

(2011) 06 GUJ CK 0112

In the Gujarat High Court

Case No : First Appeal No's. 3753 to 3778 of 2007, 1024 to 1040 of 2010, 1513 to 1533 of 2010, 2539 to 2552 of 2010 and 749 to 787 of 2010

State of Gujarat

APPELLANT

Vs

Patel Amratbhai Shankarbhai

RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 23(2), 28

Citation : (2012) 1 GLR 63

Hon'ble Judges : Jayant Patel, J; J. C. Upadhyaya, J

Bench : Division Bench

Advocate : Moxa Thakkar, A.G.P, for the Appellant; A. V. Prajapati and Harnish V. Darji, for the Respondent

Judgement

Jayant Patel, J

1. As all the appeals arise in connection with the acquisition of lands at village Maktupur, Taluka Unjha and the issues arise for consideration are common, they are being considered by this common judgment. The facts group-wise are as under :

2.1. In First Appeal Nos. 3753 to 3778 of 2007 and First Appeal Nos. 749 to 787 of 2010, the acquisition of the land at village Maktupur under the Land Acquisition Act (hereinafter referred to as "the Act") for the project of Dharoi Irrigation, notification under Sec. 4 of the Act was published on 2-8-2002 and the notification under Sec. 6 of the Act was published on 4-12-2002. The award was passed by the Special Land Acquisition Officer on 31-12-2002 and the Special Land Acquisition Officer awarded compensation at Rs. 10-50 ps., per sq.mtr. As the land owners/claimants were not satisfied for the compensation awarded by the Special Land Acquisition Officer, dispute was raised under Sec. 18 of the Act demanding compensation at Rs. 500/- per sq.mtr. The matter was thereafter, referred to the Reference Court for adjudication being Land Acquisition Reference Case Nos. 214 to 239 of 2005. The Reference Court, at the

conclusion of the reference, awarded the compensation at Rs. 451-50 ps., per sq.mtr as additional compensation with the statutory benefits of solatium and the benefits under Secs. 23(1A), 23(2) and 28 of the Act and other consequential benefits by the judgment and award dated 16-10-2006. Under the circumstances, the present appeals before this Court.

2.2. The relevant facts in the group of First Appeal Nos. 749 to 787 of 2010 are that for the project of Sabarmati Canal Scheme, for the land at village Maktupur, notification under Sec. 4 of the Act was published on 20-12-2001 and the notification under Sec. 6 was published on 18-4-2002. The award was passed by the Special Land Acquisition Officer under Sec. 11 of the Act on 26-5-2003 and he awarded the compensation at Rs. 15/- per sq.mtr. As the claimants were not satisfied with the compensation awarded, they raised the dispute and demanded the compensation initially at Rs. 50/- per sq.mtr., and subsequently, enhanced to Rs. 500/- per sq.mtr. The said disputes were referred to the Reference Court for adjudication being Land Acquisition Reference Case Nos. 733 to 774 of 2004. The Reference Court, at the conclusion of the reference, awarded the compensation at Rs. 305/- per sq.mtr., as additional compensation plus the statutory benefits of solatium, increase in the price, interest, etc. Under the circumstances, the present appeals before this Court.

2.3. The relevant facts in the present group of First Appeal Nos. 2539 to 2552 of 2010 are that for the acquisition of land at village Maktupur for the project of Sabarmati Canal Scheme, notification under Sec. 4 of the Act was published on 2-8-2002 and the notification under Sec. 6 of the Act was published on 4-12-2002. The award was passed by the Special Land Acquisition Officer under Sec. 11 of the Act on 31-12-2002 and he awarded the compensation at Rs. 10-50 ps., per sq.mtr. As the claimants/land owners were not satisfied with the compensation awarded, they raised the dispute under Sec. 18 of the Act and initially demanded the compensation at Rs. 200/- per sq.mtr., and subsequently, enhanced the claim to Rs. 500/- per sq.mtr. Such disputes were referred to the Reference Court for adjudication being Land Acquisition Reference Case Nos. 20 to 24 and 26 to 33 all of 2005 and 1 of 2008. The Reference Court, at the conclusion of the reference, awarded the compensation at Rs. 317/- per sq.mtr., as additional compensation plus the statutory benefits under Secs. 23(1A), 23(2) and 28 of the Act. Under the circumstances, the present appeals before this Court.

2. We may record that since the earlier groups were already heard by this Court yesterday, but the present group of First Appeal Nos. 1024 to 1040 of 2010 and First Appeal Nos. 1513 to 1533 of 2010, were not listed, the matters were kept today and the present group was to be notified today and with the consent of the learned Advocates appearing for both the sides, namely learned A.G.P. Ms. Thakkar for the appellant and Mr. A. V. Prajapati and Mr. Darji appearing for the original claimants/land owners, the office was directed to list the matters in the second sitting, and accordingly, they are considered with the present group,

since the acquisition of the land is at the very village and the points involved for assessment of the valuation and compensation are common.

3.1. The relevant facts in the group of First Appeal Nos. 1024 to 1040 of 2010 are that for the acquisition of land at village Maktupur for the project of Sabarmati Canal Scheme, notification under Sec. 4 of the Act was published on 2-8-2002 and the notification under Sec. 6 was published on 4-12-2002. The award was passed by the Special Land Acquisition Officer under Sec. 11 of the Act on 31-12-2002 and he awarded the compensation at Rs. 10-50 ps., per sq.mtr. As the claimants/land owners were not satisfied with the compensation awarded, they raised the dispute under Sec. 18 of the Act and initially demanded the compensation at Rs. 200/- per sq.mtr., and subsequently, enhanced the claim to Rs. 500/- per sq.mtr. Such disputes were referred to the Reference Court for adjudication being Land Acquisition Reference Case Nos. 195 to 213 of 2005. The Reference Court, at the conclusion of the reference, awarded the compensation at Rs. 317/- per sq.mtr., as additional compensation plus the statutory benefits under Secs. 23(1A), 23(2) and 28 of the Act. Under the circumstances, the present appeals before this Court.

3.2. The relevant facts in the group of First Appeal Nos. 1513 to 1533 of 2010 are that for the acquisition of land at village Maktupur for the project of Sabarmati Canal Scheme, notification under Sec. 4 of the Act was published on 2-8-2002 and the notification under Sec. 6 was published on 4-12-2002. The award was passed by the Special Land Acquisition Officer under Sec. 11 of the Act on 31-12-2002 and he awarded the compensation at Rs. 10-50 ps., per sq.mtr. As the claimants/land owners were not satisfied with the compensation awarded, they raised the dispute under Sec. 18 of the Act, and initially, demanded the compensation at Rs. 200/- per sq.mtr and subsequently enhanced the claim to Rs. 500/- per sq.mtr. Such disputes were referred to the Reference Court for adjudication being Land Acquisition Reference Case Nos. 186 to 206 of 2004. The Reference Court, at the conclusion of the reference, awarded the compensation at Rs. 317/- per sq.mtr., as additional compensation plus the statutory benefits under Secs. 23(1-A), 23(2) and 28 of the Act. Under the circumstances, the present appeals before this Court.

3. We have heard learned A.G.P. Ms. Thakkar in all the appeals on behalf of the appellants and Mr. A. V. Prajapati as well as Mr. Darji, learned Counsel on behalf of all the claimants/land owners-respondents herein.

4. It was submitted by the learned A.G.P. Ms. Thakkar that for the acquisition of the land at village Brahmanvada, Taluka Unjha, which is adjacent to village Maktupur and whose boundary was also touching Unjha city, the awards were passed by the Special Land Acquisition Officer granting compensation at Rs. 18/- per sq.mtr., against which matters were preferred to the Reference Court and in that group, the Reference Court awarded the compensation at Rs. 450/- per sq.mtr., being additional compensation, against which the Special Land Acquisition Officer and the State preferred appeals being First Appeal No. 2794 of

2009 and allied matters before this Court, which came to be decided vide judgment dated 1-4-2011. As per the view taken by this Court, there will be minimum reduction in the value of the land located at village site in comparison to Municipal area and consequently, this Court reduced the compensation to Rs. 300-50 ps., per sq.mtr. She submitted that if the same criteria is applied, the awards passed by the Reference Court cannot be maintained and the appeals deserve to be allowed to that extent by reducing the amount of compensation. She additionally submitted that in the present case, Reference Court, for the acquisition of the land of very village, in one matter, has awarded compensation at Rs. 451/- per sq.mtr.; whereas in the other matter, it is awarded at Rs. 317/- per sq.mtr., and there is no consistency in the view taken by the Reference Court for awarding the compensation. She also submitted that additionally the difference in the nature of the land which was considered by the Special Land Acquisition Officer for awarding the compensation at Rs. 15/- per sq.mtr., and Rs. 10-50 ps., per sq.mtr. as against Rs. 18/- per sq.mtr., which was the case for acquisition of the land at village Brahmanvada may be considered by the Court for taking decision on the aspects of market value and consequential additional compensation.

5. Whereas, on behalf of the respondents/claimants, it was submitted by the learned Counsel Mr. Prajapati that village Maktupur is more nearer to Unjha city in comparison to village Brahmanvada, though boundaries of both the villages are touching to city Unjha. It was submitted that if this Court has fixed the valuation of the land at village Brahmanvada at Rs. 318-50 ps., per sq.mtr., as per the above-referred judgment, which is relied upon by the learned A.G.P., it will be in any case not less than the value assessed for the acquisition of the land at village Brahmanvada. He also submitted that the claimants would be entitled to some more amount of compensation in comparison to the acquisition of land at village Brahmanvada. He, therefore, submitted that the claimants would be entitled to the additional compensation accordingly.

6. The perusal of all the judgments of the Reference Court shows that there is no consistency in the assessment of the market price of the land inasmuch as in the group of First Appeal Nos. 3753 to 3778 of 2007 the Reference Court has awarded the compensation at Rs. 451-50 ps., per sq.mtr., as additional compensation for the land located at the very village wherein also the notification under Sec. 4 of the Act was published on the very day i.e. 2-8-2002. It is true that in the said group the references have been decided by the 3rd Addl. Sr. Civil Judge, whereas in the remaining group, the decision has been taken by the learned Principal District Judge, but the fact would remain that for the acquisition of the land at the very village wherein the date of the relevant notification is more or less of the same period, there is substantial difference in the assessment of the market price, and also consequently, the additional compensation. The pertinent aspect is that in both the groups, the reliance has been placed upon the assessment of the market value of the land situated at Unjha city and the award passed by the Reference Court in respect thereto, whereby the

compensation was fixed at Rs. 231/- per sq.mtr. But the distinguishing feature is that in the award passed by the learned Principal District Judge, he has relied upon the earlier award which was considered and by taking the base at Rs. 105/- per sq.mtr., as the notification under Sec. 4 was published on 11-6-1981, he has considered the appreciation for subsequent 21 years at 10% per annum and has arrived at the market value at Rs. 327-50 ps., per sq.mtr. Whereas in the awards passed by the learned Sr. Civil Judge, he has considered the base of the price fixed at the time of acquisition of Rs. 231/- per sq.mtr., as on 15-3-1992 for Unjha city, and thereafter, has considered the appreciation at 10% per annum, and thereafter, has assessed the market price. Since there is a basic difference in taking the principal value, the difference has resulted in the actual assessment and the assessment of the market price. In our view, such an approach cannot be countenanced for the simple reason that the yardstick and the criteria of compensation more particularly for the land situated at the same area or the nearby locality of the very village should have been common.

7. We may record that in the case of acquisition of the land at village Brahmanvada, the boundary of which is touching to Unjha city, in First Appeal No. 2794 of 2009 and allied matters, this Court observed thus at Paragraphs 6, 7, 8, 9 and 10 :

"6. The pertinent aspect in the present matter is that the Reference Court in both the impugned judgment and award has mainly relied upon another decision of the Reference Court in the Land Reference Case Nos. 214 to 239 of 2005 for the acquisition of the land at village Maktupur, whereby the additional compensation was awarded at Rs. 451-50 per square metre plus statutory benefit. The learned Counsel appearing for both the sides have made available to the Court copy of the said decision and as per the said judgment of the Reference Court in the said matter, it has relied upon the another decision of the Reference Court in L.A.R. No. 247 of 1997 for acquisition of the land at Unjha, whereby the additional compensation was awarded at Rs. 231/- per square metre in respect of the acquisition made vide notification under Sec. 4 of the Act on 15-3-1992. Thereafter, since there was time gap of about 10 years and more, the appreciation is considered at the rate of 10% p.a. and compensation was fixed accordingly. The another aspect is that in the impugned judgment, the Reference Court has referred to and relied upon the decision of the Reference Court in earlier Land Reference Case Nos. 248 to 350 of 1997 in respect of the acquisition of the land at Unjha wherein the notification under Sec. 4 of the Act was published on 15-3-1992 and the notification under Sec. 6 of the Act was published on 21-12-1992 and the Reference Court ultimately had awarded the compensation at Rs. 231/- per square metre vide judgment and award dated 13-3-2003. It may be recorded that against the aforesaid decision of the Reference Court, the matters were carried before this Court in First Appeals Nos. 2147 to 2249 of 2004 and this Court (Coram : J. M. Panchal and Smt. Abhilasha Kumari, JJ.) vide judgment dated 2-7-2007, did not interfere with the judgment and award of the Reference Court and dismissed of the appeals. Under these

circumstances, it appears that the Reference Court in the impugned judgment after considering the time gap of the notification under Sec. 4 of the Act in respect of the land acquired at Unjha has applied appreciation of 10% p.a. and has arrived at the market value at Rs. 468/- per square metre in First Appeal No. 2794 of 2009 and allied matters and Rs. 455/- per square metre in First Appeal No. 1732 of 2009 and allied matters, and thereafter, as the compensation was already paid at Rs. 18/- per square metre, the additional compensation has been awarded at Rs. 450/- per square metre and Rs. 437/- per square metre plus the statutory benefit.

7. In both the matters, the Reference Court has lost sight of the important aspect that Unjha is a Municipal area whereas Brahmanwada is a gram panchayat area. In a case where the valuation is made of the land which is falling in the Municipal area, it cannot be compared at par with the land situated at village area even if the boundary of Municipal area and the boundary of the said village area may be touching to one another. The reason is that there would be basic difference in the infrastructural facilities and the amenities in the Municipal area in comparison to the gram panchayat area. For Municipal area, there will be facilities of water, light, transportation, road, school, etc., which may not be available in the gram panchayat area. Further, even if it is considered that since the area is adjacent to each other, there was more development in gram panchayat area, which is adjacent to the Municipal area, it appears to us that if it is to be examined for the purpose of tracing the appropriate valuation, such valuation will be minimum 30% less in comparison to the value of the land in the Municipal area. It appears that the Reference Court has totally lost sight of the said aspect and has considered the valuation of the land at par with Unjha which is a Municipal area. The learned Counsel for the original claimants is also not in a position to show any evidence to the contrary save and except that the village of Brahmanwada is touching to Unjha city. In our view, would not make much difference as observed earlier and the difference of valuation by 30% at least would continue even after the boundary of the village attached to the Municipal area since the basic difference of various facilities and infrastructure and development between the Municipal area and the gram panchayat area would continue.

8. In view of the aforesaid observations and discussions in the group of First Appeal No. 2794 of 2009, as the valuation of the land is assessed by the Reference Court at Rs. 468/-, it will have to be reduced by 30% and such amount would come to Rs. 140-40 and if deducted from Rs. 468/-, it would come to Rs. 327-60 out of which, the amount at the rate Rs. 18/- per square metre has already been awarded as compensation. Therefore, the net amount would come to Rs. 309-60 per square metre being the additional amount of compensation.

9. Whereas, in the group of First Appeal No. 1732 of 2010, as the valuation is fixed at Rs. 455/- per square metre, amount of 30% required to be reduced

would come to Rs. 136-50 and the net amount would come to Rs. 318-50 out of which, as the amount of Rs. 18/- per square metre has already been awarded as compensation, the additional amount of compensation would come to Rs. 300-50. The other benefits which are awarded by the Reference Court are in the nature of statutory benefits, and therefore, they are not required to be interfered with save and except to the extent that on account of the reduction of the principal amount of compensation, such amount would proportionately get reduced.

10. In view of the above observations and discussions, the judgment and the award passed by the Reference Court so far as they relate to exceeding Rs. 309-60 in the group of First Appeal No. 2794 of 2009 and allied matters and exceeding Rs. 300-50 in the group of First Appeal No. 1732 of 2009 and allied matters are quashed and set aside. The other benefits awarded by the Reference Court of solatium, increase in the price and interest as per the provisions of the Land Acquisition Act are not interfered with and even the direction issued for no deduction of the compensation in respect of the new tenure land is also not interfered with."

8. It is pertinent to note that the decision of the Reference Court which was relied upon and considered by this Court in the above-referred First Appeal No. 2794 of 2009 and allied matters and more particularly at Para 6 is the same, which has been considered by the Reference Court in the present group of matters. The valuation assessed is thereafter made at par with the value of the land located at Unjha city.

9. The another relevant aspect is that in the above-referred decision, this Court, as per the observations made at Para 7 reproduced hereinabove, found that there will be minimum difference of 30% in the value of the land located at village site and within the Municipal limits. Therefore, it appears to us that the same criteria for the purpose of finding out the difference between the value of the land at village Maktupur, which is in the present case and the value of the land at Unjha city is required to be taken. The learned Counsel for the claimants/respondents is not in a position to show any justifiable ground for not to consider the same. We are of the considered view that the reasons as recorded in the above-referred judgment at Para 7 has to be squarely applied for the land located at village Maktupur since the land in question at village Maktupur which is a village site; whereas Unjha city is a Municipality and the land at Unjha would fall within the Municipal limits.

10. However, we find that the basis taken by the Reference Court for considering valuation made of the land at Unjha city as back as in the year 1981, and thereafter, to consider the appreciation could not be justified in the present case since the assessment made of the price at Rs. 231/- per sq.mtr., for the land at Unjha city was confirmed by this Court in the group of First Appeal No. 2147 of 2004 and allied matters as referred to in the decision of First Appeal No. 2794 of 2009 and allied matters, more particularly at Para 6. Therefore, we find that the

Reference Court has committed error to that extent.

11. Further, if the correct valuation of the land for village Maktupur is to be traced, the reliance can be made upon the market price assessed by this Court for the adjacent village Brahmanvada, whose boundaries are also touching to Unjha city. The another aspect is that in the above referred decision of First Appeal No. 2794 of 2009 and allied matters, notification under Sec. 4 of the Act was published on 27-8-2002 and in the present groups also in majority of the cases, they have been published in August 2002, except in matters, which are subject-matters of First Appeal Nos. 749 to 787 of 2010 wherein the notification under Sec. 4 of the Act was published on 20-12-2001 about 8 months earlier than August, 2002. Hence, we find that the valuation made of the land at village Brahmanvada can be taken as a base for the correct valuation of the land at village Maktupur.

12. In view of the aforesaid discussion, it can be said that Rs. 318-50 ps., per sq.mtr., could be the basis of the valuation even for the purpose of fixing the compensation in respect of the acquisition of the land in question at village Maktupur. However, the distinction as was considered by the Special Land Acquisition Officer for awarding the compensation while passing the award at Rs. 10-50 ps., per sq.mtr., and Rs. 15/- per sq.mtr., in the concerned award deserves to be considered. No evidence is brought to the notice of this Court to show that the distinction in fixing the compensation as recorded by the Special Land Acquisition Officer while passing the award as was for the land at village Brahmanvada and for the land at village Maktupur, was wrong or there were errors committed. Therefore, we find that if the amount of Rs. 318-50 ps., per sq.mtr. is proportionately reduced on account of the fact that the Special Land Acquisition Officer had awarded the compensation at Rs. 15/- per sq.mtr., such amount would come to Rs. 265/- per sq.mtr., excluding the paise by rounding the figure.

13. It further appears that the Special Land Acquisition Officer, for the various parcels of the land at village Maktupur, which were acquired, in respect of one group of land, he has awarded the compensation at Rs. 15/- per sq.mtr.; whereas for the remaining, he has awarded the compensation at Rs. 10-50 ps., per sq.mtr. We have considered the award and it appears that though the land, as per the Schedule, is mentioned as "jirayat-non-irrigated", in the body of the award, there is reference to the irrigation facility. Consequently, the land could be termed as irrigated land or the land with the irrigation facility. Such aspects, if taken into consideration, the difference in the compensation fixed by the Special Land Acquisition Officer for the different parcels of the land at the very village would not survive and it has to be at par with other irrigated land for which the compensation is fixed at Rs. 15/- per sq.mtr. Therefore, we find that the value of the lands which have been acquired should be the same and the difference as considered by the Special Land Acquisition Officer of awarding the compensation at Rs. 15/- per sq.mtr., and Rs. 10-50 ps., per sq.mtr., should be ignored.

14. The learned Counsel for the claimants is right in submitting that the village Maktupur is nearer to Unjha city in the comparison to the location of village Brahmanvada. It was submitted by him that on account of such situation, some additional benefit in the value of the land would be available to the land owners at village Maktupur. As such, if we consider the basis taken by the Reference Court, it has to be at par with the land at village Brahmanvada. However, since the valuation has been reduced by 30% by applying criteria of difference between the land located within the Municipal limits and revenue village, we find that the said aspect of being nearer to the city on the comparison to the location of the land at village Brahmanvada slightly away from Unjha city would assume importance. Considering the facts and circumstances, we find that 5% benefit can be given being the higher value of the land at village Maktupur in comparison to the location of the land at village Brahmanvada. Hence, the 5% if added in the value of the land at Rs. 265/- per sq.mtr., and the benefit shall be Rs. 13-25 ps., and if rounded, would come to Rs. 13/-. Hence, total would come to Rs. 278/- per sq.mtr.

15. The aforesaid shall be the valuation of the land for the purpose of awarding compensation in cases where the notification under Sec. 4 of the Act was published in August, 2002. However, so far as the group wherein notification under Sec. 4 of the Act was published on 20-12-2001 being First Appeal Nos. 749 to 787 of 2010, there will be reduction in the valuation by 7.5% on the principle of reduction in value at the rate of 10% per annum. Such figure would come to Rs. 20-85 ps. If the principal amount is considered at Rs. 278/- per sq.mtr., and if rounded, it would come to Rs. 21/-. Consequently, net amount would come to Rs. 257/- per sq.mtr., for the land which is subject-matter of First Appeal Nos. 749 to 787 of 2010.

16. It is required to be clarified that since different amount of compensation has been paid by the Special Land Acquisition Officer out of the aforesaid amount of compensation, the amount of compensation already paid as per the award under Sec. 11 of the Act will be required to be deducted and the claimants would be entitled to the additional compensation accordingly.

17. We may record that other statutory benefits as awarded by the Reference Court under Secs. 23(1A), 23(2) and 28 of the Act are not required to be interfered with save and except to the extent that on account of reduction of the principal amount, the compensation of such amount shall proportionately get reduced.

18. In view of the aforesaid observations and discussion, the judgment and award passed by the Reference Court for ordering additional amount of compensation will have to be modified. Hence, the following order :

I. In First Appeal Nos. 3753 to 3778 of 2007, 1024 to 1040 of 2010, 1513 to 1533 of 2010 and 2539 to 2552 of 2010* the claimants shall be entitled to the compensation at Rs. 278/- per sq.mtr., but with the clarification that the

compensation already paid to the land owners as per the award of the Special Land Acquisition Officer, shall be required to be deducted. Hence, the net amount of compensation shall be Rs. 263/- per sq.mtr., in cases where compensation has already been paid at Rs. 15/- per sq.mtr., and Rs. 267-50 ps., per sq.mtr., in cases where the compensation has been paid as per the award at Rs. 10-50 ps., per sq.mtr., plus statutory benefits as awarded by the Reference Court.

II. In First Appeal Nos. 749 to 787 of 2010, the claimants would be entitled to the compensation at Rs. 257/- per sq.mtr., with clarification that the amount of compensation already paid as per the award of the Special Land Acquisition Officer at Rs. 15/- per sq.mtr., would be required to be deducted and consequently, the net amount of Rs. 242/- per sq.mtr., plus the statutory benefits under Secs. 23(1A), 23(2) and 28 of the Act shall be required to be paid as the additional compensation.

III. All the appeals are partly allowed to the aforesaid extent. The impugned judgments and the awards of the Reference Court shall stand modified accordingly.

IV. Considering the facts and circumstances, there shall be no order as to costs.

V. The amount of compensation, if not deposited, shall be deposited within a period of eight weeks from the date of receipt of the order.