

(1999) 03 GUJ CK 0029

In the Gujarat High Court

Case No : First Appeals No's. 1577 and 1598 of 1988

State of Gujarat

APPELLANT

Vs

Bhanumati Hargovinddas Shah

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 23(1A), 34

Citation : (1999) 03 GUJ CK 0029

Hon'ble Judges : M.H. Kadri, J;J.M. Panchal, J

Bench : Division Bench

Advocate : M.R. Raval, A.G.P. in F.A. Nos. 1577 to 1587 of 1988 and H.L. Jani, A.G.P. in F.A. Nos. 1588 to 1598 of 1988, N.S. Shevde, D.K. Nakrani and Shantilal S. Shah, for the Appellant; G.M. Amin and P.S. Champaneri, for the Respondent

Judgement

J.M. Panchal, J.—By means of filing these appeals u/s 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the State of Gujarat has challenged legality of the common judgment and award dated December 31, 1987, rendered by the learned Assistant Judge, Surendranagar, in Land Reference Cases No. 2/81 to 23/81. The lands belonging to the respondents were placed under acquisition pursuant to publication of preliminary notification u/s 4(1) of the Land Acquisition Act, 1894, on September 2, 1974. We may state that Land Reference Case No. 6/81 was treated as the main case and the parties had led common evidence therein. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. A proposal to acquire (1) open plots (2) common plots (3) private roads and (4) agricultural lands of village Dudharej situated on the northern boundary of Surendranagar City for the public purpose of "Virangam-Okha-Porbandar Broad-guage Conversion Scheme", was received by the State Government. On verification of the said proposal, the State Government was satisfied that open

plots, common plots, agricultural lands, etc. of village Dudharej were likely to be needed for the said public purpose. Accordingly, notification u/s 4(1) of the Land Acquisition Act, 1894 ("Act" for short) was issued, which was published in the Government Gazette on September 2, 1974. The lands to be acquired were specified in the said notification. The owners, whose lands were sought to be acquired, were served with notices u/s 4 of the Act. They had filed their objections against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report u/s 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that open plots, common plots, agricultural lands, etc. of village Dudharej specified in the notification published u/s 4(1) of the Act were needed for the public purpose of "Virangam-Okha-Porbandar Broad-guage Conversion Scheme". Therefore, declaration u/s 6 of the Act was made which was published in official gazette on August 14, 1975. Interested persons were thereafter served with notices u/s 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 15/- per sq.yard i.e. Rs. 17.98 ps per sq.mtr., but, having regard to the materials placed before him, the Land Acquisition Officer, by his award dated July 30, 1980 offered compensation to the claimants at the rate of Rs. 2.50 ps to Rs. 5.00 per sq.mtr for agricultural and non-agricultural lands respectively. By the said award, the land owners were also offered compensation at the rate of Rs. 1.00 per sq.mtr for private roads and common plots. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the District court, Surendranagar, which were numbered as Land Reference Cases Nos.2/81 to 23/81. In the reference applications, the claimants pleaded that the lands acquired were very valuable, and having regard to overall development, which had taken place near the acquired lands as well as potentiality of the agricultural lands for building purpose, they were entitled to higher compensation. Having regard to different qualities and nature of the acquired lands, the claimants had claimed different amounts of compensation ranging between Rs. 10 and Rs. 24 per sq.mtr before the Reference Court. The reference applications were contested by the present appellants vide written statement Exh. 8. In the reply, it was stated that those claimants, who had not laid any claim in response to service of notices u/s 9 of the Act, were not entitled to any enhanced compensation. It was pleaded that the Land Acquisition Officer had taken into consideration all the relevant factors before making the award and therefore the reference applications should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were framed by the Reference Court at Exh. 9. In order to substantiate the claim advanced in the reference applications, the claimants examined (1) Jagjivan Ujamsinh at Exh. 20, (2) Navnitlal Mohanbhai at Exh. 33, (3) Kantilal Girdharlal Shah at Exh. 34, (4) Vanechand Kalidas Shah at Exh. 37, (5) Jagbahadursinh Ramsharansinh at Exh.

39, (6) Pratap Himatlal at Exh. 38, (7) Abdul Noormohmad at Exh. 42, (8) Vidhyagauri Rajkumar at Exh. 43, (9) Lalji Kunverji at Exh. 44, (10) Kuberbhai Narsinhbhai Rathod at Exh. 45, (11) Mahendrakumar Ranchhodbhai at Exh. 46, (12) Umedbhai Mulubhai at Exh. 47, and (13) Punamchand Mohanbhai Mehta at Exh. 48. On behalf of the State Government, two witnesses were examined, namely, Rajendrakumar Shantilal at Exh. 64 and Valjibhai Dahyabhai Vaghela at Exh. 65. The claimants had also produced documentary evidence in support of their claim for higher compensation. On appreciation of evidence, the Reference Court held that the compensation offered by the Land Acquisition Officer for agricultural and non-agricultural lands was inadequate. The Reference Court noticed that the lands under acquisition were very near to the northern boundary of the city of Surendranagar and huge development at the relevant time had taken place on the northern side of city of Surendranagar, with the result, there was high potential value of the lands under acquisition for development of Surendranagar city. Having regard to nature of acquisition, Reference Court was of the opinion that the lands under acquisition should be treated as a big homogeneous parcel of the plots consisting of several big and small plots of lands and there was uniform potential value with respect to agricultural lands as well as non-agricultural lands under acquisition. In view of the overall development which had taken place near the acquired lands, Reference Court deduced that it was not necessary to resort to belting method while ascertaining the market value of the acquired lands. It was further held by the Reference Court that the claimants were entitled to same amount of compensation as may be determined for non-agricultural lands in respect of common plots and roads also. After taking into consideration documentary evidence produced by the parties, Reference Court held that sale instances produced by the claimants in respect of Survey Nos. 663, 719, 580, 633 and 606 were relevant as well as comparable for the purpose of ascertaining the market value of the acquired lands. In ultimate decision, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs. 12/- per sq.mtr by the impugned common award, giving rise to the present appeals. We may state that the Reference Court has also granted statutory benefits available to the claimants under different provisions of the Act.

3. The learned Government Counsel submitted that the sale instances relating to Survey Nos. 663, 580 and 606 were not proved at all and, therefore, the same could not have been relied upon by the Reference Court while ascertaining market value of the acquired lands. It was submitted that development in the area nearby the acquired lands had taken place after the acquisition of the lands in the present case and, therefore, the said development could not have been made basis for the purpose of determining market value of the acquired lands. The learned Counsel vehemently submitted that there cannot be uniform potential value of the lands irrespective of fact whether the land is agricultural land or non-agricultural land and, therefore, uniform determination of market value for agricultural as well as non-agricultural lands made by the Reference

Court should be set aside. It was pleaded that the sale instances referred to by the witnesses of the State Government ought to have been relied upon for the purpose of determining market value of the acquired lands and the Reference Court was not justified in not considering the same at all. Learned Counsel for the Government highlighted that the Reference Court was not justified in holding that the claimants were entitled to 12% additional amount of compensation u/s 23(1-A) of the Act, as award was made by the Land Acquisition Officer on July 30, 1980 and, therefore, provisions of section 23(1-A) of the Act would not be applicable to the facts of the present case. The learned Counsel also pleaded that the Reference Court was not justified in directing the acquiring authorities to pay interest on additional amount of compensation payable u/s 23(1-A) of the Act as well as on solatium payable u/s 23(2) of the Act and, therefore, said direction also should be set aside. What was stressed was that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs. 12/- per sq.mtr and, therefore, the impugned common award should be set aside.

4. Mr. G.M. Amin and Mr. P.S. Champaneri, learned counsel for the claimants, submitted that the sale deed dated January 11, 1971 in respect of land bearing Survey No. 663 of village Dudharej produced at Exh. 28 and sale deed dated February 1, 1967 in respect of land bearing Survey No. 663 of village Dudharej which is produced at Exh. 29, are not only comparable but relevant for the purpose of ascertaining the market value of the acquired lands and, if these sale instances are taken into consideration, determination of market value of the acquired lands at the rate of Rs. 12/- per sq.mtr cannot be said to be excessive at all warranting interference of this Court in the present group of appeals. The learned counsel for the claimants further pleaded that the claimants had produced previous award of the Court dated August 13, 1962, rendered in respect of lands of Surendranagar City at mark 104 and the same ought to have been taken into consideration by the Reference Court while ascertaining the market value of the acquired lands. The learned Counsel for the claimants asserted that the Reference Court was not justified in directing the acquiring authorities to pay interest at the rate of 9% from February 17, 1974, inasmuch as date of taking possession of the acquired lands was December 28, 1973 and, therefore, direction to pay interest at the rate of 9% per annum from December 28, 1973 for the first year and thereafter at the rate of 15% per annum till realisation of the amount ought to have been given. What was highlighted by the learned counsel for the claimants was that there was an overall development near the acquired lands at the time of publication of notification u/s 4(1) of the Act and, having regard to possibility of acquired lands being put to better use, the award of compensation at the rate of Rs. 12/- per sq.mtr should not be interfered with by the Court.

5. We have heard the learned counsel for the parties at length and we have also gone through the record of the case. Normally, methods of valuation are: (1) opinion of experts: (2) the prices paid within a reasonable time in bona fide

transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages: and (3) a number of years" purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years" purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. In this case, the Reference Court has referred to sale instances for the purpose of ascertaining the market value of the acquired lands. Those sale instances are tabulated in paragraph 28 of the judgment. However, the sale instances in respect of Survey Nos. 633, 508 and 606 are not proved at all and, therefore, those sale instances could not have been taken into consideration by the Reference Court for the purpose of ascertaining the market value of the acquired lands. The claimants produced sale deed dated January 11, 1971 in respect of land bearing Survey No. 663 of village Dudharej at Exh. 28. We may mention that original survey number of this land was 719. The sale deed was produced during the examination of witness Jagjivan Ujamsinh at Exh. 20. The sale deed indicates that land admeasuring 1201-1-0 sq.yds. was sold to Andh Vidyalaya, Surendranagar by its owner for a consideration of Rs. 8407/0. Seller Jagjivan Ujamshi was one of the joint owners. It is relevant to note that part of original survey No. 719 which was subsequently given new survey no. 663, was acquired in this case. Therefore, this is a sale instance in respect of part of land which was acquired and is the best evidence for determining market value of the acquired lands in view of several decisions of the Supreme Court on the point. It indicates that the land was sold at the rate of Rs. 9.50 ps. per sq.mt. As observed earlier, sale deed was executed on January 11, 1971; whereas notification u/s 4(1) of the Act was published in the present case on September 2, 1974 and, therefore, if appropriate deduction is made having regard to the smallness of the land sold in comparison to large tract of lands acquired in the present case as well as if reasonable rise in price of the land is considered in favour of the claimants because of time lag between the date of sale deed and publication of notification u/s 4(1) of the Act, we are of the opinion that determination of compensation at the rate of Rs. 12/per sq.mt. cannot be said to be excessive at all. Again, Exh. 29 is another sale deed dated February 1, 1967 in respect of part of survey no. 663 of village Dudharej produced by witness Jagjivanbhai. By the said deed, land admeasuring 5120 sq.yds. was sold to Shri Vivekanand Co.op. Housing Society Ltd., Surendranagar for consideration of Rs. 47,817/-. This is also a sale instance relating to part of the land acquired in this case. The sale deed was executed on February 1, 1967; whereas in the present case notification u/s 4(1) of the Act was published on September 2, 1974 and thus, there is time lag of more than 7 years between the date of sale and publication of notification u/s 4(1) of the Act. The extent of land which was sold by the deed dated February 1, 1967 cannot be termed as sale of small land in comparison to the large tract of lands acquired in the present case. If reasonable rise in price of land is considered in favour of the claimants in view of time lag between the date of sale and publication of notification u/s 4(1) of the Act, we

are of the view that determination of compensation by the Reference Court at the rate of Rs. 12/- per sq.mt. is just and reasonable and by no stretch excessive at all. The evidence of witness Jagjivan Ujamsinh recorded at Exh. 20 would indicate that both sale deeds were executed voluntarily and lands were sold at prevailing market value. In our view, two sale instances produced by the claimants at Exhs. 28 & 29 which relate to non-agricultural lands, establish that market value of the non-agricultural lands at the relevant date was Rs. 12/- per sq.mt. However, the Reference Court was not justified in holding that there is uniform potential value with respect to non-agricultural lands as well as agricultural lands and, therefore, market value of both kinds of lands should be uniform as well as identical. It hardly needs to be emphasised that the agricultural land is subject to several restrictions before it could be put to non-agricultural use. For the purpose of developing agricultural land, one is required to incur expenditure for providing enough space for roads, sewers, drains, layout etc. Under the circumstances, agricultural lands and non-agricultural lands could not have been assessed on the same footing and appropriate deduction ought to have been made while ascertaining market value of the acquired agricultural lands on the basis of market value of the acquired non-agricultural land assessed in this case. The Supreme Court in the case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, has laid down that the Court should deduct reasonable amount from the price of non-agricultural land while ascertaining market value of the agricultural land. Having regard to the facts and circumstances of the case, we are of the opinion that interest of justice would be served if 25% is deducted from the price of non-agricultural land for the purpose of ascertaining market value of the acquired lands and accordingly, we hold that market value of the agricultural land acquired in the present case was Rs. 9/- per sq.mt. as on the relevant date.

6. The submission that belting method ought to have been adopted has no substance and deserves to be rejected. We may state that before the acquisition proceedings were initiated, there was an overall development near the acquired lands and several structures had come up adjacent to the acquired lands. The evidence of witnesses examined by the claimants indicates that the development in the area had started since 1954 and there was pressure on the lands in Surendranagar city. It was not brought to the notice of the Court that the lands acquired were abutting on any National Highway or State Highway, though it is true that some of the lands acquired were near the State Highway. So far as the belting method is concerned, the Supreme Court in The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamamma (Dead) by Lrs. and Others K. Krishnamachari and Others, laid down as under:

"When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as

disadvantages, Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason."

In view of the abovereferred to principles laid down by the Supreme Court, we are of the opinion that it is not necessary to resort to belting method while determining market value of the acquired lands.

In view of our finding that the market value of the acquired agricultural land was Rs. 9.00 per sq.mtr. on the relevant date, the appeals filed by the State Government will have to be partly allowed.

In para-37 of the impugned award, the Reference Court has held that the claimants would be entitled to 12% additional amount of compensation as envisaged u/s 23(1-A) of the Act. It is an admitted position that the Land Acquisition Officer had made award u/s 11 of the Act on July 30, 1980 and, therefore, provisions of section 23(1-A) of the Act would not be applicable to the facts of the present case. Therefore, the direction given by the Reference Court to the acquiring authorities to pay additional amount of compensation as envisaged u/s 23(1-A) of the Act will have to be set aside. The record of the case indicates that the possession of the acquired lands was taken on December 28, 1973. It is agreed between the acquiring authorities and the claimants that possession of the acquired lands was taken on December 28, 1973 and there is no dispute on this point. As date on which possession of acquired land was taken, is December 28, 1973, the Reference Court should have held that the claimants were entitled to interest at the rate of 9% per annum for one year from that date and thereafter at the rate of 15% per annum till realisation of the amount and not from February 17, 1974. We accordingly hold that the claimants are entitled to interest at the rate of 9% per annum from December 28, 1973 for a period of one year and thereafter at the rate of 15% per annum till realisation of the amount as contemplated u/s 34 of the Act. We further notice from the Schedule annexed to the impugned award that the claimants are paid interest on additional amount of compensation payable to them u/s 23(1-A) of the Act as well as on solatium payable to them u/s 23(2) of the Act. Such a direction could not have been given in view of the decision of the Supreme Court rendered in case of State of Maharashtra Vs. Maharau Srawan Hatkar, . Therefore, the direction given by the Reference Court to the acquiring authorities to pay interest on additional amount of compensation payable u/s 23(1-A) of the Act as well as on solatium payable u/s 23(2) of the Act, is set aside and quashed.

For the foregoing reasons, all the appeals filed by the appellants are partly allowed. It is held that the market value of the acquired non-agricultural lands on the relevant date was Rs. 12.00 per sq.mtr., whereas the market value of the acquired agricultural lands on the relevant date was Rs. 9.00 per sq.mtr. The

claimants will not be entitled to 12% additional amount of compensation as envisaged u/s 23(1-A) of the Act. The claimants are entitled to interest at the rate of 9% per annum u/s 34 of the Act from December 28, 1973 for a period of one year and thereafter at the rate of 15% till realisation of the said amount. The claimants shall not be entitled to any interest on additional amount of compensation payable to them u/s 23(1-A) of the Act or on amount of solatium payable to them u/s 23(2) of the Act. The rest of the directions given by the Reference Court with regard to payment of solatium, etc. are not disturbed and are hereby upheld. There shall be no order as to costs. The office is directed to draw decree in terms of this judgment.