

(1999) 02 GUJ CK 0028

In the Gujarat High Court

Case No : First Appeal No"s. 1775 to 1794 of 1995

State of Gujarat

APPELLANT

Vs

Mohan Popatbhai

RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1A), 4(1)

Citation : (1999) 02 GUJ CK 0028

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

Bench : Division Bench

Advocate : H.L. Jani, A.G.P. in First Appeals Nos. 1775 to 1790 of 1995 and M.R. Raval, A.G.P. in First Appeals Nos. 1791 to 1794 of 1995, for the Appellant; C.L. Soni and Yatin Soni, for the Respondent

Judgement

J.M. Panchal, J.—These appeals, which are instituted u/s 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated October 6, 1993 rendered by the learned Assistant Judge, Porbandar, in Land Acquisition Reference Cases No. 11/88 to 30/88. The claimants had led common evidence in Land Acquisition Case No. 96/78. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. The agricultural lands of village Fulrama which are subject matter of these appeals were placed under acquisition pursuant to publication of notification dated November 2, 1978 which was issued u/s 4(1) of the Land Acquisition Act, 1894 ("the Act" for short), as the lands were needed for public purpose of Amipur Irrigation Scheme. After hearing the claimants, the Land Acquisition Officer by his common award dated February 5, 1981 had offered compensation to the claimants at the rate of Rs. 50/- per Are in some cases and also Rs. 70/- per Are in other cases having regard to location and nature of respective lands of the claimants. The claimants were of the opinion that offer of compensation made by the Land Acquisition Officer was not adequate and, therefore, by

making applications in writing, they had required the Land Acquisition Officer to refer the matters to the Court for determination of compensation. Accordingly, references were made to the District Court, Junagadh, which were numbered as Land Reference Cases No. 11/88 to 30/88. In the reference applications it was claimed by the claimants that having regard to the prevailing market price of the lands situated nearby as well as income derived from sale of agricultural produces, they were entitled to compensation at the rate of Rs. 625/- per Are. The reference applications were contested by the present appellants vide common written statement Exh.15. In the reply, it was pleaded by the appellants that the market price was properly determined by the Land Acquisition Officer and as compensation offered to the claimants was just and adequate, reference applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the reference court. In order to substantiate the claim advanced in the reference applications, the claimants had examined; (1) Puna Hamir at Exh.29, (2) Dhanji Naran at Exh.30, (3) Dahya Uka at Exh.31, (4) Jiava Gova at Exh.32, and (5) Khodabhai Kanabhai at Exh.33. On behalf of the appellants, no oral evidence was adduced at all. The claimants had produced a xerox copy of sale deed of survey no. 187 at Exh.26. It indicated that survey No. 187 of village Fulrama was sold on February 17, 1981 for a sum of Rs. 10,000/-. The claimants had also given particulars about the income derived by them from the sale of agricultural produces. On appreciation of evidence, reference court held that post notification sale transaction was not relevant for the purpose of ascertaining market value of the acquired lands in these cases. The reference Court took into consideration the figures of income stated by different witnesses and came to the conclusion that the market value of the acquired lands as on the date of publication of notification u/s 4(1) of the Act was Rs. 350/- per Are, by the impugned award which has given rise to present appeals.

3. The learned counsel for the appellants submitted that the compensation awarded by the Land Acquisition Officer was fair as well as adequate and, therefore, additional amount of compensation should not have been awarded by the reference court. It was stressed that no cogent and reliable evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs. 350/- per Are and, therefore, the impugned common award should be set aside. It was pleaded that the claimants failed to adduce reliable evidence regarding income derived by them from the agricultural produces and, therefore, the reference court should not have determined the market value of the acquired lands on yield basis. What was highlighted by the learned Counsel for the appellants was that the reference Court failed to deduct 50% towards cultivation expenditure after ascertaining yearly income from the sale of agricultural produces and, therefore, the appeals should be allowed. In the alternative, the learned Counsel vehemently submitted that the claimants are not entitled to additional compensation u/s 23(1-A) of the Act and, therefore, the award made in favour of the claimants u/s 23(1-A) of the Act should be set aside, as the Land

Acquisition Officer had made award prior to the coming into force of Act 68 of 1994 by which section 23(1-A) of the Act was inserted in the statute book. It was also pleaded that the claimants were also not entitled to solatium on additional amount of compensation payable u/s 23(1-A) of the Act and, therefore, the direction given by the reference court to pay solatium on additional amount of compensation payable u/s 23(1-A) of the Act also deserves to be set aside.

4. Mr. C.L.Soni, learned Counsel for the claimants contended that a just and reasonable award has been passed by the reference Court and, therefore, present appeals should be dismissed. It was submitted on behalf of the claimants that in absence of best method, namely, sale instances, reference Court was justified in determining the market value of the acquired lands on yield basis and as no error is committed by the reference Court in determining market value of the acquired lands on yield basis, the impugned common award should be confirmed. What was claimed by the learned Counsel for the respondent was that the lands of village Miti (Ghed) were acquired for Amipur Irrigation Scheme pursuant to publication of notification on December 1, 1977 which was issued u/s 4(1) of the Act and as the Supreme Court has awarded to the claimants compensation at the rate of Rs. 10,020/- per bigha, the appeals should be dismissed.

5. We have heard the learned Counsel for the parties at length and also taken into consideration the record of the case. It is relevant to notice that agricultural lands of village Miti (Ghed), Taluka : Mangrol, District : Junagadh were placed under acquisition pursuant to publication of notification on December 1, 1971, which was issued u/s 4(1) of the Act. The Land Acquisition Officer therein had determined market value of the lands acquired in that case at different rates for different lands. In some cases, he had determined market price at Rs. 3/- per Are; whereas he had determined market price at Rs. 88/- per Are in other cases. The claimants had sought references and claimed compensation at the rate of Rs. 625/- per Are. The reference court by common judgment and award dated September 15, 1993 had determined market price of the lands acquired in that case at the rate of Rs. 325/- per Are. That award has been produced before us by learned Counsel for the claimants for our perusal. It indicates that the reference Court had totalled the figure of income stated by witnesses examined on behalf of the claimants and determined market value after dividing said total by number of witnesses examined. Thereupon, the State of Gujarat and others had instituted First Appeals No. 2530/95 to 2549/95 challenging the said common award. The matter had come-up for hearing before the Division Bench comprising N.J.Pandya & S.K.Keshote, JJ. and the Division Bench had passed following order on September 22, 1995 :-

"The amount awarded by the trial court takes care of all the eventualities, when the basis is crop-yield method. He has, no doubt, noted that the witnesses are interested in giving exaggerated figures and he has also noted wide variations coming out of depositions of various claimants in the course of the deposition before the trial court. But, when on the basis of the data figure available with

him he has reduced the Are value by slashing it down to almost one-third of the figure worked out on the basis of the material, there is no reason for this court to interfere. Hence, these appeals are rejected."

6. The order passed by the Division Bench was subjected to appeal before Supreme Court and Supreme Court in Civil Appeals No. 16945-16964 of 1996 passed following order on December 13, 1996:-

"IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 16945-16964 OF 1996

(Arising out of SLP (C) No. 13322-41 of 1996)

The State of Gujarat & Ors. ... Appellants

Vs. Rama Rana & Ors. ... Respondents O R D E R

Delay condoned. Leave granted.

7. We have heard learned Counsel on both sides. These appeals by special leave arise from the judgment of the Gujarat High Court, made on September 22, 1995 in F.A. Nos. 2532-2549/95.

A total extent of 68 hectares 62.5 sq.mts. of land was acquired for irrigation scheme by publication of the notification u/s 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short "the Act") on August 25, 1977. The Land Acquisition Officer in his award dated March 27, 1978 awarded compensation at the rate of Rs. 2023.50 ps. per acre for the dry crop lands, Rs. 3035.25 for the irrigated lands, Rs. 40.47 for the waste lands. On reference u/s 18 of the Act, the Asstt. District Judge by his award and decree dated September 13, 1993 enhanced the compensation to Rs. 325/per acre to all the lands irrespective of the classification. On appeal, the High Court in the impugned judgment confirmed the same. Thus, these appeals by special leave.

8. The reference court proceeded on the premises that there are no sale deeds exhibited for determination of the compensation. Therefore, the oral evidence was relied upon to determine the compensation, on the basis of the yield. 8 witnesses came to be examined in proof of the yield of the acquired lands. One of the witnesses was the Sarpanch of the village and his evidence was accepted. The reference Court also found that the witnesses exaggerated the yield. On that basis, it determined the market value after deducting 1/3 towards prices at Rs. 325/- per acre. It would be common knowledge that expenditure would be involved in raising and harvesting the crops and that, therefore, on an average 50% of the value of the crop realised would go towards cultivation expenses. Therefore, deduction of 1/3rd was not correct in determining the compensation of the lands on the basis of yield.

9. It is undoubtedly true that one of the methods of determination of

compensation, in the absence of best evidence, namely, sale deeds, is the realised value of the crop. Normally, they should have produced the statistics from the Agricultural Department as to the nature of the crops and the prices prevailing at that time. But, unfortunately, neither claimants nor the Government took any steps to adduce that best evidence. It is a fact that the Government have failed to adduce any evidence in that behalf. However, we cannot reject the oral evidence of the witnesses on that ground alone. The court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man, i.e. whether he would be willing to purchase the land at the rates proposed by the Court. On the touch stone of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on compensation. The reference Court has accepted the evidence of the Sarpanch to be the reliable person. Therefore, we proceed on that premise. The appropriate multiplier should be of 10 years as settled by several judgments of this Court. Necessarily, 50% of the net value towards cultivation expenses requires to be deducted. The award of the reference Court as confirmed by the High Court stands set aside and the value of the crop as determined by the reference Court at Rs. 2,050/as average annual income stands upheld. Multiplier of 10 years should be applied and deduction of 50% towards cultivation expenses should be made. After giving deduction, the balance will be the net value of the land. On that basis, the claimants are entitled to Rs. 20,500/- per acre with solatium @ 30% on enhanced compensation and interest on enhanced compensation @ 0.9% per annum for one year from the date of taking possession and 15% per annum till date of deposit into the court under the Act as amended by Act 68 of 1984, namely 30% solatium on the enhanced compensation, interest on the enhanced compensation from the date of taking possession for one year at 9% and thereafter at 15% till date of deposit.

9. The appeals are accordingly, allowed. No costs.

Sd/- (K. Ramaswamy, J.)

Sd/- (G.T.Nanavati, J.)

New Delhi December 13m 1996." 10. After the above referred to order was passed by the Supreme Court, the State of Gujarat and others had filed Review Petitions No. 1134-1153/97 in Civil Appeals No. 16945-16964/96 and following order was passed by the Court on August 4, 1997 :-

"SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Review Petition Nos. 1134-1153/97 In

Civil Appeals No. 16945-16964/96

State of Gujarat & Ors. Petitioners Vs. Rama Rana & Ors Respondents
(with appln.for c/delay in filing RPs and clarification)

Date: 4.8.1997

CORAM : Hon"ble Mr. Justice S.C.Agrawal Hon"ble Mr. Justice G.T.Nanavati

For the Appellant(s) :

Mr. Adhyaru Yashank Pravin, Adv. Mrs. Hemantika Wahi, Adv. Ms. Sumita Hazarika, Adv. For the Respondent(s) Mr. Ranjit Kumar, Adv. Mr. H.A. Raichura,Adv. UPON hearing Counsel the Court made the following

O R D E R

11. Delay condoned.

12. In the Order dated December 13, 1996 at page 3 for the words "the claimants are entitled to Rs. 20,500/per acre" the words "the claimants are entitled to Rs. 10,250/- per bigha" shall be substituted. The review petitions are disposed of with this modification. No order as to costs.

Sd/- Sd/- (Vijay Kumar Sharma) (Gopi Balau) Court Master Court Master

13. Signed order is placed on the file."

14. Thereafter, the State of Gujarat and others had filed I.A. Nos. 41-60 in R.P. (C) Nos. 1134-1153/97 in C.A.Nos. 16945-16964/96 for clarification/modification of the order and those I.As. were dismissed by order dated March 17, 1998.

15. It is undoubtedly true that the best method available for determining the market value of the acquired lands is sale instance relating to part of the acquired lands or the similar land situated nearby. Though in this case the claimants had produced sale deed relating to survey No. 187 of village Fulrama itself, neither the vendor nor the vendee nor the scribe of the deed was examined and therefore, the reference Court though has made reference to the said sale deed was justified in not determining the market value of the acquired lands in this case on the basis of said deed. The evidence of the claimants would indicate that the lands which were acquired were situated at such a place that whenever there was flood in the river alluvial soil used to be deposited increasing the fertility of the soil and, therefore, the claimants were required to spend less amount for manure etc. Their evidence further shows that the claimants used to sow cotton, groundnut, wheat and gram on the acquired lands. As per their evidence, yield of cotton per bigha was 40 maunds; whereas yield of groundnut was 25 maunds per bigha and that of wheat was 50 maunds per bigha. The witnesses examined on behalf of the claimants further asserted that in the year 1978, 1 maund of gram fetched Rs. 45/-; whereas 1 maund of wheat fetched Rs.40/- and one maund of groundnut fetched Rs.150/-. It was further stated by them that the price of cotton was Rs. 100/per maund in the year 1978 and each claimant used to earn Rs. 20,000/- from sale of agricultural produces per bigha. Normally, the claimants should produce the statistics from the Agriculture Department as to the nature of the crops and the prices prevailing at that time. But, unfortunately, neither claimants nor the Government took any steps to

adduce that best evidence. The fact remains that the appellants failed to adduce any evidence in that behalf. It is also true that the claimants should adduce reliable evidence regarding income realised from crops and left to us, we would have remanded the matters to the reference Court with liberty to the parties to lead evidence regarding income realised from crops because average method adopted by reference Court is hardly satisfactory. But, in view of order of the Supreme Court, such a course is not permissible. As observed by the Supreme Court in the above quoted order, oral evidence of the witnesses regarding income from crops cannot be rejected, as it is statutory duty of the Court to the society to subject the oral evidence to great scrutiny and thereafter to determine market price of the acquired lands, but the evidence of the witnesses examined by the claimants is accepted by the reference Court and we proceed on that premises. On consideration of the evidence, we find that the conclusion arrived at by the reference Court that the annual average income from the acquired lands would be Rs. 1550/- per bigha is perfectly correct. However, if 50% is deducted therefrom towards cultivation expenses as held by the Supreme Court in the above quoted order, the annual net income would come to Rs. 775/- per bigha and if 10 years multiplier is applied, the figure would come to Rs. 7750/- per bigha i.e. Rs. 484/- per Are. As observed earlier, the reference Court has awarded compensation to the claimants at the rate of Rs. 350/per Are, but the claimants have neither filed appeals against the common award claiming higher compensation, nor filed cross-objections in the appeals instituted by the State of Gujarat and another. Therefore, we do not think it proper to award compensation higher than awarded by the reference Court. However, determination of compensation by the reference Court cannot be said to be excessive in any manner so as to warrant interference of the Court in the present appeals and the same will have to be upheld.

16. In the operative part of the impugned judgment and award, reference court has ordered that the acquiring authority shall pay additional compensation to the claimants as shown in Annexure-A attached to the judgment with running interest at the rate of 9% per annum for the first year from the date of award and for subsequent period till the date of payment, with running interest at the rate of 15% per annum with proportionate costs. A bare look at Annexure-A which forms part of the impugned award makes it evident that the additional compensation determined by the reference court as payable, also includes solatium on the additional amount of compensation payable u/s 23(1-A) of the Act. There is also no doubt that a direction to pay additional amount of compensation as envisaged by Section 23(1-A) of the Act is given. Such directions could not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today 1995(2) SC 583. The pertinent observations made by the Supreme Court in Para-7 of the reported decision are as under :-

"It would thus be seen that the additional amounts envisaged under sub-ss.(1-A) and (2) of S. 23 are not part of the component of the compensation awarded

under sub-s.(1) of S. 23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under S. 28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the Court as envisaged under the proviso."

17. Therefore, the operative part of the order in so far as it directs the appellants to pay the amount envisaged u/s 23(1-A) and solatium u/s 23(2) of the Act on the additional amount of compensation payable u/s 23(1-A) of the Act is concerned, will have to be set aside and are hereby set aside.

18. For the foregoing reasons, all the appeals are partly allowed. It is held that the claimants are entitled to compensation at the rate of Rs. 350/per Are. It is further held that the claimants shall not be entitled to additional compensation as envisaged u/s 23(1-A) of the Act nor to the solatium on the additional amount of compensation payable u/s 23(1-A) of the Act. Rest of the award is not disturbed at all. There shall be no order as to costs. Office is directed to draw decree in terms of this judgment.