
(1999) 12 GUJ CK 0087

In the Gujarat High Court

Case No : First Appeal No's. 141 to 150 and 153 of 1980 with Cross Objections

State of Gujarat

APPELLANT

Vs

Rambhaben Josabhai by Lrs.

RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 30

Citation : AIR 1991 Guj 156 : (1991) 1 GLR 591

Hon'ble Judges : Y.B. Bhatt, J;C.V. Rane, J

Bench : Division Bench

Advocate : D.K. Trivedi, Incharge Govt. Pleader, for the Appellant; S.M. Shah, for the Respondent

Judgement

C.V. Jani, J.—First Appeals Nos. 142/80 to 150/80 under S. 54 of the Land Acquisition Act, 1894 arise from a common judgment and awards of the learned Joint Judge, Jam nagar in Land Acquisition Cases Nos. 1 / 76 to 10/ 76 respectively. First Appeal No. 141/80 arise - s from the same judgment and award of the learned Joint Judge, Jamnagar in Land Acquisition Case No. 7/76 and First Appeal No. 153/80 arises from the same judgment and award of the learned Joint Judge, Jam nagar in Land Acquisition Case No. 1/78.

2. The lands, which are involved in this appeal, were acquired for providing a Danger Zone Area of the classified range at Jam nagar. Notification under S. 4 of the Land Acquisition Act, 1894, hereinafter referred to as the " Act", was issued on 4-7-1969 and it was published in the Government Gazette, Part-1, on 31-7-69. Notification under S. 6 was published on 11-11-79, and the Deputy Collector, Jam nagar who acted as Land Acquisition Officer, made his, award on 12-8-76, The claimant moved the Collector for making references under S. 18 of the Act. These references were ordered to be consolidated and evidence was led in Land Reference Case No. 7/ 76. It appears from the record that documentary evidence was produced on behalf of the State of Gujarat with the list Exh. 23 and Exh. 15, while the claimants produced certain sale deeds with list Exh. 12 and

list Exh. 37. 14 claimants were examined on the same day i.e. on 19-12-78 and 2 other claimants were examined on the next day i.e. 20-12-78. After the oral evidence was recorded the documents produced by the Government pleader and the claimants came to be exhibited by consent. These documents were relating to the sales of other agricultural lands of different dates beginning from 28-11-1966 to 23-2-1971.

No witnesses were examined to show the relevance of these sale instances. The learned Judge digested the details about the area, date of execution and average rate per acre in a Tabular form in respect of the 19 instances. Though the rates varied from Rs. 2,000 / - per acre in February, 1967 to Rs. 75,000/- per acre in February, 1971, the learned Judge thought of taking out an average, irrespective of the distance of the sale instances from the acquired lands. No attempt was made by the learned Judge to find out which of the sale instance was comparable either from the point of view of distance or from the point of view of time and situation. Even after taking out the average, the learned Judge almost arbitrarily fixed the market value of the land bearing survey No. 1287 at Rs. 20,000/- per hectare, market value of the lands bearing survey Nos. 1153 and 1212 at Rs. 10,000/ - per hectare and the market value of the other lands at Rs. 15,000/- per hectare. The only reason for determining the market value by classifying the lands in the aforesaid three categories was, in his own words, as under:

"Taking an overall view of the evidence and the sale instances relied upon by the petitioners in each case and in view of the fact that purchasing power of the rupee has considerably decreased during the last couple of years, it would be just and equitable if the market value.....is fixed at....."

3. It was, therefore, natural that both the learned In charge Government Pleader as well as the learned Advocate for the respondents challenged the awards made by the learned Joint Judge, Jam agar, as illegal, unscientific and oblivious of relevant criteria. So, the entire discussion made by the learned Judge and the exercise of taking out the average undertaken by him, had to be ignored and we had to appreciate the evidence on record afresh, like the trial Court. Needless to say that, it is not necessary to repeat the submissions made on behalf of the appellants and the respondents, which are identical, as stated above. The only additional submission made by the learned Advocate for the respondents who have filed cross-objections, is that, compensation should be awarded at Rs. 10,000/- acre and according to the learned In charge Government Pleader, the compensation awarded by the Land Acquisition Officer should not be disturbed.

4. So far as the potential value of the lands is concerned, the learned Judge has found that the lands had considerable potential value as Building site, even though, they were agricultural lands. It emerges from the evidence that there is a Firing Butt and the lands were acquired for the purpose of defence. Jam agar is a fast developing city and the acquired lands were just near Porbandar-Jamnagar road, having transport facility. There are also residential quarters of GIDC and Military establishment over and above the Industrial Sheds of GIDC at some

distance from the acquired lands.

5. It appears from the Map Exh. 81, as well as S. 4 Notification Exh. 38 that some of the acquired lands, namely, Survey Nos. 1287, 1290, 1224 and 1225 were within the Municipal limits of Jamnagar, while other lands were just adjoining these limits, and so the learned Judge rightly held that the acquired lands had potential value. Now, so far as the acquired lands, which are the subject-matter of the present appeals, are concerned, they almost form a compact block. We would just refer to some of the sale instances produced by the Government and the claimants in this group of cases which would show how difficult and almost impossible is the task to assess the value of the acquired lands on the basis of the sale instances, as witnesses have not been examined in order to explain the circumstances in which the lands were sold and purchased at a particular rate. It appears that the City of Jamnagar is situated to the north-east of the acquired lands and, therefore, the lands situated in the north, which were the subject matter of sale instance, should have fetched a higher rate, while the lands, which were situated, to the south should fetch a lower rate. The sale instances do not disclose any such rationale. The sale instance Exh. 71 relating to sale of Survey No. 1281 /1 which is nearest in distance from the acquired lands on the northern side, was sold at Rs. 1600/- per acre on 29-12-1967 i.e. less than two years before the notification under S. 4 of the Act. Another instance Exh. 51 relating to the sale of Survey No. 1241 in the north, discloses altogether a speculative rise in the price of land. Some of these lands was sold at Rs. 25,000/- per acre on 18-4-70, while the other land from the same survey number was sold at Rs. 37,500/- per acre, within the period of three months i.e. on 21-7-70. The aforesaid sale of Survey No. 1241 /1 in the north, can be contrasted with the sale of Survey No. 1165 and Survey No. 1166 in the south at Rs. 2730/- on 23-7-67. Thus, these sale instances do not provide any guideline in evaluating the acquired lands. The principle of taking out an average would apply if the lands are similarly situated either in point of time or in view of the distance from the acquired lands. No witness has been examined to show that some special advantage was available to the purchaser of the lands which had been sold at higher rate.

6. Now so far as the group of acquired lands is concerned, the land bearing Survey No. 1292 is the subject-matter of an agreement of sale Exh. 55 dated 18-6-69, which discloses the market rate of Rs. 19,500/- per acre. Apparently, this would be the most comparable instance, not only because it is a part of the block of acquired lands, but it also purports to have been executed about one month before the notification under S. 4 of the Act. However, the sale instance Exh. 55 has many strange features:

(i) Even though the Government came out with a case in the reference Court, that compensation cannot be awarded at a rate higher than the one awarded by the Land Acquisition Officer; it was the learned District Government Pleader who produced the alleged agreement Exh. 55 at Survey No. 25-B with its list

document Exh. 10. Indeed, it was the District Government Pleader who had produced sale deeds Exhs. 51, 52 and 54, showing the market value of Survey No. 1241 at the rate of Rs. 37,500/- and Rs. 25,000/- per acre respectively. It appears that the documents produced before the Land Acquisition Officer, which were in fact, not relied upon by the Land Acquisition Officer, were produced in a bulk by the learned District Government Pleader, without even looking at those documents and without applying his mind regarding the implications thereof, and naturally, the learned Advocate appearing for the claimants immediately endorsed his "no objection" to exhibiting the documents. So even without necessary proof of these documents by examining the witnesses, these documents became a part of the record, and even if we ignore the sale deeds relating to Survey No. 1241, which is at some distance from the acquired lands, it would be difficult to ignore the document Exh. 55 relating to Survey No. 1292, which is in the midst of the acquired lands. We cannot refrain from observing that it was the most callous attitude on the part of the District Government Pleader in producing such sale instances, which cut at the roots of the Government case in such Land Acquisition matters. This would be more clear from the other strange features of the document Exh. 55.

(ii) Document Exh. 55, which purports to be an agreement of sale between the owner Babulal Maganlal and Shah Nemchand Sura and Godhan Ranchhod, is a copy of the original agreement of sale, which is written on a simple paper without bearing the signature of the so-called executant, and even without being certified as a true copy by any competent authority. It is really strange that the learned District Government Pleader chose to produce such a document as a piece of evidence to support the Government case.

(iii) Even though, as per this agreement, Survey No. 1292 belonged to Babulal Maganlal; Babulal Maganlal who as a owner of the land was likely to get Rs. 19,500 per acre, did not move the Collector for making any reference, even though, he actually had moved him for making a reference in respect of two other survey numbers.

(iv) Babulal Maganlal was examined as a witness at Exh. 19. He had pressed his claim in respect of Survey Nos. 1199 and 1296, but not in respect of Survey No. 1292 regarding the value of which, he had conclusive evidence in his possession. In an affidavit Exh. 56 alleged to have been filed by a co-purchaser Gordhan Ranchhod, the deponent, had stated that the original agreement of sale was in possession of Babulal Maganlal. Such an affidavit is no evidence, particularly when Babulal was examined as a witness. Ordinarily, the Court would not have exhibited the affidavit Exh. 56 and the agreement Exh. 55, had the District Government Pleader not produced it as a piece of evidence admitted by the claimants.

(v) Babulal Maganlal was examined at Exh. 19. He did not make any reference to the agreement of sale of Survey No. 1292 in his examination-in-chief and what is most surprising is that the District Government Pleader Shri Buch did not put a

single question in his cross-examination regarding this agreement of sale which, if taken as genuine, would be the most comparable sale instance. On the contrary, in his cross-examination Babulal Maganlal stated:

"I did not have any other land except this. I have never purchased or sold agricultural land".

This evidence was given by Babulal when he was deposing about acquisition of Survey Nos. 1199 and 1296.

(vi) The learned Judge also adopted the strange procedure of marking exhibits on the documents produced by the parties, after the oral evidence of all the witnesses was produced. The learned Judge even after exhibiting the 19 documents did not try to find out which of them was a comparable instance, and tried to take out an average from the instances of sale of different lands, which were absolutely dissimilar to each other in situation as well as price. He never tried to find out whether any of the instance apart from Exh. 55 would throw any light regarding the prevailing market rate of the neighbouring land.

7. In view of this grossly negligent conduct of the proceedings on behalf of the Government, and also in view of the inappropriate method of evaluation adopted by the learned Judge, we were inclined to remand the matter to the lower Court, for permitting the parties to lead their evidence in respect of the sale instances and for re-appreciation of the evidence that may come on record by adopting a more appropriate criteria, but we are not doing so because of the following considerations:

(i) the acquisition proceeding has become almost 20 years old; and many of the witnesses concerned with the said sale instances may not be in existence.

(ii) In 1984 S. 23 of the Land Acquisition Act was amended by inserting sub-section (1)(a) and adding sub-sec, (2). S. 28 of the Act was also amended. So, if the matter is remanded and hypothetically the lower Court awards compensation even at the lowest rate advocated by the Government, the claimants would be entitled to receive 12% per annum on the market value of the land for the period commencing from the date of publication of notification under S. 4(I) to the date of the award, or the date of taking possession of the land and also 30% solatium on the market value. The claimants also would be entitled to recover interest on the total amount of compensation at the rate of 9% per annum instead of 4 1/2 per cent. This would be the result of the operation of sub-sec. (2) of S. 30 of the Act 68 of 1984, and the total amount that would be awarded after the remand, would perhaps be more than the amount to be awarded in these appeals at the rate claimed by the opponents-claimants.

8. When this possibility was brought to the notice of Mr. Trivedi, learned In charge Government Pleader, he submitted that the matters should not be remanded even if this Court is inclined or constrained to award higher compensation as claimed by the opponents. We, therefore, take the document

Exh. 55, disclosing the rate of Rs. 19,500/- per acre as indicative of speculative rise in the market rate of the adjoining land and in that context, the document Exh. 51 dated 27-1-70 and the document Exhs. 52 and 54 dated 18-4-70 have to be appreciated and accepted as some basis for assessing the value of the acquired land. As the map is the only guideline for us in absence of any direct evidence from the parties to the sale instances, we will have to ignore sale instances of the year 1967 and 1968 as remote in point of time. The sale deeds Exh. 52 and 54 in respect of the lands bearing Survey No. 1241 disclose the market rate of Rs. 25,000/- per acre, while sale deed Exh. 51 in respect of another portion of the same survey number executed three months thereafter discloses the rate of Rs. 37,500/- per acre. Whatever the motive behind this spurt in price, it cannot be ignored that they were the transactions between willing sellers and willing purchasers and it would not be unsafe to assess the value of the acquired lands at Rs. 10,000/- per acre as claimed by the respondents.

9. It appears from the record that the claimant had claimed compensation at varying rates from Rs. 10,000/- per acre to Rs. 75,000/- per acre in the lower Court, excepting the case of the claimant in Land Reference Case No. 6/ 76, who had claimed Rs. 7500/- per acre in respect of Survey Nos. 1196 and 1197 which are in the extreme south of the block of lands acquired in this project. Hence, so far as First Appeal No. 147/80 arising from Land Reference Case No.6/76 is concerned, the compensation to be awarded would be limited to Rs. 7500/- per acre.

10. In cross-objections filed by the respondent in these appeals, the respondents have claimed compensation at the rate lower than Rs. 10,000/- per acre. Therefore, so far as the cross-objections in these appeals are concerned, excepting First Appeal No. 147/ 80, they will have to be allowed, in entirety. So, far as First Appeal No. 147/80 is concerned, on deducting the amount already awarded, the respondents will be entitled to recover additional amount of Rs. 27,242. On the amounts so awarded in all the appeals, towards the market value of the lands, the respondent would be entitled to solatium at the rate of 15%. They would also be entitled to recover interest at the rate of 15% on the additional amount awarded in these appeals, from the date of taking possession till payment.

11. The appeals are dismissed accordingly and Cross Objections are allowed to the aforesaid extent with costs of both the Courts.

12. As the rate of interest awarded by us as per the statutory provisions prevailing on the date of the acquisition appears to be ridiculous in these days, the appellant will pay interest at the rate of 12% per annum from the completion of four months hereafter within which period the appellant will pay the additional amount of compensation as awarded by us.

13. Decrees to be drawn accordingly after computing the amount awardable to cash respondent-claimant.

14. Order accordingly.