

(2011) 09 GUJ CK 0037
In the Gujarat High Court

Case No : First Appeal No. 1040 of 2004 to First Appeal No. 1041 of 2004

Vikramsinh Pratapsinh Gohel and 1

APPELLANT

Vs

State of Gujarat and 2

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

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

Citation : (2011) 09 GUJ CK 0037

Hon'ble Judges : R.M. Chhaya, J; Jayant Patel, J

Bench : Division Bench

Advocate : Vijay N. Ravals, 1.2.1, 1.2.2 - 2, for the Appellant; Moxa Thakkar, AGP for Defendant(s) : 1 -, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Jayant Patel

1. The present appeals arise against the common judgment and the award passed by the Reference Court dated 06.09.2002 whereby the Reference Court has awarded additional compensation at Rs.50 per square metre plus statutory benefit under sections 23(1A), 23 (2) and 28 of the Land Acquisition Act, 1894 ("the Act" for short) and has also additionally directed deduction of 5% towards new tenure land.

2. Therelevant facts are that for the Project of Narmada Yojna Residential Houses, the lands at Halol were to be acquired under the Act. The notification u/s 4 of the Act was published on 21.12.1989 and the notification under 6 of the Act was published on 24.05.1990. The award was passed thereafter by the Special Land Acquisition Officer u/s 11 of the Act whereby he awarded compensation at Rs.6.50 per square metre, Rs.7 per square metre and Rs.8 per square metre for different parcels of lands. As the claimants were not satisfied with the compensation they raised dispute u/s 18 of the Act and demanded Rs.100 per square metre as compensation. Such disputes were referred to the Reference

Court for adjudication being Land Reference Case Nos.250/93 and 256/93. The Reference Court at the conclusion passed the aforesaid judgment and award. Under the circumstances the present appeals before this Court.

3. We have heard Mr. Raval for the appellants and Ms.Thakkar, learned AGP for the respondents. We have considered the R & P of the Reference Court and we have also considered the reasons recorded by the learned Judge in the impugned judgment.

4. The perusal of the judgment of the Reference Court shows that the Reference Court has mainly relied upon the decision of the learned District Judge in Land Reference Case No. 25/89 for acquisition of other lands of some of the claimants wherein the notification u/s 4 of the Act was published on 21.08.1980 and the additional compensation awarded was Rs.34.50. The Reference Court has thereafter, arrived at the market value and has awarded additional compensation at Rs.50 per square metre.

5. Mr. Raval appearing for the appellants contended that it is by now well settled that appreciation at the rate of 10% p.a. deserves to be considered if there is a time gap in the notification u/s 4 of the Act and the earlier decision of the Reference Court for awarding of the compensation. He submitted that if the appreciation is considered at the rate of 10% p.a., the Reference Court has committed error in awarding additional compensation of Rs.50/-only.

6. Whereasthe learned AGP supported the award passed by the Reference Court.

7. We find considerable force in the submission of the learned counsel for the appellants inasmuch as 10% appreciation to be considered is by now a well settled proposition unless any extraordinary case is made out to make the departure therefrom. The Reference Court did not commit any error in relying upon the decision of the another reference court in Land Reference Case No.25/89 since the acquisition in that case was also at the very city Halol. Therefore, the said approach cannot be faulted with. However, we find that the Reference Court committed error in not considering the appreciation at the rate of 10% p.a. after taking into consideration the time gap between notification u/s 4 of the Act in the earlier matter and the notification u/s 4 of the Act in the present matter. The judgment of the Reference Court in earlier matter has been produced at Exhibit 21 and it is apparent that the notification u/s 4 of the Act in the said case was of 21.08.1980 whereas the notification u/s 4 of the Act in the present case is 21.12.1989. Therefore, in any case there was a time gap of about 9 years in the notification u/s 4 of the Act. Under the circumstances, the appreciation at the rate of 10% p.a. was required to be considered by the Reference Court.

8. If the aforesaid aspect is further examined with the contents of the earlier decision at Exh.21 of the Reference Court in Land Acquisition Case No.25/89, it appears that in the said case, the Special Land Acquisition Officer had awarded compensation at Rs.5.50 per square metre and the Reference Court had

additionally awarded the compensation at Rs.34.50 per square metre and therefore accordingly, it can be said that the market value for the purpose of awarding of compensation under the Act was assessed at Rs.40 per square metre. If the appreciation is considered at the rate of 10% p.a. for a period of 9 years, such amount would come to Rs.36 and accordingly, Rs.76 could be said as market value on the date when the notification u/s 4 of the Act was published on 21.12.1989. It further appears from the judgment at Exh.21 of the Reference Court in the earlier matter that the Reference Court having found the fertility and the irrigation facility had assessed the market value, at Rs.40/-per square metre. If the said aspect is considered with the contents of the Award in the present matter and the evidence that was led on behalf of the claimants, at the most it could be said that the market value of the land at Rs.76 could be attributed to the best available piece of land which was found by the Land Acquisition Officer and for which he awarded compensation at Rs.8 per square metre. Under the circumstances, those claimants for whose land the Land Acquisition Officer awarded compensation at the rate of Rs.8 per square metre could be said as entitled to additional compensation of Rs.68 per square metre, whereas the Reference Court has awarded Rs.50/-per square metre and under the circumstances, the judgment and the award of the Reference Court to that extent deserves to be modified.

9. However, all the claimants would not be entitled to the similar compensation at par with the claimants who were awarded compensation at Rs.8 per square metre by the learned Special Land Acquisition Officer. If the said aspect is considered with the contents of the award and the evidence that was led on behalf of the claimants, it appears that the Special Land Acquisition Officer reduced the compensation at Rs.7 per square metre and Rs.6.50 per square metre to the different parcels of land on account of the availability of the approach road and the location. Nothing has come on record that such aspect did not exist.

10. Under the circumstances, the difference as was considered by the Special Land Acquisition Officer for the market value of the land would be required to be considered but proportionately. Therefore, taking the base of Rs.76 for the land for which the compensation has been awarded at Rs.8 per square metre in the award of the Special Land Acquisition Officer, the market value of the land of the claimants who have been awarded compensation at Rs.7 per square metre by the Special Land Acquisition Officer proportionately, would come to Rs.66.50 out of which Rs.7 per square metre has already been awarded as compensation and therefore, such claimants would be entitled to additional compensation at Rs.59.50 per square metre. In the same manner, for the claimants who have been awarded compensation at Rs.6.50 per square metre by the Special Land Acquisition, proportionately the market value would come to Rs.61.75 per square metre out of which as Rs.6.50 per square metre has been awarded compensation, such claimants would be entitled to additional compensation at Rs.55.25 per square metre. However, in all the matters, the Reference Court has

awarded compensation at Rs.50 per square metre only and therefore, the judgment and award of the Reference Court would also be required to be modified to that extent.

11. It appears that the Reference Court has directed for deduction of 5% of the amount from the compensation qua the claimants who are holding the land as new tenure land. Such direction cannot be sustained in view of the decision of this Court in the case of State of Maharashtra Vs. Babu Govind Gavate etc.,

12. In view of the aforesaid observations and discussions, it is observed and directed that the concerned original claimants who have been awarded compensation at Rs. 8 per square metre by the Special Land Acquisition Officer shall be entitled to additional compensation at Rs.68 per square metre (Rs.50 is awarded by the Reference Court plus Rs.18). It is further observed that the original claimants who were awarded compensation at Rs.7 per square metre by the Special Land Acquisition Officer would be entitled to additional compensation at Rs.59.50 per square metre (Rs.50 is awarded by the Reference Court plus Rs.9.50 per square metre) and the concerned claimants who have been awarded compensation by the Special Land Acquisition Officer at Rs.6.50 per square metre would be entitled to additional compensation at Rs.55.25 per square metre (Rs.50 awarded by the Court plus Rs.5.25 per square metre).

13. It is further observed and directed that all the claimants on the aforesaid amount of additional compensation would be entitled to increase in the market value u/s 23(1A) of the Act, solatium u/s 23(2) of the Act and interest u/s 28 of the Act.

14. The direction given by the Reference Court for making deduction of 5% for new tenure land is quashed and set aside.

15. The judgement and the award of the Reference Court shall stand modified to the aforesaid extent. Considering the facts and circumstances, no order as to costs.

16. It is further observed and directed that if the amount of compensation is not deposited with the Reference Court, the same shall be deposited as per the present order of this Court within a period of eight weeks from the receipt of the order of this Court.