

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9064 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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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?
1 - Yes
2 to 5 - No

BHARATBHAI SHANTILAL SHAH

Versus

DY. COLLECTOR AND SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR JV JAPPEE for Petitioners
MR UDAY BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/12/97

ORAL JUDGEMENT (Per : C.K.Thakkar,J.)

Rule. Mr.Uday Bhatt, learned Assistant Govt.
Pleader appears and waives service of notice of rule on
behalf of respondents. In the facts and circumstances of
the case, the matter is taken for final hearing today.

#. This petition is filed by the petitioners for an appropriate writ, order or direction of quashing and setting aside the order dated August 6, 1997, Annexure-B to the petition, by which an application made by the petitioners under Sec.28-A of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was rejected by Deputy Collector and Special Land Acquisition Officer (ONGC), Ahmedabad.

#. The case of the petitioners was that they were having agricultural land at Village Meda Adaraj. The land was acquired for drilling and construction of road. The Deputy Collector and Special Land Acquisition Officer (ONGC), respondent No.1 herein, declared an award on September 8, 1988. It appears that the petitioners did not take any proceeding against said award. One Patel Savajbhai Prandas submitted an application and the matter was referred to District Judge, Mehsana vide L.A.R. No.211 of 1989. The learned District Judge, Mehsana, who heard the matter, determined the market value of land by an award dated October 16, 1995 with 30% solatium, 12% increase and also interest. It is the case of the petitioners that they received a copy of said award on January 8, 1996 and they submitted an application under Sec.28-A of the Act on January 19, 1996 in which a prayer was made to award compensation on that basis. Said application came to be rejected by the first respondent by the impugned order dated August 6, 1997 only on the ground that when the award was declared by Land Acquisition Officer on August 8, 1988, the petitioners accepted said amount without any hesitation or objection and that they had not made any application to refer the matter to a competent court. Hence, the petitioners were not entitled to any benefit.

#. When the matter was placed for admission, we passed the following order on December 17, 1997.

"Notice for admission as well as for final hearing. Returnable on 26th December, 1997. Direct service."

#. On December 26, 1997, time was sought by the respondents which was granted. Mr.J.V.Japee, learned counsel for the petitioners submitted that there was an error apparent on the face of the record committed by Land Acquisition Officer in rejecting the application filed by the petitioners under Sec.28-A of the Act. It is precisely in such cases that an application, Sec.28-A would lie and the authority is bound to consider and decide it in accordance with the award passed by the

competent court. The provisions of Sec.28-A are clear. Our attention was, however, invited by learned counsel for the petitioners to a decision of Hon'ble Supreme Court in Babua Ram & Ors. Vs. State of U.P. & Another, JT 1994(7) S.C. 377.

#. In our opinion, the submission is well founded and must be accepted. It is true that when award was declared and amount was offered, the petitioners accepted the said amount and did not pray for making reference to a competent court. But when a person similarly situated filed an application, pursuant to which, reference was made and the amount was enhanced by a competent Court, it was open to the petitioners to file an application under Sec.28-A of the Act which has been made. By rejecting the application only on the ground that the petitioners had not objected and/or shown inclination to get the matter referred to a competent Court, illegality has been committed. Hence, the petition deserves to be allowed and is accordingly allowed. Order passed by the respondent No.1 on August 6, 1997 Annexure-B is hereby quashed and set aside and it is directed that the respondent No.1 will pass an appropriate order in accordance with Sec.28-A of the Act in the light of the above decision of the Hon'ble Supreme Court. Rule is made absolute. In the facts and circumstances of the case, no order as to costs. Since the matter pertains to compensation in land acquisition proceedings, the respondents will pass an appropriate order as expeditiously as possible preferably by March 31, 1998.

Sd/-

(C.K.Thakkar,J.)

Sd/-

Dt:30-12-1997 (R.P.Dholakia,J.)

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