

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9268 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

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? No

5. Whether it is to be circulated to the Civil Judge?
No

DINKARRAI VALLABHRAI

Versus

STATE OF GUJARAT

Appearance:

MR AB MUNSHI WITH MR AJ PATEL for Petitioners

MR UA TRIVEDI, A.G.P. for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 30/11/98

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Mr. U.A. Trivedi, learned A.G.P. waives
service of notice of rule on behalf of the respondents.

At the joint request of learned Counsel appearing for the parties, the petition is taken-up for final hearing today.

By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated October 14, 1998 passed by the Officer on Special Duty (Land Acquisition), Surat by which application submitted by the petitioners under section 28A of the Land Acquisition Act, 1894 is rejected on the ground that the petitioners had accepted the offer of compensation made by the Land Acquisition Officer without protest.

2. The petitioners were owners of lands bearing Survey No.146/2 and 241/2 situated at village Kavas, Taluka : Choryashi, District : Surat. It was proposed to acquire lands belonging to the petitioners and others for public purpose of establishing G.I.D.C. Estate. On receipt of the proposal, State Government was satisfied that the lands belonging to the petitioners and others were likely to be needed for the said purpose. Therefore, notification under section 4 of the Land Acquisition Act, 1894 ("the Act" for short) was published in the Official Gazette on March 18, 1986. The land owners were served with notices, who filed their objections against proposed acquisition. After considering the objections submitted by the owners, Land Acquisition Officer forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. On receipt of the report, State Government was satisfied that lands of the petitioners and others were needed for public purpose of establishing G.I.D.C. Estate. Therefore, declaration under section 6 of the Act was made which was published in the Official Gazette on May 4, 1987. Interested persons were thereafter served with notices for determination of compensation. After considering the materials placed before him, Land Acquisition Officer by his award dated July 5, 1989 offered compensation to the claimants at the rate ranging between Rs. 3/- to Rs. 7/- per sq.mt. Some of the claimants were dissatisfied with the offer made by the Land Acquisition Officer and, therefore, by making applications, they required the Land Acquisition Officer to refer the matter to the Court for determination of compensation. Accordingly, references were made to the District Court, Surat which were numbered as Land Acquisition Reference Cases No. 57/89 to 72/89, 83/89 to 115/89, 120/89 to 131/89, 133/89 to 137/89, 1/90 to 7/90, 9/90, 10/90, 13/90 to 25/90, 27/90 to 71/90, 114/90 to

131/90, 147/90, 148/90 and 162/90. The Reference Court by award dated September 30, 1996 determined compensation payable to the claimants at the rate of Rs.20/- per sq.mt. The award rendered by the Reference Court is produced by the petitioners at Annexure-B to the petition. As the Reference Court had allowed to the claimants amount of compensation in excess of the amount awarded by the Land Acquisition Officer under section 11 of the Act, the petitioners who were interested in their lands covered by the same notification issued under section 4 of the Act and who were aggrieved by the award of the Land Acquisition Officer, made application to the Special Land Acquisition Officer within three months from the date of the award of the Court requiring Land Acquisition Officer that the amount of compensation payable to them be redetermined on the basis of the amount of compensation awarded by the Court. The application submitted by the petitioners to the Officer on Special Duty (land acquisition) G.I.D.C. is produced by the petitioners at Annexure-A to the petition. The Officer on Special Duty (land acquisition) G.I.D.C., Surat has ordered to file the application submitted by the petitioners vide communication dated October 14, 1988 on the ground that the petitioners had accepted the award of Land Acquisition Officer without protest, giving rise to the present petition. The communication dated October 14, 1988 addressed by the Officer on Special Duty (land acquisition) GIDC, Surat is produced by the petitioners at Annexure-F to the petition.

3. Learned Counsel for the petitioners submitted that the respondent no.2 committed an error in interpreting Section 28A of the Act and, therefore, order dated October 14, 1988 produced at Annexure-F to the petition deserves to be set aside. It was pleaded that the Court had allowed to the claimants an amount of compensation in excess of the amount awarded by the Land Acquisition Officer under section 11 of the Act and as the petitioners were interested in their lands which were covered by the same notification under section 4(1) of the Act and as the petitioners were aggrieved by the award of the Land Acquisition Officer, they were entitled to make an application to the Land Acquisition Officer requiring him to redetermine compensation payable to the petitioners on the basis of amount of compensation awarded by the Court and, therefore, the application submitted by the petitioners should not have been ordered to have been filed by the respondent no.2. What was claimed was that the impugned order is contrary to the judgment of the Supreme Court rendered in BABUA RAM AND OTHERS v. STATE OF U.P. AND ANOTHER, (1995)2 S.C.C.

689 and, therefore, the prayer made in the petition should be granted.

4. Mr. U.A.Trivedi, learned A.G.P. submitted that the petitioners had accepted award of the Collector without protest and, therefore, the petition filed by the petitioners should be dismissed in view of provisions of Section 28A of the Act.

5. In view of the rival submissions advanced at the bar, the short question which falls for consideration of the Court is whether the petitioners can be said to be aggrieved persons within the meaning of section 28A of the Act so as to entitle them to submit application before the Land Acquisition Officer requiring him to redetermine the amount of compensation payable to them on the basis of amount of compensation awarded by the Court. In the case of BABUA RAM AND OTHERS (Supra), the Supreme Court has considered the question as to who should be treated as an aggrieved person for the purpose of Section 28A of the Act. On interpretation of section 28A, the Supreme Court has held as under :-

"16. In *Krapa Rangiah v. Special Dy.*

Collector, Land Acquisition this Court observed that in an acquisition proceedings, lands situated in the same locality and in the neighbouring locality when are possessed of the same comparable advantages, the owners of the former lands are entitled to the same rate of compensation as the owners of other lands as determined by the judgment of the High Court which had become final as otherwise, it would be inequitable and discriminatory. In other words, the owners of the lands possessing the same kind and same quality etc. are entitled to parity in payment of compensation for their lands. Section 28-A (1) is intended to overcome the hurdle created by Section 18 (1) and 2nd proviso to Section 31 (2) in the matter of obtaining equal compensation for similar acquired lands. Equal compensation for similar acquired lands could be got by all the interested persons, if their lands are acquired under the same notification. In other words, if an owner fails to avail of the right and remedy under Section 18(1), Section 28-A(1) grants an extra right and remedy for redetermination of the compensation payable to him for his land on the basis of an award of the court giving to an owner of another land covered

by the same notification under Section 4 (1) and under the same award. The payment of higher compensation to his neighbouring landowner makes an applicant an aggrieved person to claim redetermination of the compensation payable to him for his land. The person aggrieved, therefore, in this context, would mean a person who had suffered legal injury or one who has been unjustly deprived or denied of something, which he would be interested to obtain in the usual course of similar benefits or advantage or results in wrongful affection of his title to compensation.

18. The person aggrieved must, therefore, be one who has suffered a legal grievance because of a decision pronounced by civil court giving higher compensation for the acquired lands similar to his own while he is denied of such higher compensation for his land because of operation of Section 18 read with Section 31 of the Act resulting in affectation of his pecuniary interest in his acquired land directly and adversely by that award of the Collector made under Section 11. As such he becomes an aggrieved person entitled to avail of the right and remedy conferred upon him under Section 28-A (1) to make good his denied right to receive compensation in excess of the amount awarded by the Collector/LAO. Acceptance of the contention of Shri G.L.Sanghi, learned Senior Counsel and his companions, that persons who under protest received payment of compensation for their lands but failed to avail of the right and remedy under Section 18 waiting in the wings for success of the landowners of the adjoining lands to get higher compensation under Section 28-A (1) as person aggrieved robs the poor and inarticulate who by reason of their property or ignorance failed to avail of the right and remedy under Section 18, and creates not only invidious discrimination between same class of persons similarly situated but would be highly unjust and arbitrary offending Article 14 of the Constitution, apart from flying in the face of express animation of the statute as espoused in its Statement of Objects and Reasons and the Financial Memorandum. In this context, we make it clear that we have looked into Statement of Objects and Reasons and the Financial Memorandum to know what is it that induced the introduction

of the Bill but not as an aid to interpret Section 28-A (1). Therefore, we have no hesitation to hold that any interested person in the land acquired under the same notification published under Section 4 (1) who failed to avail the right and remedy under Section 18 (1) read with second proviso to Section 31 (2), becomes a person aggrieved under Section 28-A (1) of the Act when the owner of the other land covered by the same notification is awarded higher compensation by the civil court on a reference got made by him under Section 18."

6. In view of the above-referred to proposition of law laid down by the highest Court of land, there is no manner of doubt that the petitioners were aggrieved persons within the meaning of Section 28A of the Act. The application submitted by them under section 28A of the Act could not have been ordered to be filed on the ground that they had received the amount of compensation awarded by the Land Acquisition Officer without protest. The petitioners became aggrieved when for other lands covered by the same notification under section 4(1) of the Act, the Reference Court awarded higher compensation and, therefore, as aggrieved persons the petitioners were entitled to invoke provisions of section 28A of the Act. In view of the clear pronouncement of the Supreme Court in the case of BABU RAM AND OTHERS (Supra), we are of the opinion that the impugned order produced at Annexure-F is liable to be set aside and the petition deserves acceptance.

For the foregoing reasons, the petition succeeds. The order dated October 14, 1998 produced at Annexure-F is hereby set aside and quashed. Respondent no.2 is hereby directed to redetermine compensation payable to the petitioners on the basis of amount of compensation awarded by the Court in Land Acquisition Reference Case No. 84/89 and other allied 153 matters as early as possible and preferable within 3 months from today. Rule is made absolute accordingly, with no order as to costs.

(patel)