in respect of two survey numbers only, whereas the acquisition in the present case is of a much large area comprising of various survey numbers. Further, the aspect of distance between the land at Village Malvan, which is located on the highway and the land in question, which is located at the distance of about 2 kms inside the highway is also required to be taken into consideration. This Court had an occasion to consider similar question for the purpose of assessment of the market price of the land in case of State of Gujarat through Special Land Acquisition Officer and Anr. v. Amaji Mohanji Thakore, reported in 2010 (3) GLH 447 and in the said decision at paragraph 16, inter alia, observed as under:

16. The aforesaid shows two aspects; one is that the sale instance or the price at which the Government has allotted the land can be taken into consideration by the Reference Court at the time of assessing the market value for the purpose of awarding compensation under the Act, and the second is the deduction to be made keeping in view the size of the plot allotted by the Government and the land under acquisition, the nature of use, the locality and other factors namely; that agricultural use, non-agricultural use and others. It is true that in the said case, this Court found it proper to deduct 40% of the amount from the price at which the Government had allotted the land to the said Trust, but it appears that certain aspects, which did not arise for consideration in the said matter, do arise for consideration in the present group of matters, which shall be dealt with hereinafter.

7. The aforesaid shows that if the comparison is to be made of the acquisition of a small area while considering the price of the land of larger area, there would be roughly difference of 40%. The other aspects may not be required to be considered since the land is located at the very village Malvan, but the distance as found by the Reference Court between the acquisition of the land earlier at which the price was fixed at Rs. 28/- per square metre and the distance of the land under acquisition is required to be taken into consideration which is interior to the highway. Taking into consideration the over all facts and circumstances, it appears to us that the appropriate deduction was required to be made of 40% for the assessment of the market price of the land even if basis was required to be considered of the earlier decision of the Reference Court for acquisition of the land at village Malvan.

8. Accordingly, if Rs. 28/- per square metre is taken into consideration, 40% of the said amount would come to Rs. 11.20 and consequently, the net amount would come to Rs. 16.80 per square metre. Further, in the very decision of the group of First Appeal No. 2869/10 and allied matters, this Court had an occasion to consider the question of appreciation and it was found by this Court that keeping in view the facts and peculiar circumstance that the lands were located in Surendranagar District read with the the observations of the apex Court in the case of General Manager, ONGC v. Ramesh J.P., reported in (2008) 14 SCC 745 and more particularly the observations made at paragraph 17, the appropriate

appreciation can be calculated at 7% p.a. In the present case, as the notification under 4 of the Act is dated 30.08.1991, about 5 years appreciation will have to be calculated at 7% p.a. Accordingly, total appreciation of 35% (7 X 5 = 35) of the principal amount of 16.80 per square metre would come to Rs. 5.88 ps and consequently, the net amount of Rs. 22.68 would be the market price of the land in question. Out of the said amount, the amount of compensation at Rs. 0.75 ps has already been paid and therefore, the additional amount of compensation would be Rs. 21.93 and if rounded would come to Rs. 22/- per square metre, but such would be for non-irrigated land. This Court had also an occasion to consider the question of difference between the price of the irrigated and non-irrigated land in the above referred group of First Appeal No. 2869/10 and allied matters and it was observed by this Court at paragraph 18 of the said decision taking into consideration the observations made by the Apex Court in the case of Kantaben Manibhai Amin and Another Vs. Special Land Acquisition Officer, Baroda, that there would be difference of about 25% in price if the comparison is to be made between non-irrigated and irrigated land and to say in other words, irrigated land will have higher value of 25% more in comparison to non-irrigated land. Therefore, if 25% is added, the amount would come to Rs. 5.50 plus Rs. 22/- which is calculated as the basic price. Consequently, the net amount would come to Rs. 27.50, out of which 1.12 is already paid as compensation and therefore, the net, being additional amount of compensation would come to Rs. 26.38 and if rounded of would come to Rs. 26.40. Under the circumstances, the judgment and the award of the Reference Court deserves to be modified accordingly.

9. So far as the acquisition of the land at village Akhiyana is concerned, it can be treated at par for the acquisition of the land at village Pipli which came to be considered by this Court in the group of First Appeal No. 2869/10 and allied matters. We may state that for arriving at the valuation of village Pipli, this Court had observed in the above referred decision at paragraph 19 as under:

19. The aforesaid shall be the position for the acquisition of the land at Village Sedla, but such will not be the situation for the land located at Village Pepli. If the distinction of the land is taken into consideration as considered by the Special Land Acquisition Officer it does appear that for the acquisition of the land at Village Pepli, the market price assessed is Rs. 0.56 per sq. mtrs., for non-irrigated land and Rs. 0.84 per sq. mtrs., for irrigated land, as against the price fixed of Rs. 1.32 for the irrigated land and Rs. 0.88 for the non-irrigated land at Village Sedla. If the said distinction is kept in mind and thereafter the basis of the market price is assessed of the land at Village Sedla is taken into consideration, the consequential effect would be that the market price for the irrigated land at Village Pipli would come to Rs. 15.88, whereas for non-irrigated land, it would come to Rs. 12.65. Out of the said amount for irrigated land, if the amount of Rs. 0.84 is deducted, being the compensation already paid, the net amount would come to Rs. 15.04 and if rounded off, it would come to Rs. 15.05 for the irrigated land. Whereas for non-irrigated land, if the price fixed by the Special Land Acquisition Officer is considered in comparison to the price fixed for

the land of Village Sedla and assessed by us at Rs. 19.88, such amount of Rs. 12.65 being the market price of the land at Village Pipli, out of which, Rs. 0.56 is already paid as the compensation and, therefore, the additional amount would come to Rs. 12.09 and if rounded off, it would come to Rs. 12.10 per sq. mtrs., being the additional compensation.

10. If the matter is considered in light of the quality of the land as found by the Land Acquisition Officer, it can be said at par with the acquisition of the land at village Pipli. Further, the location of the land is also adjacent to the land at Akhiyana, which is the land adjacent to village Pipli as contended by the learned Counsel appearing for the land owners/original claimants.

11. Under these circumstances, it appears to us that the same valuation as was fixed by this Court in the above referred decision can be considered and treated at par with the land at village Pipli even for the acquisition of the land of village Akhiyana. Consequently, the net additional amount of compensation in view of the reasons recorded hereinabove would come to Rs. 15.04 per square metre and if rounded, it would come to Rs. 15.05 per square metre for irrigated land. Whereas, for non-irrigated land, it would come to Rs. 12.09 being additional amount of compensation and if rounded of, it would come to Rs. 12.10. Under the circumstances, the judgment and the award of the Reference Court for the acquisition of the land at village Akhiyana forming part of the group of the First Appeals No. 1687/10 and allied matters with the cross objections deserve to be modified accordingly.

12. So far as the other part of the judgment and the award of the Reference Court is concerned, they pertain to the statutory benefits under Sections 23(1A), 23(2) and 28 of the Act and the same are not required to be interfered with, save and except to the extent on account of the increase in the principal amount of compensation, such amount shall proportionately get enhanced.

13. In view of the aforesaid observations and discussions, it is held that for the acquisition of the land at village Malvan, the concerned land owner/original claimant would be entitled to additional compensation at Rs. 22/- per square metre for non-irrigated land and Rs. 26.40 for irrigated land. It is further held that for the acquisition of the land at village Akhiyana, the original land owners/ original claimants would be entitled to additional compensation at Rs. 12.10 per square metre for non-irrigated land and Rs. 15.05 ps for irrigated land.

14. Additionally, the claimants would also be entitled to statutory benefits of increase in the price u/s 23(1A) of the Act, solatium u/s 23(2) of the Act and interest u/s 28 of the Act.

15. All the First Appeals preferred by the Appellants shall stand dismissed with no order as to costs. All cross objections preferred by the original claimants shall stand allowed to the aforesaid extent with costs. The additional amount of compensation shall be deposited with the Reference Court within a period of eight weeks from the date of the receipt of the order of this Court.

16. R and P be returned to the Reference Court. It is also observed that in case, if any of the claimants have been expired, after verification of the death and the legal heirs, the Reference Court shall be at the liberty to give effect to the present judgment and order.