

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4682 of 1998

TO

FIRST APPEAL No 4807 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA 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?

SPL.LAQ OFFICER

Versus

AMARSINH MAVABHAI GADHAVI

Appearance:

MR HL JANI for appellants in all appeals
MR AB MUNSHI for AJ PATEL for Respondents claimants
in all appeals.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/04/99

COMMON ORAL JUDGEMENT (per M.R. Calla, J.)

This batch of 126 First Appeals is directed against the common order dated 7th January 1998 passed by the 2nd Extra Assistant Judge, Kheda, at Nadiad, in a group of Land Reference Cases Nos.356/94 (1), 1077/92 to 1085/92 (9), 29/33 to 45/93 (17), 46/93 to 48/93 (3), 1640/94 to 1642/94 (3), 1086/92 to 1092/92 (7), 1070/92 to 1076/92 (7), 1061/92 to 1065/92 (5), 1067/92 to 1069/92 (3), 343/94 to 352/94 (10), 395/94 to 409/94 (15), 1364/94 (1), 355/94 (1), 357/94 to 361/94 (5), 315/94 to 318/94 (4), 367/94 to 378/94 (12), 379/94 to 394/94 (16) and 1096/92 to 1102/92 (7), 126 in all main land reference case being 356/94. Whereas all these 126 references have been decided by a common order as aforesaid and the present batch of 126 First Appeals have been filed against the common order dated 7th January 1998 and the appeals involve common questions based on identical facts, we propose to decide all these 126 appeals by this common judgment and order.

2. The agricultural lands of village Antroli, Taluka Kapadvanj, were sought to be acquired for the purpose of Narmada Project, Main Canal, Division-5. For this purpose, the notifications under Section 4 were issued on different dates ranging between 10th June 1990 to 13th August 1990. The notifications under Section 6 were published on 15th January 1991. The land owners claimed the compensation before the Land Acquisition Officer at the rate of Rs.120/- per sq.mtr. The Land Acquisition Officer passed the award on different dates in different cases and with regard to the Land Acquisition Case No.16/90, the award was passed on 10th July 1992, but there is no dispute that the awards were passed in all the cases in the year 1991-92. We are informed that the Land Acquisition Officer had classified the groups of the cases on the basis of taking the block of 8 Ha. of the land in each group and, therefore, the land owners whose lands fell in the block of 8 Ha. was taken as one case of land acquisition. In all the cases, the Land Acquisition Officer himself found that the entire land which was acquired from all these land owners of village Antroli was irrigated land and on that basis, he passed the award granting compensation at the rate of Rs.330/per Are. Being aggrieved from the rate of compensation as was decided by the Land Acquisition Officer, the claimants sought reference under Section 18 of the Land Acquisition Act and these references under Section 18 have been decided by the reference Court as above by its order dated 7th January 1998 whereby the reference Court has partly allowed all these Land Reference Cases with proportionate costs awarding compensation to each of the claimants at the rate of Rs.2000/- per Are, i.e. at the

rate of Rs.20/- per sq.mtr. along with other allied reliefs with regard to solatium, increase upon the market price at the rate of 12% from the date of the notifications under Section 4 of the Act till the date of the award without interest, and 9% interest on the amount of compensation from the date of the award for the period of first year and 15% interest per annum for the subsequent years till realisation and it was also ordered that any other compensation awarded by the Land Acquisition Officer under Sec.11 of the Act will also be allowed accordingly.

3. Aggrieved from this order dated 7th January 1998, the present appeals have been filed by the Special Land Acquisition Officer and the Executive Engineer, Narmada Project as appellants, wherein the only challenge which has been thrown before us is with regard to the rate at which the compensation has been granted, i.e. at the rate of Rs.20/- per sq.mtr. No other part of the order passed by the reference Court is under challenge before us.

4. We have heard learned Counsel and have also gone through the impugned order dated 7th January 1998 passed by the reference Court, as also the material and the evidence which is available on record before us. The learned Counsel for the appellants has made reference to the only two witnesses who were examined on behalf of the claimants at Exhs.30 and 31. He has also referred to the statement of the witness at Exh.37, documents Exh.49, which was a consent award and Exh.53, which was the sale instance relied upon by the Department. Reference was also made to Forms No.7/12 which had been produced by the claimants. It is clearly borne out from the evidence as well as the impugned order that the compensation rate has been arrived at on the basis of the yield given out in the concerned lands. On going through the statements of witnesses Kanubhai Ambalal Patel at Exh.30 and Dineshbhai Ramanbhai Patel at Exh.31, we find that these witnesses have mainly deposed that vegetables are grown on these lands and they have also given the details about the vegetables crops and the quantity of the yield as also the market value of such yield as was obtaining at the relevant time and the profit which they used to get from such yield every year. The witness Kanubhai Ambalal Patel has laid stress on the vegetable crops while the other witness Dineshbhai Ramanbhai Patel has said with regard to the trees of lemon and also given the details about the quantity, the number of crops and the amount which he used to get from such produce. The witness Kanubhai Ambalal Patel, examined at Exh.30 has also stated that he is deposing on behalf of the other land

owners. Either of these two witnesses have not been able to give any account, although the witness examined at Exh.31 says that he is a Commerce Graduate and also used to maintain such record. Therefore, so far as these two witnesses are concerned, all that can be taken and be read is that on the lands in question, vegetables are produced and that there are lime trees and lemon is also produced in some cases. These witnesses have also deposed that the lands in question are irrigated lands and at least this fact is not disputed that in all there are 49 wells on these lands. In sum and substance, according to these witnesses, they are entitled to the compensation at the rate of Rs.12,000/- per Are. which comes to Rs.120/- per sq.mtr.

5. Exh.49 is a consent award with regard to another village of Sandheli, Taluka Thasara which is about 25 km. away from the lands in question. In our opinion, this consent award which has been relied upon by the Department is of no use for the purpose of the present cases for the twin reasons that, it is a consent award and that the lands which were concerned in the consent award is about 25 km. away from the lands in question.

6. The sale instance Exh.53 which was also relied upon by the Department cannot be said to be proved because no competent witness was examined by the Department to prove this document and, therefore, this sale instance cannot be relied upon and it does not form a valid legal piece of evidence for the purpose of determining the amount of compensation.

7. The Village Forms No. 7/12 which have been produced by the claimants were also referred to by the learned Counsel for the appellants in order to show that the contents of these Village Forms with regard to the crops are at variance with the deposition made by the witnesses examined at Exhs.30 and 31. That may be so, but the fact remains that the expert witness who was examined by the Department itself at Exh.37 has supported the case of the claimants rather than that of the Department. This witness was examined by the Department itself and this witness, namely, Mohanbhai Parshottambhai, is Assistant Director of Agriculture, at Kapadvanj. He has deposed that he was discharging his duties as Agricultural Specialist, at Kapadvanj and he claims to be an Agriculture Graduate and he has deposed that in the agricultural lands in question, tobacco, rice, bajra, cotton, vegetables, fenniel seeds, wheat etc. are grown in some of the lands and Papaya and lemon are also grown. He has also deposed that the produce of

flower-Gobi gives a net profit of about Rs.52,650/- per Ha. while that of chilli is Rs.72,000/- per Ha. He has also referred to other vegetables including guvar etc. and has said that it gives a profit of Rs.90,000/- per Ha. He has also deposed about the market price of the products with regard to certain items. Thus, this witness has supported the case of the claimants with regard to the crops and also to certain extent with regard to the quantity and the rate of the profits and the market rates of the concerned items as were prevailing at that time. The reference Court, taking into consideration the entire evidence including that of the expert witness at Exh.37, has found that instead of Rs.12,000/- per Are, the claimants were entitled to the compensation at the rate of Rs.2,000/- per Are. Deduction of 50% against cultivation expenses has also been taken in to account while fixing the rate of compensation at Rs.2,000/- per Are. Taking an overall view of the matter and on consideration of the material as is available and particularly the expert evidence and the analysis of the evidence which has come on record with regard to the crops, and other factors with regard to the quantity and the quality of the yield and the fact that the deposition made by the expert evidence at Exh.37 as is also based on record maintained by him as has been referred by him in his statement as Exh.36, we find that the rate at which the compensation has been awarded by the reference Court at the rate of Rs.20/- per sq.mtr. is neither excessive nor disproportionate. The conclusion arrived at by the reference Court is based on sound and proper consideration of the material available before him and the learned Counsel for the appellant has failed to point out any such reason or material on the basis of which a different view than the one taken by the reference Court can be taken by this Court. The order passed by the reference Court does not suffer from any infirmity whatsoever and we agree with the reasoning and the conclusion arrived at by the reference Court. Accordingly, all these 126 First Appeals fail. The same are hereby dismissed. No order as to costs.

sreeram.