

(Spl.H.C.D.D 28E)  
G.P.Bve-(J)-191-18,000-6-89.  
G.R.J.D No. 4398 dated 3.7.16.

FIRST APPEAL NO. 1238 OF 1981

Date of decision: 22.9.1994.

For Approval and Signature

Hon'ble Mr.Chief Justice : B.N.Kirpal

Hon'ble Mr. Justice : R.K.Abichandani

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter of not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. D.D.Vyas, Advocate for the appellant.  
Mr. N.D.Nanavati, Government Pleader for the respondent No.1  
Respondent Nos. 2 and 3 served.

Coram: B.N.Kirpal, C.J. & R.K.Abichandani,J.  
Date : 22.9.1994

ORAL JUDGEMENT (Per B.N.Kirpal, C.J.)

The challenge in this appeal is to the judgement of the Assistant Judge, Junagadh, who awarded compensation at the rate of

Rs. 1,42,500/- per hectare in respect of land of the appellant which had been acquired.

Vide a notification issued on 24th December, 1971 under Section 4 of the Land Acquisition Act, land of the appellant admeasuring 1 hectare 29 acre 62 square metre was sought to be acquired. The Land Acquisition Collector awarded a sum of Rs. 1,83,676/- for the land, Rs. 17,848/- for trees, houses or other immovable things, Rs. 1,100/- for crops or huts.

Not being satisfied with the aforesaid award, reference was made under Section 18 of the Land Acquisition Act. Vide a judgement dated 15th January, 1981 the market value of the land was fixed at Rs. 1,42,500/- per hectare. The result of this was that a further sum of Rs. 14,502.50, in addition to what had been awarded by the Land Acquisition Collector, became payable to the appellant.

In the appeal, the learned Counsel for the appellant has submitted that the compensation should have been awarded by determining the value of land at Rs. 1,25,000/- per acre.

We have gone through the judgement of the Assistant Judge and we find that various documents were produced in evidence on behalf of the claimant with the consent of the Counsel for the respondent. Naturally, the said documents were taken in evidence and were exhibited. It is indeed surprising that apart from the fact that no evidence were led by the Government, representative of the Land Acquisition Officer admitted all the documents which were produced by the claimant before the Assistant Judge. The documents produced were not certified copies but they purported to be original documents, which would normally but for the consent of the Government Counsel, would have required proof of the execution of the sale. Be that it may, the case must proceed on the basis of the documents which were duly exhibited in this manner.

We however, find that the judgement of the Assistant Judge calls for no interference. All the documents which were produced and were allegedly executed prior to the issuance of Section 4 notification show that the market value of land could not be more than Rs. 1,42,500/- as has been determined in the present case. Our attention was invited to Exhibit 98 which is a copy of the sale deed for the land bearing survey No. 382. The price of land vide said sale deed comes to only Rs. 55,000/- per acre and what has been awarded in the present case is Rs. 57,000/- per acre.

Mr. Vyas, the learned Counsel for the appellant however, submitted that compensation should have been awarded at the rate of Rs. 1,25,000/- per acre on the sale deed dated 6th September, 1976 - Exhibit 54. The land in the subject matter of the said sale deed was sold by the Public Trust and the Assistant Judge has

given cogent reasons for not following the same. The reasons given by him are that the land which is the subject matter of Exhibit 54 is far away from the land in the reference. Secondly, the land which was the subject matter of Exhibit 54 is located in an area which was predominantly residential as against the present land which was, at that time agricultural land. What is most important however, is that exhibit 54 is a sale deed which was executed nearly 5 years after the issuance of Section 4 notification in the present case. On this ground alone the said sale deed becomes irrelevant, more so for the reasons that before the sale deed was executed the land had already been converted to non-agricultural use by virtue of an order dated 15th June, 1972 passed by the Collector.

In our opinion, therefore compensation of land in the present case could not possibly exceed Rs. 57,000/- per acre and the same has been awarded to the appellant. We find no merit in this appeal and the same is dismissed. There shall be no order as to costs.

-----