

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1147 of 1996

to

FIRST APPEAL No 1190 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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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?

CHAUDHARI JESINGBHAI RAGHABHAI

Versus

DY.COLLECTOR, LAQ

Appearance:

MR MS DESAI for the Appellants.

MR LR PUJARI, AGP, for the Respondent.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 28/02/97

COMMON ORAL JUDGEMENT

The appellants who are original claimants, have filed this group of first appeals under S. 54 of the Land Acquisition Act, 1894 (for short 'the Act') read with S.96 of the Code of Civil Procedure, challenging the

common judgment and award dated 23.2.1995, passed by the learned 3rd Joint District Judge, Mehsana in a group of 83 Land Acquisition Reference Cases No. 831/91 to 913/91. Out of the above 83 Land Acquisition Reference Cases, claimants in 44 cases have challenged the common judgment and award by way of these appeals. Respective First Appeal Nos. and the corresponding Land Acquisition Reference cases are as under :

Sr.No. F.A.No. LAR Case No.

1. 1147/96 831/91
2. 1148/96 832/91
3. 1149/96 838/91
4. 1150/96 839/91
5. 1151/96 842/91
6. 1152/96 844/91
7. 1153/96 845/91
8. 1154/96 846/91
9. 1155/96 847/91
10. 1156/96 854/91
11. 1157/96 855/91
12. 1158/96 858/91
13. 1159/96 859/91
14. 1160/96 860/91
15. 1161/96 861/91
16. 1162/96 862/91
17. 1163/96 864/91
18. 1164/96 867/91
19. 1165/96 869/91
20. 1166/96 872/91
21. 1167/96 873/91
22. 1168/96 875/91
23. 1169/96 880/91
24. 1170/96 881/91
25. 1171/96 882/91
26. 1172/96 884/91
27. 1173/96 885/91
28. 1174/96 886/91
29. 1175/96 887/91
30. 1176/96 888/91
31. 1177/96 889/91
32. 1178/96 890/91
33. 1179/96 891/91
34. 1180/96 892/91
35. 1181/96 895/91
36. 1182/96 897/91
37. 1183/96 901/91
38. 1184/96 902/91
39. 1185/96 903/91
40. 1186/96 908/91

41. 1187/96 910/91
42. 1188/96 911/91
43. 1189/96 912/91
44. 1190/96 913/91

2. Executive Engineer, Mukteshwar Canal Yojana, Palanpur, proposed for acquisition of the lands of the claimants of Village Chelana, Taluka Kheralu, District Mehsana for the purpose of preparing Mukteshwar Canal. Notification under S.4 of the Act was published in the Government Gazette on 8.6.1989 and notification under S.6 of the Act was published on 19.4.1990. After following the formalities, the Land Acquisition Officer (for short 'LAO') initiated proceedings and passed the award on 18.2.1991, whereby the LAO awarded compensation to the claimants for their acquired lands at Re.1.11 ps., Re.1.60 ps. and Re.1.77 ps. for different categories of lands. The claimants requested the LAO to make references under S. 18 of the Act to the District Court. The said References were numbered in the District Court at Mehsana as stated above.

3. The opponent - acquiring body filed its written objection at Ex.4 inter alia contending that the Spl. LAO had considered all the relevant factors governing fixation of compensation and had awarded the maximum possible compensation to the claimants. It was averred that the lands under acquisition are not so fertile and the claim canvassed by the claimants was exorbitant.

4. In all the references, lands under acquisition were of the same Village Chelana. The learned 3rd Joint District Judge, Mehsana, consolidated all the References and recorded evidence in Land Acquisition Reference Case No. 851 of 1991. On behalf of the claimants one Dalsanghbhai Galababhai, who is claimant in LAR Case No. 849/91 was examined at Ex.236. Claimant in LAR Case No. 839/91 Raghajibhai Ramabhai was examined at Ex.245. On behalf of opponent Spl. LAO and Dy.Collector, Pitamberbhai Parshottambhai Patel, was examined at Ex.246. The claimants produced the certified copy of the judgment and award passed in LAR Case No. 1070/87 to 1085/87 at Ex.9. The said judgment and award related to acquisition of lands of Village Dulana which were also acquired for Mukteshwar Canal Yojana.

5. The learned 3rd Joint District Judge, after appreciating oral as well as documentary evidence produced before him, awarded to the claimants for their lands which were acquired, compensation at the rate of Rs.4/- per sq.mtr. by relying on the earlier judgment

and award produced at Ex.9. Notification under S.4 of the Act was published on 12.3.1981 in respect of the lands which were acquired and which were the subject matter of the judgment and award at Ex.9. The map which is produced shows that Village Chelana and Village Dulana are situated on the bank of river Saraswati at a short distance. Witness Mr. PP Patel (Ex.246) who was the LAO at the relevant time has also deposed that the lands of villages Dulana and Chelana were adjoining to each other. Therefore, the learned reference Judge was justified in placing reliance on the judgment and award Ex.9. It appears that the judgment and award Ex.9 was not challenged before any higher forum. It is pertinent to note that by judgment and award Ex.9, the reference Court had determined the market price of the lands of village Dulana at Rs.8/- per sq.mtr. for the acquisition of the year 1981. It must be noted that the present lands were acquired in the year 1989.

6. Learned Counsel for the appellants has submitted that in this group of first appeals, the claimants have restricted their claims to Rs.5/- per sq.mtr. which is quite just and reasonable keeping in view the earlier awards of the reference court as well as the judgment and award of this High Court in FAs No.1365/94 to 1424/94, which came to be decided on 13.9.1995 (Coram: BC Patel and NN Mathur, JJ.). Learned Counsel in support of his submission argued that the lands which were the subject matter of FAs No. 1365/94 to 1424/94 were of Village Pandwa, which is situated adjacent to village Chelana. It is submitted that the lands of village Pandwa were acquired by Notification under S.4 of the Act which was published on 13.11.1980, and for which lands, this court determined the market price at Rs.5/- per sq.mtr. It is further submitted that the lands of village Pandwa were also acquired for the same project, i.e. Mukteshwar Canal Project.

7. Learned Counsel for the appellants has also invited my attention to the decision of this court (Coram: BN Kirpal, CJ, (as he then was) and RK Abichandani, J.) in First Appeals No. 586/94 to 613/94, which came to be decided on 28.7.1994. The lands which were the subject matter of FAs No. 586/94 and allied matters were of Village Kotda, which came to be acquired by notification under S.4 of the Act on 13.10.1983 for Cippu Project. The Division Bench of this Court determined the market price of the lands of Village Kotda at Rs.5/- per sq.mtr. Relying on this judgment, the learned Counsel for the appellants has argued that the lands of Village Kotda are at a distance and are situated

near Village Dhanera which is adjacent to desert area for which market price was fixed at Rs.5/- per sq.mtr. by this court and therefore, the claimants have prayed for additional compensation of Re.1/- per sq.mtr. which is just and reasonable.

8. Learned AGP Mr.LR Pujari has submitted that the claimants before the LAO had agreed for passing of consent award and therefore, they are estopped from challenging the award of the LAO by filing references under S.18 of the Act. In support of his submission, the learned AGP has relied on S.11(2) of the Act, which reads as under :-

" 11. Enquiry and award by Collector.-

(1) x x x

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. "

The submission of the learned Ld.AGP is devoid of any merit. LAO Mr.PP Patel, who was examined at Ex.246 deposed that he had not remained present in any of the meetings of making consent awards and he also admitted in his deposition that the claimants had not entered into any agreement with the LAO to pass awards by consent. No consent awards were produced by the opponent before the reference court to substantiate the plea that consent awards were passed by the LAO. Therefore, the provisions of S.11(2) of the Act would not attract in the present appeals.

9. It is pertinent to note that the judgment of the Division Bench of this court rendered in FAs No. 1365/94 to 1424/94 with regard to acquisition of lands at Village Pandwa was challenged in the Supreme Court by way of filing Petitions for Special Leave to Appeal (Civil) No. 6541-6600/96, in which the Supreme Court condoned the delay in filing the petitions but dismissed the special leave petitions. Thus the judgment and order of the Division Bench rendered in FAs No. 1365/94 to 1424/94 has become final. By that judgment, the market price of

the lands of Village Pandwa was determined at Rs.5/- per sq.mtr.. As said above, the lands of Village Pandwa are situated adjoining to Village Chelana, which is the subject matter of this group of first appeals. In my opinion, the claimants are justified in claiming compensation at Rs.5/- per sq.mtr. which is quite just and reasonable.

10. In respect of the very same project, lands of Village Pandwa came to be acquired in the year 1980 and the market price of those lands was fixed by this court at Rs.5/- per sq.mtr. Therefore, there cannot be any hesitation in fixing the market price of the acquired lands at Rs.5/- per sq.mtr. The lands under acquisition are situated on the bank of river Saraswati and the witnesses who have been examined on behalf of the claimants have categorically deposed that in the acquired lands they were raising sugarcane crops which required more water. Even witness Mr.PP Patel, who is examined on behalf of the Government also admitted in his evidence that the claimants were raising sugarcane crop in the acquired lands. It is quite natural that lands situated on the river bank would be more fertile and therefore, the claimants are justified in claiming compensation at the rate of Rs.5/- per sq.mtr. From the evidence which is produced by the parties before me in this group of first appeals, it becomes abundantly clear that the lands under acquisition were fertile and the lands of villages Pandwa, Dulana and Chelana are of the same fertility and they are situated adjoining to each other. When the market price of the lands which were acquired in the years 1980 and 1983 was determined at Rs.5/- per sq.mtr., the claimants whose lands have been acquired by the Notification under S.4 of the Act in the year 1989 are entitled to get compensation at Rs.5/- per sq.mtr.

11. As a result of the foregoing discussion, this group of first appeals deserves to be allowed and they are hereby accordingly allowed. Market price of the lands of the appellants-claimants which were acquired for the Mukteshwar Canal Project is fixed at Rs.5/- per sq.mtr. The appellants-claimants shall be entitled to recover the enhanced compensation of Re.1/- per sq.mtr. alongwith 30% solatium on the additional compensation and interest at 9% per annum for the first year of taking possession of the lands and thereafter at the rate of 15% p.a. till realisation of the amount awarded by way of additional compensation. The appellants-claimants shall also be entitled to recover the amount calculated at the rate of 12% p.a. on such market value from the date of publication of notification under S.4(1) of the Act upto

the date of the award or the date of taking possession of the land whichever is earlier. In the facts and circumstances of the case, there shall be no order as to costs.

The opponent shall deposit the amount of additional compensation within 4 months from today.

(abraham)