
(1991) 01 GUJ CK 0013
In the Gujarat High Court
Case No : First Appeal No. 820 of 1979

State of Gujarat	Vs	APPELLANT
Devji Bechar		RESPONDENT

Date of Decision : 15-01-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4, 6

Citation : AIR 1991 Guj 187 : (1991) 2 GLR 736

Hon'ble Judges : R.D. Vyas, J;J.U. Mehta, J

Bench : Division Bench

Advocate : D.K. Trivedi, Govt. Pleader, for the Appellant; B.H. Upadhyaya, for the Respondent

Judgement

J.U. Mehta, J.—The State of Gujarat who is the original opponent No. 1 has filed this appeal against the award passed by the learned Assistant Judge, Bhavnagar in Land Reference Case No. 1 of 1976 and the original claimants-respondents Nos. 1 to 4 in the present appeal have preferred their cross objections against the part of the award in Land Reference Case No. 1 of 1976.

2. Mr. Upadhyaya, learned Advocate for the respondents-original claimants seeks permission to withdraw the cross-objections before effective hearing and the same are permitted to be withdrawn before effective hearing of this appeal. Mr. D. K. Trivedi appearing for the appellant has no objection if the cross-objections are allowed to be withdrawn. The cross-objections are allowed to be withdrawn before effective hearing, with no order as to costs.

3. The lands involved in this case are situated at village Chitra, Taluka District Bhavnagar. Notification u/ S. 4 of the Land Acquisition Act (hereafter referred to as "the Act") was issued on 20-8-1964. Survey Nos. 76, 77 and 78 admeasuring 8 acres 18, gunthas, 6 acres 23 gunthas and 10 acres 30 gunthas respectively of village Chitra, Taluka District Bhavnagar were included in the aforesaid Notification and were acquired for the purpose of establishment of the Industrial Township. After the issuance of S. 4 Notification, public notices inviting claims

were issued and individual notices were also served. The objections received were heard and then report under S. 5A of the Act was submitted to the Government. After considering the objections and the report under S. 5A of the Act, Notification under S. 6 of the Act, dated 18-10-1965 was published on 28-10- Public notices were published and individual notices were also issued and served under Ss. 9 and 10 of the Act. The claimants preferred their claims. They were heard and finally, the Resident Deputy Collector, Bhavnagar, declared award on 9-2-1968. In some cases, the Government cancelled the Notification under S. 6 of the Act and a fresh Notification under S. 6 of the Act with Urgency Clause dated 16-1-1969 was issued and the same was published on 18-1-1969 in the Government Gazette. Notices were accordingly issued under S. 9 of the Act and the same were duly published at the Mamlatdar's Office, Bhavnagar, Talati's Chora and on the lands on 20-4-1970. Individual notices under S. 9(3)(4) of the Act and also under S. 10 of the Act inviting claims were also issued and served upon the persons concerned. Before the date of hearing, the stay was issued by the High Court in the writ petition filed by the interested persons. Later on, the writ petition so filed was withdrawn and consequently, the Stay Order was vacated. The acquiring body i.e. the G.I.D.C. offered rates of land valuation and other terms for consent award. The, interested persons agreed to accept these rates and terms and executed the consent agreements. A consent award was passed in respect of the acquired lands except three survey numbers, which was involved, in the present appeal, bearing Survey Nos. 76, 77 and 78. In respect of the said Survey Numbers, the claim at the rate of Rs. 20,000 / - per acre was made before the Special Land Acquisition Officer. The Special Land Acquisition Officer awarded the compensation at the rate of Rs. 65 / per gunthas for the land bearing Survey Nos. 76 and 77 treating it as Bagayat land and at the rate of Rs. 50/ - per Guntha for the land of S, No. 78 treating it as Jirayat land. The claimants did not accept the award and, therefore, an application was made to the Special Land Acquisition Officer for making reference under S. 18 of the Act. The reference accordingly was made before the District Court and it was heard by the learned Assistant Judge, Bhavnagar and gave the award by his judgment dated 30-11-1978, enhancing the compensation by fixing the market price of the acquired land at Rs. 46250 per guntha i.e. fixing the market price at the rate of Rs. 18,500/- per acre.

4. Being aggrieved by the said judgment and award passed by the learned Assistant Judge, Bhavnagar; the State has preferred this appeal. The claimants also, being aggrieved by the same judgment and award, filed cross-objections.

5. The learned Government Pleader appearing on behalf of the State submitted that the trial Court erred in relying upon the sale instances produced by the claimants, which related to small plots of land which were not comparable with the lands under acquisition. He submitted that the land under acquisition is much larger in area and the trial Court ought not to have relied upon the post Notification sales of small plots of land produced by the claimants. Mr. D. K. Trivedi also submitted that the instances of sale produced by the claimants

related to the lands situated on the southern side of the Rajkot Bhavnagar Highway, situated on a high level near village Chitra, while the lands under acquisition are far away from village Chitra and situated on the northern side of the Rajkot-Bhavnagar Highway. Mr. D . K. Trivedi appearing on behalf of the appellant also submitted that the lower Court erred in relying upon the sale deeds at Exs. 86, 87, 88, 89, 71, 46, 44, 59 and 77 which were not comparable sale instances. He submitted that, therefore, the award of the excess amount of compensation awarded to the claimants be quashed and set aside.

6. Mr. Upadhyaya, learned Advocate appearing on behalf of the claimants submitted that the appeal filed by the State should be dismissed.

7. Mr. D. K. Trivedi, learned Government Pleader appearing for the appellant State took us through the evidence led on behalf of the claimants.

8. Before we proceed to discuss the evidence led in this case, well known principles laid down by the Courts will have to be kept in mind. It is laid down by this High Court in the case of Collector of Panchmahals v. Desai Keshavlal Panalal, reported in AIR 1969 Guj 276 as follows (para 3):-

"The person who challenges the award becomes as it were, a plaintiff in the Court and he has to show to the satisfaction of the Court that the amount awarded has not been the proper market value of the property under acquisition and that he should be awarded at a particular rate or price set out in the reference. In other words, the proceedings before the Court start afresh and it is on the legal evidence produced before it that it has to arrive at his own judicial finding and pass an award under the provisions of the Act."

It is also laid down in the said case as follows (para 4):-

"The best method of determining the true market price of any land or property under acquisition at the date of notification published under S. 4 of the Act is to base it on instances of sale of the same land or a portion of land having taken place by about the same time. The next best method is to look for other instances of sale comparable in time and quality. In other words, the instances of sale should have been in respect of lands in the nearby locality or area having the same and similar advantages or disadvantages as the lands under acquisition. Those instances must also be nearer In point of time to the date of notification published under S. 4 of the Act for the acquisition of land."

It is also laid down that:-

"Before such instances of sale can be considered there must be material evidence either by the production of the sale deeds or by examining the parties to the deeds or persons having knowledge of the sales, to prove that the sales are genuine. In the absence of such evidence they can be of no help in ascertaining the market value of the lands."

9. Now, keeping in mind the aforesaid principles, we would like to see what is the

evidence led by the claimants in this case, to fix the market price of the acquired lands. On behalf of the claimants, applicant No. 1 Jasmat Devji is examined at Ex. 90 and also other persons who have deposed about the sale instances produced on record as persons well conversant with the said transactions and in whose presence some of the documents were executed. Jasmat Devji has deposed that he is doing the Vahivat on behalf of his family members who are other applicants in this case. He says that all the applicants reside together at village Nari. He says that there is one well in S. No. 76 and there are two wells in the land S. No. 77. He says that he claimed Rs. 2000/- as compensation for the well in S. No. 76 and Rs. 5000/- as compensation in all for two wells in S. No. 77. According to him, he laid the pipelines for the passage of water of the well to irrigate his lands and that he has claimed Rs. 1000 /- for the cost of the pipeline. He also says that he made a gutter to discharge the water of the well and he has claimed Rs. 600/ -. For the acquired lands, he says that he has claimed at the rate of Rs. 20,000/- per acre. So far as the situation of the acquired land is concerned, he says that the road running between Nari and Bhavnagar meets the Bhavnagar-Rajkot road at village Chitra and the said approach road of village Nari passes through the land of S. No. 76 on one hand and S. Nos. 77 and 78, on the other hand. According to him, they used the water of three wells for irrigating their fields and that the acquired lands had fruit-bearing trees, viz. pomegranate and pear. In the cross-examination, he says that he has no written proof of show that there was a well in the land S. No. 76. He has also admitted that he had not declared at any time to the revenue authorities or any other authorities that there was a well in the land of S. No. 76. He says that the compensation as claimed at serial Nos. 6, the Land Acquisition Officer as per the award and to that extent has already paid 7 and 8 in his application to him; the said claim of Rs.3600/- does not survive. So far as the wells are concerned, he has stated that his deceased father constructed the said wells and the said wells were more than 40 years old. He denied the suggestion made on behalf of the opponents that there was no water in the said wells and they were lying unused since long time. lie also admitted in his cross-examination that lie had no written accounts about the amount spent on the pipe line and the drainage. He further says in his cross examination that the lands situated to the south of Bhavnagar-Rajkot road opposite the lands of village Chitra were Padtar lands, while the lands situated to the north of the said road are agricultural lands. He admitted that the lands on the southern side were sold earlier; whereas the agricultural lands on the northern side started to be sold after the year 1965-66. Thus, the evidence of the claimant Jasmat Devji does not help us in arriving at the true market price of the acquired land. But the claimants have led the evidence of the other persons by producing the sale deeds through them to enable the Court to evaluate the market price of the acquired lands and now we will deal with the sale instances produced on behalf of the claimants.

10. In all 9 sale deeds are produced on record through different witnesses and they are exhibited at Exs. 86, 87, 88, 89, 71, 46, 44, 59 and 77. The sale deed

at Ex. 71 is of 14-3- the sale deed at Ex. 46 is of 22-4-1968. The sale deed at Ex. 44 is of 25-9-1968. The sale deed at Ex. 59 is dated 2-1-1969 and the sale deed at Ex. 77 -is dated 15-3-1969. The documents are post-notification sale deeds because in the present case the notification under S. 4 is published on 20-8-1964. Now, it will be seen that the transactions of sale at or about the time of the preliminary notification under S. 4 are usual and indeed the best evidence of market value, as time and again stated by this High Court and the Supreme Court. Therefore, we will have to see whether there are other transactions of sale at or about the time of the notification under S. 4 in the present case.

11. Now, in the present case, what the trial Court has done is that it has relied upon the maximum price paid in sale transaction at Ex. 44 dated 25-9-1968, which is at Rupees 12.91 p. per sq. yard for adopting reduction theory between one-half and one-third and of 45%, relying upon the decision of the Gujarat High Court in First Appeal No. 135 of 1964 and has also relied upon the award in Land Reference Case No. 14 of 1973 wherein the market price of S. No. 176 of village Chitra, admeasuring 16 acres- 14 gunthas was fixed at Rs. 4/- per sq. yard. The learned Judge, in our opinion, committed an error in relying upon this award because the preliminary notification under S. 4 of the Act issued in that case was dated 26-5-1969, the trial Court fixed the market price at Rs. 462.50 per guntha i.e. something less than what was awarded in Land Reference Case No. 14 of 1973. The market price of the land comprised in Land Reference Case No. 14 of 1973 would be Rs. 484/- per guntha. In our opinion, when there were other sale transactions available on record, produced by the claimants of near about the time of the preliminary notification under S. 4, the trial Court ought to have concentrated on the same for fixing the market value of the acquired lands. The other sale transactions produced by the claimants are near about the time of the preliminary notification of the acquired lands and they are at Exs. 86, 87, 88 and 89. The sale deed at Ex. 86 is dated 5-2-1963. The sale deed at Ex. 87 is dated 20-3-1963. The sale deeds at Exs. 88 and 89 are dated 28-3-1963 i.e. they are the transactions executed at or about the time of the preliminary Notification under S. 4 of the Act.

12. Now, we proceed to discuss the evidence of those witnesses who have produced and proved the aforesaid sale deeds from Exs. 86 to 89. Exs. Gajanand Shamaldas Raval who is examined at Ex. 72 produces 86, 87, 88 and 89. He has stated in his evidence that he has personal knowledge as regards the transactions evidenced by the documents, Exs. 86, 87 and 89 which were marked as Exs. 73/1, 73/2 and 73/4. He also stated that he was present at the time of the execution and registration of the said documents. He also stated that the amounts of consideration of the said documents were also paid in his presence. He also stated that all the said transactions happened to be genuine and bona fide transactions and the contents of the said documents are correct. On this point, there is no cross-examination on behalf of the present respondents. Plot No. 41 sold by Ex. 86 on 5-2-1963 admeasured 602 sq. yards, the price rate of which comes to Rs. 5-83 p. per sq. yard. The next sale deed is

at Ex. 87, dated 20-3-1963 and it is a sale transaction of plot No. 98, admeasuring 602 sq. yards and the rate is Rs. 4-90 per sq. yard. The sale deed, Ex. 88, dated 28-3-1963 is a sale transaction of plot No. 127 admeasuring 602 sq. yards and the price is at the rate of Rs. 4-90 per sq. yard. So far as the sale deed, Ex. 89, dated 28-3-1963 is concerned, it is sale transaction of plot" No. 129, admeasuring 602 sq. yards at the rate of Rs. 4-90 per sq. yard. In our opinion, Gajanand has proved the sale-trans actions of the aforesaid documents and the said sale transactions appear to be bona fide transactions of sale at or about the time of the preliminary Notification and, indeed, can be relied upon in the present case to be the best evidence of market value. But before arriving at the correct market price of the acquired lands, it will have to be appreciated that these sale transactions are of small plots. They are converted into N.A. before the sale transactions were entered into and they were better situated than the acquired lands, in this way that the plotting activities were on the southern side of Bhavnagar-Rajkot road than on the northern side of the said road where the acquired lands are situated. It is true that it is a well recognised principle of valuation of lands not to value large areas of land on the basis of sales of small areas without making suitable deductions from sale price of small plots of land on account of the largeness of the size of the land sought to be evaluated with reference to the said small plots. But, in our opinion, neither the valuer nor the, Court would be justified in rejecting the sale instance of a small plot as one that is not a comparable sale instance only on the ground of difference in size, and a large plot of land may, in a given case, justly be valued on the basis of the sale instance of small plot of land after making suitable deductions and allowances from the sale price of the small plot of land on account of the largeness of the size of the land sought to be evaluated. Ordinarily, a large tract of land cannot be valued on the same basis as a small plot of land. The reasons therefore are obvious. The number of intending purchasers competing for the purchase of a small plot would be far greater than that for a large plot, with the result that the seller of a small plot is likely to obtain a comparatively higher price than the seller of a big plot of land. Furthermore, when a small plot is purchased, the actual rate at which it is purchased may not be very carefully or properly scrutinized, the whole cost of purchase being small. The investment, which would be required to be made in the purchase of a large plot of land, would be relatively very much higher and the risk, which the purchaser of such a plot undertakes would in its magnitude, be also great. It is commonly known that a person who has to sell a large tract of land may not be able to sell it all at once unless there is a brisk market and keen demand for the lands in the locality and as such also the market value of such land would be less. If the intending purchaser of a very large plot of land enters into the transactions with the idea of parceling it out into small plots and selling it to different purchasers, he takes into account the cost of development which may have to be incurred in demarcating the plots, deducing the area for accommodation, laying the roads, providing for water and electricity supply and other amenities, and in otherwise making the smaller plots marketable. He has also to provide for the costs, which

may have to be incurred on advertising the project, paying commission to land agents and brokers and conveying such a large number of small plots to different buyers. He has also to make allowance for the loss of interest on the investment made in the purchase of large plot because some period of time is bound to elapse before all the small plots may be sold and he must also contemplate the possibility of some of the smaller or inferior plots remaining unsold. Having regard to all these diverse factors and considerations, it is a well known principle of valuation of lands not to value large areas of land on the basis of sales of small areas without making suitable deduction from sale price of small plots of land on account of the largeness of the size of the land sought to be evaluated with reference to the said small plots. The view which we are taking is supported by the judgment of this High Court in the case of Collector of Panchmahals Vs. Desai Keshavlal Panalal, . In the said case, this High Court has laid down that no hard and fast rule can be laid down with regard to quantum of deduction, and it would not be proper to adopt a dogmatic or doctrinaire approach in the matter and while evaluating a large plot of land by reference to the sale instance of a small plot of land, several factors must enter into account and no definite rule can be laid down as to the exact extent of deduction to be made.

13. We are unable to accede to the submission made by the learned Government-Pleader that the sale instances evidenced by Exs. 86 to 89 are not comparable sale instances and do not evidence a prudent purchase. We are also unable to hold that the claimants have failed to discharge the initial burden that lay upon them to show that the compensation offered by the Land Acquisition Officer was prima facie inadequate. We, therefore, hold that the lower Court was justified in entering upon an inquiry whether or not the compensation offered by the Land Acquisition Officer was adequate. As we said earlier, the lower Court was not justified in awarding enhanced compensation on the strength of the post-notification sale deed at Ex. 44 by which the sale price at the rate of Rs. 12-91 p. per sq. yard was entered into. The trial Court also was not justified in relying upon the award in Land Reference Case No. 14 of 1973 wherein S. 4 Notification of the acquired land was dated 26-5-1969. The trial Court ought to have borne in mind that the notification under S. 4 in respect of the present lands was published on 20-8-1964. Keeping in mind the principles laid down by this High Court in (1971) 12 Guj LR 319 (supra), in our opinion, a deduction of approximately 33% from the sale price of the sale transaction at Ex. 89 which is dated 28-3-1963 would adequately meet the requirements of the case and, therefore, we will evaluate the market price of the acquired lands on that basis at Rs. 3-40 p. per sq. yard and that will be Rs. 411-40 p. per guntha and it will be Rs. 16456/- per acre.

14. In view of the above discussion, the appeal of the State is partly allowed to the extent of 42 p. per sq. yard. The claimants are awarded compensation at the rate of Rs. 3.40 p. per sq. yard for the area admeasuring 124751 sq. yards acquired and solatium thereon at the rate of 15%, and interest at the rate of 4 1/2%. "The rest of the claim of the claimants is disallowed. The present

respondents-original claimants do pay to the appellant the excess amount with proportionate costs and running interest at 4 1/2% on the excess amount of compensation and the solatium till the date of repayment. The conditions attached to the deposited awarded amount will remain only to the extent of the amount decreed by this Court till the repayment is made. Decree to be drawn accordingly.

15. Appeal partly allowed.