(1994) 07 GUJ CK 0008

In the Gujarat High Court

State of Gujarat APPELLANT

Vs

Gobar Rupa RESPONDENT

Date of Decision : 19-07-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 6

Citation : (1995) 1 GLR 1

Hon'ble Judges : B.N. Kirpal, C.J;R.K. Abichandani, J

Bench : Division Bench

Judgement

B.N. Kirpal, C.J.—This judgment will dispose of First Appeals Nos. 1424 to 1431 of 1986, 1433 to 1457 of 1986, 1458 to 1482 of 1986, 1483 of 1986 to 1507 of 1986, 1508 of 1986 to 1532 of 1986, 1535 to 1559 of 1986, 1610 to 1634 of 1986 relating to village Veratia in District Jamnagar. The aforesaid lands were acquired for the purposes of Und Irrigation Scheme under the provisions of the Land Acquisition Act. Notification u/s 4 was issued on 30-11-1978 which was followed by Section 6 Notification on 17th. July, 1980 and the award was made by the Land Acquisition Collector on 27-3-1981. By the said award a sum of Rs. 2.50 per square metre was offered to the claimants for open land. Some of the land had construction upon it. The Land Acquisition Collector relied upon a report of the Deputy Engineer, who had categorised the houses which had been constructed, into four different categories. On the basis of the said report a sum of Rs. 231 per square metre was awarded in respect of category "A", Rs. 144/- per square metre was awarded in respect of category "B", Rs. 126/ - per square metre was awarded in respect of category "C" and Rs. 99/- per square metre was awarded in respect in respect of category "D".

2. Being dissatisfied with the aforesaid offer, the claimants made applications for reference u/s 18 of the Land Acquisition Act. By judgment dated 13th December, 1985, the Assistant Judge, Jamnagar awarded a sum of Rs. 12.50 per square metre for open land and Rs. 450/- per square metre for the constructed land.

3. In arriving at the aforesaid conclusion regarding the fixation of compensation

for open land, the Assistant Judge noticed that in the year 1966, 41 sq. yards of land had been purchased for Rs. 450/- and the same was proved by a Kabulat Ex. 23. The price for one square foot of land came to Rs. 10.50. The Assistant Judge also observed that the claimants themselves had produced abstracts of sale by Government auction of open pieces of land in village Virpur, Dhutarpur and Varna for the period 1967 to 1976 which show that the prices ranged from Rs. 3.02 to Rs. 4.00 per sq.mtr. In addition to that he also took note of a sale-deed Ex. 81 in respect of a parcel of land admeasuring 25 sq.ft. having one kachha road which was sold at Rs. 111/- per sq. mtr. From the aforesaid instances, and without any further discussion, the Assistant Judge came to the conclusion that the claim of the claimants of Rs. 12.50 per sq. mtr. for open piece of land was reasonable.

4. With regard to amount of compensation in respect of constructed properties, the Assistant Judge held that village Veratia consisted of 400 houses and the claimants who had been examined had deposed that their houses were pucca houses having good facility. While rejecting the evidence in the form of the report of the Deputy Engineer which had categorised the construction into four different categories on the ground that the author of the said report has not been examined, the Assistant Judge came to the conclusion that there was no cogent evidence to rebut the evidence of the claimants that the houses were pucca and therefore, it was not necessary to classify the houses into different categories. He then concluded that all the calimants should be entitled to the same amount of compensation and for determining the compensation, he held that an award Ex. 19 had been given in respect of the very same Und Irrigation Scheme for the construction in the neighbouring village Kharavedha. The said award shows that houses had been classified into different categories and compensation had been given ranging from Rs. 372 to Rs. 438. Observing that there is no sale instance of any house in village Veratia he concluded that the sale1 instances by way of award Ex. 19 will be relevant and the claim of Rs. 450/- per sq.mtr. for constructed property was not unreasonable. The effect of the above conclusion is that the entire claim of the claimants, viz., Rs. 12.50 for open land and Rs. 450/- per sq.mtr. for constructed portion was accepted in toto.

5. The aforesaid decision of the Assistant Judge is impugned in the present appeals.

6. Compensation has to be awarded in terms of the provisions of Section 23 of the Land Acquisition Act. The principles for determining the said compensation have, by now been clearly enunciated in different decisions of the Supreme Court and other Courts. On behalf of the appellants, it has been contended that ratio of the decision of the Supreme Court in M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, is relevant and should be followed. In that case for determination of the market value of the acquired plots of land the High Court had followed the average price basis. The Supreme Court, however, observed that "if a land sold under a sale-deed is comparable with the acquired

land, then the Courts will have, ordinarily recourse of comparable sales method of valuation to determine the market value of the acquired land. The price fetched under a genuine sale-deed could form the basis for determining the market value of an acquired land and market value determined by an award made under the Act, for an earlier acquired land, either by the Land Acquisition Officer or the Court could also form the basis for determining the market value of subsequently acquired land. ''Price basis'' got by averaging comparable sales or awards which are not of same kind could not be a correct reflection of the price which the willing seller would have got from the willing buyer, if the acquired land had been sold in the market.

7. Mr. J.R. Nanavati, on the other hand placed reliance on the decision of the Supreme Court in the case of Inder Singh and Others Vs. Union of India (UOI) and Others, . It was held in this case that a claimant was entitled to just and reasonable compensation and for determining the market value of the lands, the prevailing price as on the date of publication of Section 4 Notification, the sale transaction of the same lands or sale of lands situated in the neighbourhood would furnish evidence of comparable sales. It would be possible to have reliable evidence when sales transactions are proved by either the vendor or the vendee and if either of them was not available, the attesting witness who has personal knowledge in the transaction is to be examined by producing either the original sale-deed or certified copy thereof. The examination of the witness is to find that the sale transaction is a bona fide and genuine transaction between willing vendor and willing vendee as reasonable prudent men and the price mentioned is not throw away price at arms length or depressed sales or brought into existence to inflate market value of the lands under acquisition and the sales are accommodating one. It was further held that in assessment of a fair and reasonable compensation in fixing the market value, an amount of guess work is involved. But it should not be founded on feats of imagination hedged with undue emphasis of compulsory deprivation of the possession of the land. For the exercise of State''s power of eminent domain, statutory solatium is the premium the State pays. Emphasis was strongly made by Shri Nanavati on the observation of the Supreme Court in Inder Singh''s case (supra) when it said "therefore, the approach should be pragmatic to recompense the land-owners to secure alternative lands or to invest in profitable business for rehabilitation."

8. The case of Gulzara Singh and Others Vs. State of Punjab and Others, was relied upon by Mr. Nanavati to show that potential value of the land can be assessed and considered having regard to its location and position. What is important to note, however, is that the Court observed that" it is therefore, clear that the Court in the first instance has to determine as to which of the sale-deeds are relevant, proximate in point of time and offer comparable base to determine market value. Thereafter, the average price has to be worked out and further deductions to be made in fixing just and fair market value when large chunk of the land was acquired." It would be seen that this Court has taken a consistent view of working out average and further deductions have been made in fixing

just and fair market value when large chunk of the land was acquired. We respectfully agree and adhere to the principle and we find no compelling reason to divert the stream or arrest the consistence. It may here be noted that the Supreme Court observed that sale of small land could not form basis for determining market value of large chunk of the land.

9. Applying the aforesaid principles in the present case what we find, firstly there are only two instances where land was valued at more than Rs. 4/- per square metre. One of the instances referred to by the Assistant Judge was a sale of 41 square metres of land in the year 1966 for Rs. 10.50 per square metre. The other instance was of land on which a kuchha hut had been constructed. The Assistant Judge completely ignored the fact that the claimants themselves had filed statements showing auction of land by the Government between the periods 1967 to 1976 where the price ranges from Rs. 3 to Rs. 4/-. This was no doubt the neighbouring village but the land in the said village has also been acquired for the said irrigation project. One solitary instance of purchase of 41 square metres of land in the year 1966 could not be made the basis of the acquisition of the entire village.

10. One more important aspect has been completely overlooked by the Assistant Judge. Three of the witnesses, namely, Gogha Karamshi Ex. 16, Manga Raja Ex. 17 and Hansraj Govind Ex. 18 as well as the Nayab Mamlatdar Hargovind Ramji Ex. 103 have stated that to all the villagers whose lands were acquired for the said irrigation scheme, were allotted alternative pieces of land free of cost at a distance of one mile. Therefore, this is not a case where from the compensation which is awarded, the claimants had to purchase alternative lands in lieu of the lands which had been acquired. There was no rebuttal to the evidence of these witnesses who have categorically stated that not only alternative lands were allotted to all the villagers including the claimants, but the allotments were made free of cost. Therefore, when Mr. Nanavati stated that the Court should take a pragmatic approach, the Court cannot lose sight of the fact that effort has been made by the acquiring authority to try and rehabilitate the displaced.

11. We find no reason given by the Assistant Judge for his rejecting the evidence which was produced by the claimants themselves, namely, the instances of sale by Government auction of open piece of land. In the judgment these documents had been stated to be Exhibits 72, 73 and 78. From the perusal of the record, we find that the exhibit numbers given in the judgment are not correct. The correct exhibit numbers are Exhibits 55, 56 and 57. Exhibits 55 and 57 relate to sale prices of land which was auctioned in the village Varna while Exhibit 56 relates to the sale auction in village Dhutarpur. Both these villages are adjoining villages and in the close vicinity of village Veratia, with which we are concerned in the present case. Moreover, Ex. 67 is sale instance of village Virpur, which is also one of the villages which was acquired for the same irrigation project, namely - Und Irrigation Scheme. The value of land by Government auction in the year 1978 works out to Rs. 3.02 to 4.00. This piece of evidence is not even referred to by

the Court. We find that these sale instances were later in point of time, to the solitary instance of sale of 41 sq. mtrs. of land in year 1966. No witness has been examined to prove any sale-deed in respect thereto. It is not known under what circumstances that land was sold, nor is the location of that land indicated. In our opinion, therefore, the Assistant Judge ought not to have awarded, in respect of open land,rate of more than Rs. 5/- per squre matre at the most.

12. Coming to vluation regarding the constructed protion, it in not doubt true that the Deputy Engineer, who had made the report and had classified the property into four different categories was not examined. The categoriasion had been done on the basis of quality of the structure. The Assistant judge has brushed aside this report for no cogent reson. He has observed that according to the claimants their houses were pucca construction and had good facility. The Assistant Judge accepted this bald statement and clearly overlooked the fact that while categorizing the houses into four different categories, the report showd that the holuses in the said four different categories were pucca houses. Different categories were made because of the quality of construction. Furthermore, reference to the award Ex. 19 in respect of the neighbouring villageof Kharavedha which has been relied upon by the Assistant Judge, in which he mention compensation ranging from Rs. 372 to Rs. 438 per squre metre, is factually incorrect.

13. We have persued the record and we find that the average price in the said Ex. 25 and not Ex. 19. We further find that the average price in the said Ex. 25 and not Ex. 25 is ranging from Rs. 111/- Rs. 140/per squre meter. What has been awarded by the Land Acquisition Collector on the basis of the report of the Deputy Engineer was, therefore, correct and called for no interference.

14. For the aforesaid reason, these appeals are partly allowed the market value of open land is determined at Rs. 5/-per squre metre and in rspect of constructed area, compensation will be awarded in the manner determined by th Land Acquisition Collector, namely, Rs. 231/-per squre metre for category "B" Rs. 127/- Per squre metre for category "C" and Rs. 99/-per cent solatium and interest at the rate of 9 percent thereafter till the amount is realized. Accordingly, claimants shall be entitled to 9 percent interest between 31-8-1978 to 31-8-1979 and theywould be entitled to interest at the rate of 15% form 31-8-1979 till the date of realization of the said amount. There will be no order as to costs.

