

(2011) 09 GUJ CK 0015
In the Gujarat High Court

Case No : First Appeal No's. 523 to 529 of 2009

State of Gujarat and Others

APPELLANT

Vs

Arasi Nathu

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

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

Citation : (2011) 09 GUJ CK 0015

Hon'ble Judges : R.M. Chhaya, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : Moxa Thakker, AGPs 1 and 3, for the Appellant; Vimal M. Patel, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—As all the appeals arise from the common judgment and award passed by the Reference Court, they are being considered by this common judgment.

2. All the appeals arise against a common judgment and award passed by the Reference Court dated 28.06.2006 in Land Reference Case Nos. 67/1999 to 96/1999 whereby the Reference Court has awarded additional compensation at Rs. 594/Are for irrigated land, Rs. 485/Are for non-irrigated land and Rs. 549/Are for waste land. Additionally, the Reference Court has also awarded increase in the market value u/s 23(1A), solatium u/s 23(2) and interest u/s 28 of the Land Acquisition Act, 1894 (hereinafter to be referred to as "the Act").

3. The relevant facts of the case are that lands at Village Amrapur, Dist. Junagadh were to be acquired for Vrujmi Jalashay Yojna under the Act. Notification u/s 4 of the Act was published on 10.09.1981 and notification u/s 6 of the Act was published on 05.08.1982. Thereafter award was passed by the Special Land Acquisition Officer on 30.04.1983 and he granted compensation at Rs. 140/Are (Rs. 14,000/Hectare) for the irrigated land, Rs. 65/Are (Rs. 6,500/

Hectare) for the non-irrigated land and Rs. 1/Are (Rs. 100/Hectare) for the waste land. As the original claimants were not satisfied with the compensation awarded by the Special Land Acquisition Officer, they raised dispute u/s 18 of the Act and demanded compensation of Rs. 1,000/Are. All such disputes were referred to the Reference Court for adjudication being Land Reference Case Nos. 67/99 to 96/99. The Reference Court, at the conclusion of the references, passed the aforesaid judgment and award. Under these circumstances, the present appeals before this Court.

4. We have heard learned AGP for the Appellants and Mr. Patel for the Respondents-original claimants in all the matters. We have considered the record and proceedings and we have also considered the reasons recorded by the Reference Court.

5. It appears from the judgment of the Reference Court that the Reference Court has relied upon the earlier decision (copy whereof was produced at Exh.129) for acquisition of the land and as per the said decision Rs. 625/Are for the irrigated land and Rs. 469/Are for the non-irrigated land was awarded as compensation. It has been further recorded by the Reference Court that the aforesaid decision was accepted by the State the Government. Apart from the above, Mr. Patel, during the course of hearing, has brought to our notice that there was acquisition of the land for the very project at Amrapur village vide notification u/s 4 of the Act dated 01.10.1981 and the Land Acquisition Officer had awarded compensation at Rs. 6,500/Hectare for the non-irrigated land and Rs. 14,000/Hectare for the irrigated land and Rs. 100/Hectare for the waste land. Against which the dispute was raised and was referred to the Reference Court being Land Reference Case No. 20/85 and the Reference Court had awarded additional compensation at Rs. 625/Are for the irrigated land and Rs. 418.75/Are for the non-irrigated land. The matter was further carried before this Court in the proceedings of First Appeal Nos. 720/99 to 725/99 and the learned Single Judge of this Court, vide decision dated 30.11.2006, has confirmed the said decision of the Reference Court and the appeals were dismissed.

6. As such from the above referred decision of this Court, it appears that the decision, upon which reliance has been placed by the Reference Court of the other notification may not assume much importance and on the contrary when the decision is available for the acquisition of the land at the very village and that too for the very project and it was also produced before the Reference Court at Exh.205, in our view, the same would be one of the important aspects which may be required for the consideration of the assessment of the market value prevailing at the time when notification u/s 4 of the Act was published. We may record that in the decision of this Court, the court recorded the reasons at Paragraph No. 5, which reads as under:

5. The Appellants have in-all examined 9 witnesses. Some of them are Government employees, whereas the others are the persons whose lands have already been sold and they have been examined with a view to have the sale-

deeds on record. The Appellants' witness, namely Prabhudas Jivrajbhai, whose evidence is recorded at Exh.104, clearly supports the version given by the Respondents. He has stated that in village Amrapur in the year 1981 the market price of the irrigated land was Rs. 10,000/- per Vigha and that of Jirayat land was Rs. 7,000/-per Vigha. He has also admitted the fact that prices that have been stated by him were after deduction of salvage value of the property. He has also stated that every year there is increase of 10 to 15% in the prices of the land. In view of this evidence of Prabhudas Jivrajbhai as also the evidence of different applicants i.e present Respondents, it appears that the market value determined by the Reference Court is just and proper. As per the Government witnesses themselves, the price of irrigated land of village Amrapur was around Rs. 10,000/-per Vigha. The Reference Court also placed heavy reliance on this evidence and determined the market value at Rs. 62,500/-per hectare. Since the acquisition was quite old, the Reference Court kept in view the relevant aspects and even thereby it came to the conclusion that the just price could be Rs. 10,000/-per Vigha or Rs. 62,500/-per hectare. I have also re-appreciated the evidence of these witnesses and in particular that of Prabhudas Jivrajbhai. There is no reason to disbelieve this evidence. It may also be noted here that the Appellants have examined certain witnesses, namely, Kasam Jamal at Exh. 124, Bhana Naran at Exh. 126, Naran Anand at Exh. 128 and Ajabhai Devabhai at Exh. 134 with a view to bring the sale instances on record. These are the persons who have either sold or purchased the land. However, there is another set of documentary evidence also produced by the present Respondents and the prices reflected therein of the land of Amrapur around the time of acquisition are also supported by the Government witnesses and in particular Prabhudas Jivrajbhai. Though the learned Judge has made observation that Prabhudas Jivrajbhai is rather helping the Respondents instead of Appellants i.e. Government, I do not find anything on record to show that he deliberately did it. Merely because confirmation can be had about the prices which are reflected from the documents produced by the Respondents, it cannot be said that he was out to help the Respondents. On the contrary, it appears that his testimony stands corroborated by documentary evidence. So far the compensation awarded by the Reference Court with regard to structures, crops, trees, etc., standing on the land in question is concerned, it is not very seriously challenged by the Appellants nor do I find any substance in the submissions that have been advanced on behalf of the Appellants. In my opinion, the award made by the Reference Court is just and proper and it does not call for any interference by this Court. These appeals, therefore, do not have any merit and they are dismissed with no order as to costs.

7. The aforesaid shows that the valuation of the irrigated land has been found by this Court @ Rs. 62,500/Hectare and to say in other words Rs. 625/Are. Further as the appeal is dismissed the value for the non-irrigated land at Rs. 418.75 is confirmed. Another relevant aspect is that there is no substantial change in the notification u/s 4 of the Act in as much as in the said case it was published on

01.10.1981, whereas in the present case it is published on 10.09.1981 viz. only few days difference. Under the circumstances, it appears to us that the correct market value of the land can be assessed at Rs. 625/Are for the irrigated land and for the non-irrigated land it can be assessed at Rs. 418/Are.

8. Apart from the above, it also appears from the judgment and award of the Reference Court that the additional compensation has been awarded for the trees as were standing over the land in question. We have considered the evidence on record and also considered the award passed by the Special Land Acquisition Officer. The Special Land Acquisition Officer has awarded compensation by making valuation of the trees and the said compensation has been granted in addition to the compensation for the land. If the said aspect is further considered with the evidence of the witnesses, we find that the evidence is not satisfactory to award additional compensation for the trees. Under these circumstances, we find that the additional compensation awarded by the Reference Court for the trees is without there being any substantial and sufficient evidence and hence, the same cannot be sustained.

9. Further the additional aspect, as it appears from the award of the Reference Court, is that of granting compensation for the waste land. The Special Land Acquisition Officer has awarded compensation to the occupiers of the waste land at par with the irrigated and the non-irrigated lands owned by the concerned original claimants. We find that such an approach on the part of the Reference Court cannot be sustained for the simple reason that the occupants, who are in possession of the agricultural land, may be as the tenants or as the owners would stand on different footing for the purpose of fixing the compensation at the time of acquisition in comparison to those persons who are in occupation of the waste land without there being any right under the law. We may also record that no evidence is brought to our notice showing that the possession of the waste land by the original claimants was under any order of allotment by the Government or the competent authority, may be by way of a restricted tenure or otherwise. Therefore, if one has occupied the waste land and is cultivating the waste land, may be for a long period but such aspects would reflect on the quantum of compensation to be paid to the occupant. It is true that if the strict view is taken, one may find that if the ownership is lacking or that a lawful entry is lacking, no compensation whatsoever may be available. But, at the same time, if the possession is continued for a long time and when the State has deprived of such possession, we find that it would be a case to compensate towards deprivation of the possession of the waste land to the occupant. We are inclined to take such a view, in view of the peculiar circumstances that in the notifications under Sections 4 and 6 of the Act as the total area is provided, which includes the waste land under the possession of the concerned claimants, and, therefore, we find that the appropriate compensation would be required to be awarded towards deprivation of the land, which was in the possession of the occupants since long time and the trees were grown over the same. But such quantum of compensation should be 25% of the market value of the land. As the land was

the waste land and no authenticated material was produced for allotment of the land or otherwise by the competent authority to the occupant, the other statutory benefits on the amount of compensation as that of the market value u/s 23A of the Act, solatium u/s 23(2) of the Act and the interest u/s 28 of the Act may not be available but, at the same time, since the amount of compensation as remained unpaid or in any case until the amount of compensation is deposited in the Court, the State Government has enjoyed the money and, therefore, by way of compensatory measure, keeping in view the bank rate interest prevailing, the claimants, who are in possession of the waste land, would be entitled to interest @ 9% p.a.

10. In view of the aforesaid observations and discussion, the judgment and award passed by the Reference Court for granting compensation to the occupants/claimants, who are in possession of the waste land, deserves to be modified accordingly.

11. The other benefits, which have been awarded by the Reference Court to the claimants, who are in possession of the irrigated and non-irrigated lands as per the provisions of Sections 23(1A), 23(2) and 28 of the Act are concerned, the same are not required to be interfered with, save and except that such amount shall proportionately get reduced on account of reduction of the principal amount of compensation.

12. In view of the aforesaid observations and discussions, it is declared and directed that the original claimants shall be entitled to the compensation at Rs. 625/Are for the irrigated land and Rs. 418/Are for the non-irrigated land. Out of the said amount, the amount of compensation already awarded by the Special Land Acquisition Officer would be required to be deducted and the net additional amount of compensation shall be Rs. 485/Are for the irrigated land and Rs. 353/Are for the non-irrigated land. Additionally, such claimants shall also be entitled to the statutory benefits of increase in the market value u/s 23(1A), solatium u/s 23(2) and interest u/s 28 of the Act. However, so far as the interest u/s 28 of the Act on the quantum of the amount of solatium u/s 23(2) of the Act is concerned, in view of the decision of this Court in case of Gujarat Industrial Development Corporation v. Patel Bhagwanbhai Bhimjibhai and Anr., rendered in First Appeal No. 805 of 1994 and allied matters on 07.07.2011, which has been taken based on the decision of the Apex Court in the case of Iyasamy and another Vs. Special Tehsildar, Land Acquisition, (2010) 1 SCC 464 such would be available from 19.09.2001 and not prior thereto. Therefore, the entitlement of the interest u/s 28 of the Act on the amount of solatium shall be from the said date.

13. It is further observed that the original claimants, who are in possession of the waste land (as described and considered in the award of the Special Land Acquisition Officer) would be entitled for the compensation @ 25% of the amount of 625/Are and Rs. 418/Are for the irrigated land or for the non-irrigated land, as the case may be. It is also observed that no benefits u/s 23(1A) and u/s 23(2) of the Act nor the interest u/s 28 of the Act would be available to such claimants

but they would be entitled to get interest @ 9% p.a. from the date of taking over the possession until the amount is paid or deposited in the Court.

14. No compensation shall be available for the trees to any of the claimants.

15. The amount of compensation, if not deposited shall be deposited as per the present judgment, within a period of 08 (eight) weeks from the receipt of copy of this judgment.

16. The judgment and award of the Reference Court shall stand modified to the aforesaid extent. The appeals are partly allowed accordingly. Considering the the facts and circumstances, there shall be no order as to costs.

17. Record & proceedings be returned to the Reference Court.