

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

FIRST APPEAL No 3263 of 1998

to

FIRST APPEAL No 3291 of 1998

STATE OF GUJARAT

VERSUS

BABAJI SOMAJI

Appearance:

MR CC BHALJA for the Appellants

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 30/09/98

C.A.V. ORDER

1. This group of 29 appeals arise from the judgment and award of the Assistant Judge, Sabarkantha at Himmatnagar decided on 30-8-1997 in Land Reference Case No.3133/89 and cognate matters. As these appeals have arisen from the common judgment of Reference court and pertains to one and the same land acquisition matter, the same are being taken up for hearing together and are being disposed of by this common order.

2. Out of these 29 appeals, I find from the schedule attached to the judgment of the Reference Court that the valuation of 24 appeals is less than Rs.20,000/-. In 5 appeals, valuation thereof is more than Rs.20,000/-. So in these 24 appeals, the subject matter of the amount of additional compensation awarded to the claimants-respondents by the Reference Court is less than Rs.20,000/-. In view of the two division bench decisions of this court (i) in the case of Sp. Land Acquisition Officer vs Shantaben Chhitubhai's widow and others in civil application No.7876 of 1997 with allied matters decided on 10-9-1997 and (ii) in the case

of State of Gujarat vs. Patel Pujabhai Nathabhai in civil application No.8700 of 1997 with allied matters decided on 21-4-1998 these appeals otherwise deserve no admission.

3. The award in these matters have been passed by the Reference Court, as stated earlier, on 30-8-1997 and these appeals are presented in this court on 15-6-1998. The office has reported that these appeals are barred by 72 days. I find from the memo of appeals that each appeal has been presented on the court fees stamp of Rs.5/-. The office has pointed out another objection that proper and full court fees is not paid on the memo. Yet there is another objection pointed out that accompanied to the appeals, the appellants have not filed the application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the court that it had sufficient cause for not preferring the appeals within the period of limitation. For want of filing of memo of appeal on requisite court fee stamp the appeals were not properly presented appeals on 15-6-1998. For calculating the period which has been taken by the appellants in filing of these appeals, the calculation has been made upto the date of filing of the same i.e. 15-6-1998 but that is an erroneous approach of the registry of this court. On 15-6-1998 and even today these appeals are not properly presented appeals and the period of filing of the appeals has to be counted upto the date on which the deficit court fee stamp has been paid. So the report of the office that appeals are barred by 72 days is not correct but till date the appeals are not properly presented appeals. The appeals have been filed after 72 days of expiry of limitation. The total period which has been available to the appellants for filing of these appeals from the date of judgment is of 289 days. The appeals, as stated earlier, have been filed after 72 days beyond limitation. So that period was also available to them to arrange the required court fees. 90 days limitation period has been prescribed so that within that period, the litigant may arrange the court fees etc. It is really shocking that despite of taking of 289 days in filing of the appeals from the date of judgment of the lower court and further fact that it has been filed beyond 72 days of limitation, the requisite court fees have not been paid on the memo of appeals. The appellants felt contended to put Rs.5/- court fees stamp on the appeal memo. Even the appellants have not filed an application for extension of the period for making good the deficiency of the court fees stamp. In appropriate case, no doubt this court has powers to

extent the time to make good the deficit of court fees stamp but for that, as stated earlier, the prayer has not been made. As these appeals have not been filed on the requisite court fees stamp and no explanation worth the name has been furnished for not filing these appeals on requisite court fees, the requisite court fees have not been paid after filing of these appeals for more than two months, and worse even no application has been filed for the extension of time to make good of the deficiency of court fees, these appeals deserve to be dismissed only on this ground.

4. The second ground on which these appeals deserve to be dismissed is that the same are barred by limitation. It is true that this court has discretionary powers to condone the delay caused in filing of the appeals but sine-qua-non for condoning the delay is that the appeals shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellants relies to satisfy the court that it had sufficient cause for not preferring the appeals within limitation. It is fruitful to have reference to the provisions of Rule-3A of Order 41 of Code of Civil Procedure, 1908. This Rule provides that where an appeal is presented after expiry of period of limitation specified therefor, it shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within such period. So the first and foremost requisite condition is that the appeal should have been accompanied by an application supported by an affidavit setting forth therein the grounds on the basis of which the appellant relies to satisfy the court that it had sufficient cause for not preferring the appeal within such period.

5. Then comes the consideration part of the application by this court and where on the facts as pleaded in the application supported by an affidavit this court is satisfied that the appellants had sufficient cause for not preferring the appeal within prescribed period of limitation the court may condone the delay in filing of the same. In the present case, no application has been filed by the appellants for condonation of delay in filing of the appeals and this court cannot condone the delay. The first condition precedent for exercising discretionary power to condone delay is totally missing from these appeals and further in the absence of any sufficient cause made out by which this court could have satisfied that the appellants had

been prevented thereby in not filing the appeals within limitation, these appeals deserve to be dismissed on the ground that the same are barred by limitation.

6. In view of these facts though it is not necessary for the court to go on and examine the merits of the matter but still I consider it to be appropriate to go on the merits of the matter and to find out whether the appellants have any case on merits which calls for interference of this court in the award passed by the Reference court.

7. Learned counsel for the appellants contended that the learned Judge has failed to appreciate that the previous award on which the reliance has been placed to determine the amount of compensation to be paid to the claimants-respondents in this case pertain to different village and in the absence of any evidence on the fact that the lands of that village and the lands of the village which are subject matter of present case are situated at a reasonable proximity of distance and are of same fertility it could have been relied upon.

8. I have given my thoughtful consideration to this contention made on merits by the learned counsel for the appellants and I do not find any substance therein.

9. This is a general contention made but the learned counsel for the appellants failed to show to this court what are the distinguishable features in between the lands which were subject matter of the previous decision Ex.29 as well as which are the subject matter of the present case. Learned counsel for the appellants, on being asked by the court, admits that from the side of the appellants before the Reference court no evidence good, bad or indifferent has been placed to make out the distinguishable features in between the lands which were subject matter of the previous decision and those which are subject matter of consideration in this case. I have gone through the judgment of the Reference court impugned in these appeals and therefrom I find that though the lands which were subject matter of the previous judgment Ex.29 are of different village but that village and the village in which these lands which are subject matter of these appeals are situated having common boundary. Not only this but both these lands are being acquired by the appellants for one and the same public purpose namely Nadiad-Kapadvanj-Modasa Railway line. It has been found as a fact by the Reference court that these lands are situated opposite to each other i.e. on other side of

the proposed railway line. The Reference court has not committed any error in holding that the previous award is a relevant and material evidence and for the purpose of determining just, adequate and reasonable compensation to be awarded in other case it can not only be considered but relied upon. The Reference court in the facts which have been established on the evidence and those findings have not been challenged by the appellants in these appeals has not committed any illegality in awarding of the amount of compensation to the claimants-respondents in this case relying on this previous decision Ex.29. So taking into consideration the totality of the facts of this case otherwise also I do not find any merits in these appeals.

10. In the result, all these appeals fail and the same are dismissed.

(S.K.Keshote,J)

zgs/-