IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1035 of 1994
TO
FIRST APPEAL NO.1039 OF 1994

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or 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?

STATE OF GUJARAT

Versus

PATEL BABUBHAI VISHRAMBHAI

Appearance:
MR. S.J. DAVE, AGP, in F.A. Nos.1035 to 1036 of 1994
MS. HARSHA DEVANI, AGP in FA Nos.1037 to 1039 of 1994
RRESPONDENTS SERVED.

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 31/03/98

COMMON ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. These appeals have been filed by the appellant

State of Gujarat under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

2. The lands under acquisition were acquired for the Sabarmati Reserve Project (Dharoi Project), and the relevant notification under section 4 was published on 2nd August 1972. After following the due procedure, the Special Land Acquisition Officer declared his award under section 11 of the said Act and determined the market value of the acquired lands, at Rs.4100/- per acre. The original land holders not having accepted the award, preferred their individual references in the Reference Court under section 18 of the said Act.

3. The Reference Court, after total consideration of the evidence on record, determined the market value of the acquired lands at the rate of Rs.240/- per Are in the case of Bagayat lands and at the rate of Rs.200/- per Are in the case of Jirayat lands. The Reference Court also awarded an additional compensation in the sum of Rs.8000/- for the well to the holder of survey No.95/4 (Land Reference Case No.1469/89). The State being aggrieved by the said common judgement and awards has preferred these appeals as aforesaid.

4. We have carefully scrutinised, with the assistance of the learned AGP for the appellant, the impugned judgement as also the relevant evidence to which our attention was drawn.

5. It is pertinent to note that it was the appellant state which had produced before the Reference Court a judgement of this court in First Appeal Nos.574/79 to 579/79, under which this court had determined the market value of the acquired lands of that case at the rate of Rs.225/- per Are. The lands under acquisition of that case were situated in the village Jambalpur, which, it is stated, is approximately only three kilometers away from the present village Babasar. The relevant notification under section 4 in respect of which this court had delivered the aforesaid judgement was dated 29th July 1971, whereas the corresponding notification in the instant case is dated 2nd August 1972 i.e. about one year thereafter. Thus, there being no significant difference between the quality of the acquired lands, the rate determined by the aforesaid decision of this court was accepted by the Reference Court as a base line or a guideline for determining the market value of the present lands. Looking to the lapse of one year in the issuance

of the relevant notification under section 4 in the instant case as one of the prime and significant factors, and looking to the other relevant evidentiary material on record, the Reference Court determined the market value of Bagayat lands at Rs.240/- per Are. It, therefore, appears that the Reference Court has considered an increment of approximately 10% for a lapse of this one year. Such an increment is reasonable and justified and could not be disputed by learned counsel for the appellant, looking to the totality of the evidence on record.

6. Having determined the market value of Bagayat lands at Rs.240/- per Are, the Reference Court was obviously justified in valuing the Jirayat lands at the rate of Rs.200/- per Are. This aspect also could not be disputed by the learned counsel for the appellant State.

7. We may merely mention in passing that the Reference Court has also taken into consideration other evidentiary material on record, for example, the oral evidence as also the documentary evidence led by the claimants for the purpose of establishing the annual agricultural yield arising from their fields, for the purpose of applying the capitalization method. However, the Reference Court has found such evidence flimsy and unreliable and has therefore discarded the same and consequently found that the capitalization method could not be applied.

8. Similarly, many other items of claim put forward by the claimants, for example, claims for fencing, Palas (earthen boundaries between the fields), etc. were not accepted by the Reference Court and no compensation has been awarded for these items due to lack of reliable evidence.

9. However, learned counsel for the appellant has urged another ground which requires consideration. The Reference Court has considered the claim for a well situated in Survey No.95/4 in Land Reference Case No.1469/84. Although the claimant of that case had seriously contended that the well was worth and should have been valued between Rs.40000/- and Rs.50000/-, the Reference Court did not accept this claim due to paucity of evidence. However, taking into account the fact that the existence of the well is not in dispute and also on account of the fact that it is undisputed that the well was in fact contributing to the value of the acquired land as an irrigated land, the Reference Court awarded a lumpsum of Rs.8000/- for the well.

10. In this context learned counsel for the appellant contends that the principle laid down by the Supreme Court in the case of State of Bihar reported at 1996 (10) SCC page 635, following the earlier Supreme Court decision in the case of O. Janardan Reddy, reported at 1994 (6) SCC page 456, would not enable the claimant to claim nor enable the Reference Court to grant any compensation for the well. This principle as laid down by the Supreme Court cannot be disputed. The Supreme Court has clearly laid down that where a land under acquisition is valued as an irrigated land, and where the irrigation facility is provided by a well situated upon the land, and such irrigation facility is in fact utilised by the land owner, the proportionately higher valuation assigned to the land as irrigated land is itself on account of the existence of the well and that therefore, the well cannot be valued separately and independently as a different head of claim. In other words, if the well on the land has contributed to the higher valuation of the land as irrigated land, no compensation for the well can be awarded.

11. In view of this principle, we must hold that the Reference Court was not justified in awarding Rs.8000/- for the well in Land Reference Case No.1469/89, corresponding to First Appeal No.1038/94. Accordingly we hold and direct that the claimant in Land Reference Case No. 1469/89 would not be entitled to Rs.8000/- for the well in question, and the relevant award in the said Land Reference case would stand modified to the aforesaid extent. Furthermore, as a consequence of this modification, there shall be a corresponding reduction in the amount of solatium. There will also be a corresponding reduction in the computation of interest due to this claimant under section 28 of the said Act.

12. We must also clarify that the operative part of the order granting interest under section 28 of the said Act (to all the claimants of the Land Reference Cases) is not adequately clear. We, therefore, hold and direct that the claimants would be entitled to interest at the rate of 9% per annum from the date of handing over possession for the first year and at the rate of 15% per annum, thereafter till the date of payment or deposit, and that this interest shall be computed on the difference between the compensation awarded by the Land Acquisition Officer and the compensation determined by us under the present judgement and decree.

13. We may also mention in passing that the State had

raised a contention in its written statement before the Reference Court that the References made by the claimants under section 18 of the said Act were time barred. In support of this contention the written statement had also urged certain facts. However, although no issue on the question of limitation was raised by the Reference Court, it appears that some submissions might have been made during the course of hearing before that Court. The Reference Court has dealt with those submissions and this contention has been soundly rejected for good reasons. We concur with the reasons given by the Reference Court for rejecting the said contention. We make these observations only for the purpose of clarifying as to why the learned counsel for the appellant has not chosen to agitate this question before us.

14. No other contention is raised.

15. Thus, the impugned judgement and awards are required to be confirmed except in Land Reference Case No.1469/89. Consequently these appeals filed by the State stand dismissed with no order as to costs except First Appeal No.1038/94 which stands partly allowed with no order as to costs. Decree accordingly.

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