

(2007) 03 GUJ CK 0017

In the Gujarat High Court

Case No : First Appeal No"s. 3983 to 4069 of 2006

The Executive Engineer Saurashtra Main Brach and Another	APPELLANT
Vs	
Heir of Ranchhod Gandabhai-Mahadevbhai Gandabhai	RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 18, 4, 4(1), 54, 5A

Citation : (2007) 03 GUJ CK 0017

Hon'ble Judges : J.M. Panchal, J;Abhilasha Kumari, J

Bench : Division Bench

Advocate : S.S. Shah, Government Pleader in First Appeal Nos. 3983 to 3999 of 2006, Krunal Pandya, Assistant Government Pleader in First Appeal Nos. 4000 to 4014 of 2006, Krina P. Calla, Assistant Government Pleader in First Appeal Nos. 4015 to 4025 of 2006, Tanuja Kachchhi, Assistant Government Pleader in First Appeal Nos. 4026 to 4036 of 2006, Mini Nair, Assistant Government Pleader in First Appeal Nos. 4037 to 4047 of 2006, J.K. Shah, Assistant Government Pleader in First Appeal Nos. 4048 to 4058 of 2006 and Sandhya Natani, Assistant Government Pleader in First Appeal Nos. 4059 to 4069 of 2006, for the Appellant; M.D. Vakil, for the Respondent

Judgement

J.M. Panchal, J.—All these appeals filed u/s 54 of the Land Acquisition Act, 1894 (the Act for short) read with Section 96 of the Code of Civil Procedure, 1908, question the legality of common judgment and award dated August 30,2005, rendered by the learned Principal District Judge, Surendranagar in Land Reference Case Nos. 95/99 to 125/99, 67/95 to 71/95, 208/97 to 219/97, 220/97 to 240/97 and 272/97 to 289/97, by which the claimants have been awarded compensation at the rate of Rs. 21.80 Ps. per sq.mt. for their acquired irrigated lands and Rs. 15.20 Ps. per sq.mt. for non-irrigated lands, which were situated at village Bajrangpura, Taluka Lakhtar, District Surendranagar. It may be mentioned that all the above numbered Land Reference cases were consolidated and decided together. In all the cases, the lands were acquired for public purpose of construction of a canal under Narmada Project. Therefore, this Court proposes

to dispose of the above numbered appeals by this common judgment.

2. A proposal was received by the State Government from the Executive Engineer, Saurashtra Main Branch, Division No. 1/1, Surendranagar to acquire irrigated and non-irrigated lands of village Bajrangpura, Taluka Lakhtar, District Surendranagar for the public purpose of construction of a canal under the Narmada Project. On perusal of the same, the State Government was satisfied that the lands of village Bajrangpura mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification u/s 4(1) of the Act was issued which was published in the Official Gazette on November 16,1992. Thereafter, necessary inquiry was conducted u/s 5A of the Act. On receipt of report from Special Land Acquisition Officer made u/s 5A(2) of the Act, the State Government was satisfied that the lands of village Bajrangpura specified in the Notification published u/s 4 of the Act were needed for the public purpose of construction of the canal under the Narmada Project. Therefore, a declaration u/s 6 of the Act was made, which was published in the Official Gazette on October 19,1993. This case was registered as L.A. Q.Case No. 161/92. Thereafter, the interested persons were served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 20/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated January 25,1995 offered compensation to the claimants at the rate of Rs. 1.80 Ps. per sq.mt. for irrigated lands and Rs. 1.20 Ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications u/s 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Surendranagar, where they were numbered as Land Reference Case Nos. 208/97 to 219/97. In those cases, four witnesses were examined by the claimants i.e. (1) Velubha Andubha at Exh.51, (2) Jaysukhbhai Nanlal Shah at Exh.53, (3) Ganeshbhai Velabhai at Exh.72 and (4) Kashiram Shankarbhai at Exh.82, in support of their claim for enhanced compensation, whereas on behalf of the acquiring authorities witness Bhanuprasad Jasbhai was examined.

3. The Executive Engineer, Saurashtra Main Branch, Division No. 1/1, Surendranagar made another proposal to acquire irrigated and non-irrigated lands situated at village Bajrangpura, Taluka Lakhtar, District Surendranagar for the public purpose of construction of canal under the Narmada Project. On perusal of the same, the State Government was satisfied that the lands of village Bajrangpura specified in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification u/s 4(1) of the Act was issued which was published in the Official Gazette on November 27,1992. Thereafter, necessary inquiry was conducted u/s 5A of the Act and report as contemplated by Section 5A(2) of the Act was forwarded to the State Government. On the

basis of the said report, the State Government was satisfied that the lands of village Bajrangpura specified in the Notification published in the Official Gazette on November 27,1992 were needed for the public purpose of construction of canal under the Narmada Project. Therefore, a declaration u/s 6 of the Act was made, which was published in the Official Gazette on November 8,1993. The acquisition proceedings initiated pursuant to publication of notification u/s 4(1) of the Act in the Official Gazette on November 27,1992 were registered as L.A.Q. Case No. 164/92. Thereafter, the interested persons were served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 20/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated March 25,1995 offered compensation to the claimants at the rate of Rs. 1.80 Ps. per sq.mt. for irrigated lands and Rs. 1.20 Ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications u/s 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Surendranagar, where they were registered as Land Reference Case Nos. 272/97 to 289/97. In those cases, on behalf of the claimants, six witnesses were examined by the claimants. i.e. (1) Ladhubhai Narsangbhai at Exh.14, (2) T.D.O. Mr. Jaysukhbhai N. Shah at Exh.57, (3) former Sarpanch Ganeshbhai Velabhai at Exh.80, (4) Kashiram Shankarbhai at Exh.88, (5) Manilal Virjibhai Patel at Exh.47 and (6) Haribhai Shankarbhai at Exh.40, in support of their claim for enhanced compensation, whereas on behalf of the acquiring authorities witness Bhanuprasad Jasbhai was examined.

4. Third proposal was made by the Executive Engineer, Saurashtra Main Branch, Division No. 1/1, Surendranagar to acquire irrigated and non-irrigated lands situated at village Bajrangpura, Taluka Lakhtar, District Surendranagar for the public purpose of construction of canal under the Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Bajrangpura specified in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification u/s 4(1) of the Act was issued which was published in the Official Gazette on May 3,1993. After inquiry made u/s 5A of the Act was over necessary report as contemplated by Section 5A(2) of the Act was forwarded to the State Government. On the basis of the said report, the State Government was satisfied that the lands of village Bajrangpura specified in the Notification published in the Official Gazette on May 3,1993 were needed for the public purpose of construction of canal under the Narmada Project. Therefore, a declaration u/s 6 of the Act was made, which was published in the Official Gazette on November 16,1993. The case initiated for acquisition of lands pursuant to the notification published u/s 4(1) of the Act in the Official Gazette on May 3, 1993 was registered as L.A.Q. Case No. 174/93. Thereafter, the

interested persons were served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 20/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated March 16,1995 offered compensation to the claimants at the rate of Rs. 1.80 Ps. per sq.mt. for irrigated lands and Rs. 1.20 Ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications u/s 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Surendranagar, where they were registered as Land Reference Case Nos. 220/97 to 240/97. In those cases, four witnesses were examined on behalf of the claimants i.e. (1) Velabha Andubha at Exh.51, (2) T.D.O. Mr.Jaysukhbhai N.Shah at Exh.53, (3) former Sarpanch Ganeshbhai Velabhai at Exh.72 and (4) Kashiram Shankarbhai at Exh.82 in support of their claim for enhanced compensation, whereas on behalf of the acquiring authorities witness Bhanuprasad Jasbhai was examined.

5. Yet another proposal was made by the Executive Engineer, Saurashtra Main Branch, Division No. 1/1, Surendranagar to acquire irrigated and non-irrigated lands situated at village Bajrangpura, Taluka Lakhtar, District Surendranagar for the public purpose of construction of canal under the Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Bajrangpura specified in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification u/s 4(1) of the Act was issued which was published in the Official Gazette on March 6,1995. Thereafter, inquiry was made u/s 5A of the Act and a report as contemplated by Section 5A(2) of the Act was forwarded to the State Government. On the basis of the said report, the State Government was satisfied that the lands of village Bajrangpura specified in the Notification published in the Official Gazette on March 6,1995 were needed for the public purpose of construction of canal under the Narmada Project. Therefore, a declaration u/s 6 of the Act was made, which was published in the Official Gazette on November 23,1995. The case initiated for acquisition of lands pursuant to the notification published u/s 4(1) of the Act in the Official Gazette on March 6,1995 was registered as L.A.Q.Case No. 229/95. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 20/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated February 3,1998 offered compensation to the claimants at the rate of Rs. 2.70 Ps. per sq.mt. for irrigated lands and Rs. 1.80 Ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications u/s 18 of

the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Surendranagar, where they were registered as Land Reference Case Nos. 95/99 to 125/99. In those cases, four witnesses were examined on behalf of the claimants i.e. (1) Raysangbhai Laxmanbhai at Exh.52, (2) T.D.O. Mr. Jaysukhbhai N. Shah at Exh.56, (3) former Sarpanch Ganeshbhai Velabhai at Exh.78 and (4) Mahadevbhai Gandabhai at Exh.84 in support of their claim for enhanced compensation, whereas on behalf of the acquiring authorities witness Bhanuprasad Jasbhai was examined.

6. It may be mentioned that Land Reference Case Nos. 208/97 to 219/97, 220/97 to 240/97, 272/97 to 289/97 and 95/99 to 125/99 were ordered to be consolidated and heard together. However, thereafter, it was brought to the notice of the Reference Court that Land Reference Case Nos. 67/95 to 71/95 arising from the L.A.Q. Case No. 7/92 relating to the acquisition of lands from village Bajrangpura, Taluka Lakhtar, District Surendranagar were left out and, therefore, the papers of those Reference Cases were also called for and decided by the Reference Court by impugned judgment. The record shows that therein also a proposal was received by the State Government from the Executive Engineer, Saurashtra Main Branch, Division No. 1/1, Surendranagar to acquire irrigated and non-irrigated lands situated at village Bajrangpura, Taluka Lakhtar, District Surendranagar for the public purpose of construction of canal under the Narmada Project. On perusal of the same, the State Government was satisfied that the lands of village Bajrangpura mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification u/s 4(1) of the Act was issued which was published in the Official Gazette on September 23,1992. Thereafter, necessary inquiry was conducted u/s 5A of the Act. On receipt of report from the Special Land Acquisition Officer made u/s 5A(2) of the Act, the State Government was satisfied that the lands of village Bajrangpura specified in the Notification published u/s 4 of the Act were needed for the public purpose of construction of canal under the Narmada Project. Therefore, a declaration u/s 6 of the Act was made, which was published in the Official Gazette on May 20,1993. The case initiated for acquisition of lands pursuant to the notification published u/s 4(1) of the Act in the Official Gazette on September 23,1992 was registered as L.A.Q. Case No. 7/92. Thereafter the interested persons were served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 20/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated April 6,1994 offered compensation to the claimants at the rate of Rs. 2.70 Ps. per sq.mt. for irrigated lands and Rs. 1.80 Ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications u/s 18 of the Act requiring

the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Surendranagar, where they were registered as Land Reference Case Nos. 67/95 to 71/95. As mentioned earlier, the papers of these reference cases were called for and those, consolidated with Land Reference Case Nos. 208/97 to 219/97 and other cognate matters.

7. After considering the evidence adduced by the parties, the Reference Court by impugned award has awarded compensation to the claimants at the rate of Rs. 21.80 Ps. per sq.mt. for irrigated lands and Rs. 15.20 Ps. per sq.mt. for non irrigated lands, giving rise to above numbered appeals.

8. This Court has heard Mr. S.S. Shah, learned Government Pleader, Mr.Krunal Pandya, learned Assistant Government Pleader, Ms. Krina P.Calla, learned Assistant Government Pleader, Ms.Tanuja Kachchhi, learned Assistant Government Pleader, Ms. Mini Nair, learned Assistant Government Pleader, Mr.J.K.Shah, learned Assistant Government Pleader, as well as Ms. Sandhya Natani, learned Assistant Government Pleader for the appellants and Mr. M.D. Vakil, learned Counsel for the claimants at length and in great detail. This Court has also considered the Record and Proceedings received from the Reference Court, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

9. The contention that the documents produced with list Exh.89 on behalf of the acquiring authorities were not considered and therefore, the impugned award should be set aside cannot be accepted. It is true that no objection was taken by the learned Counsel for the claimants in relation to production of documents which were mentioned in the list Exh.89 and those documents were exhibited with consent of the parties. However, no better particulars, such as location of the lands sold or similarity between the lands acquired and the lands which were subject matters of those sale deeds, could be established by the acquiring authorities inspite of the fact that witness Bhanuprasad Jasbhai was examined by them. As is evident from the record of the case, at least five Notifications u/s 4(1) of the Act were published in the Official Gazette between September 23, 1992 to March 6,1995 for acquiring different parcels of lands from village Bajrangpura. It is common knowledge that once a notification u/s 4(1) of the Act is published in the Official Gazette declaring the intention of the Government to acquire lands for public purpose, the prices of the lands surrounding the lands proposed to be acquired would considerably appreciate. Therefore, this Court is of the opinion that the sale deeds cannot be considered as reflecting the prices of the lands acquired in the instant cases, nor would it be prudent to determine market value of the lands acquired in the instant cases on the basis of those sale deeds. The relevance of those sale deeds for the purpose of determining market value of the lands acquired in the instant cases could not be established by the learned Counsels for the appellants. Therefore, this Court is of the opinion that

the impugned award is not liable to be interfered with on the ground that certain sale deeds, which were produced by the acquiring authorities for consideration of the Reference Court, were in fact not considered by the Reference Court.

10. It is relevant to notice that an attempt was made by the claimants to claim enhanced compensation on yield basis. However, as rightly observed by the Reference Court, no cogent and convincing material could be produced by the claimants on the basis of which market value of the lands acquired could have been determined on yield basis. Further, as observed by the Supreme Court in *Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others*, , the method of capitalising the actual or immediately prospective profits or the rent of a number of years" purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. Therefore, on the basis of unsatisfactory evidence led by the claimants regarding income derived by them from the yield, the market value of the lands acquired in the instant case could not have been computed by the Reference Court.

11. Once the sale deeds are taken out of consideration, the only piece of evidence with which the Court is left for determination of market value of the lands acquired in the instant cases is the previous award of the Reference Court relating to the lands of village Lakhtar, which was produced at Exh.68. Exh.68 indicates that pursuant to notification issued u/s 4(1) of the Act, which was published in the Government Gazette on September 23,1992, the lands of village Lakhtar (Saurashtra) were acquired for the public purpose of construction of canal under the Narmada Project. Therein the Reference Court by judgment and award dated January 20,2001 awarded additional amount of compensation to the claimants at the rate of Rs. 18/- per sq.mt. for their acquired lands, over and above what was awarded to them by the Special Land Acquisition Officer. The relevancy of the previous award of the Reference Court relating to the lands of village Lakhtar stands established by the witnesses, who have been examined on behalf of the claimants. Except pointing out that there was distance of about 6 Kms. between the lands, which were acquired from village Lakhtar and the lands which were acquired in the instant case from village Bajrangpura, no other relevant feature could be pointed out by the learned Counsels for the appellants, which would persuade this Court to disregard the previous award of the Reference Court relating to the lands of village Lakhtar for the purpose of determining market value of the lands acquired in the instant cases. The record further shows that with reference to the lands, which were acquired from village Lakhtar, Land Acquisition Reference Case Nos. 306/97 to 327/97 were registered in the Court of learned Civil Judge (SD), Surendranagar and the award rendered on January 20,2001 was confirmed by the High Court in First Appeal Nos. 3067/01 to 3088/01 decided on November 20, 2002. It is well settled that previous award of Reference Court relating to the lands of a village which has attained finality can be taken into consideration for the purpose of determining market value of similar lands acquired from the adjoining village subsequently.

As observed earlier, the similarity of the lands acquired from village Lakhtar and from village Bajrangpura stands satisfactorily established by the evidence adduced by the witnesses examined on behalf of the claimants. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Lakhtar for the purpose of determining market value of the lands acquired in the instant cases. However, this Court finds that after publication of Notification issued u/s 4(1) of the Act in the Official Gazette on September 23, 1992 for acquiring the lands from village Lakhtar, the prices of the lands situated in village Bajrangpura were bound to rise in view of the fact that the lands were situated in near vicinity. Therefore, on the basis of previous award of the Reference Court relating to the lands of village Lakhtar, the claimants would not be entitled to compensation at the rate of Rs. 21.80 Ps. per sq.mt. for irrigated lands and Rs. 15.20 Ps. per sq.mt. for non irrigated lands. There is general consensus between the learned Counsels for the parties that on the basis of previous award of the Reference Court relating to the lands of village Lakhtar, the claimants would be entitled to compensation in all at the rate of Rs. 13.20 Ps. per sq.mt. for non irrigated lands and Rs. 16.50 Ps. per sq.mt. for irrigated lands, on the basis of decision of Supreme Court in Kantaben Manibhai Amin and Another Vs. Special Land Acquisition Officer, Baroda, wherein it is laid down that market value of Bagayat land would be in excess by 25% of the market value of Jirayat land. In view of the above discussion, the above numbered appeals will have to be accepted in part.

12. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated August 30, 2005, rendered by the learned Principal District Judge, Surendranagar in Land Reference Case Nos. 208/97 to 219/97, 220/97 to 240/97, 272/97 to 289/97, 95/99 to 125/99 and 67/95 to 71/95 awarding compensation to the claimants at the rate of Rs. 21.80 Ps. per sq.mt. for irrigated lands and Rs. 15.20 Ps. per sq.mt. for non irrigated lands, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs. 16.50 Ps. per sq.mt. for irrigated lands and Rs. 13.20 Ps. per sq.mt. for non irrigated lands. The other benefits granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

Record and Proceedings be sent back to the Reference Court immediately.