

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1005 of 1999

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
  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

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SARDARNAGAR CO OP HOUSING SOCIETY LTD.

Versus

SPECIAL LAND ACQUISITION OFFICER

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Appearance:

MR MK VAKHARIA for Petitioners

Mr. HL Jani, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 31/03/99

ORAL JUDGEMENT

(Per : Panchal, J.)

Learned Counsel for the petitioners seeks permission to delete names of respondents no.2 to 4 from the petition, as they are not necessary parties for the purpose of deciding issue involved in the petition.

Permission as prayed for is granted. The names of respondents no.2 to 4 stand deleted from the present proceedings.

Rule. Mr. H.L.Jani, learned A.G.P. waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates appearing for the parties, the petition is heard 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 the impugned order dated December 24, 1992 passed by the respondent by which the petitioner no.1 is directed to pay compensation for well to its owners. The petitioners have also prayed to set aside and quash order dated June 15, 1998 by which application dated May 13, 1998 submitted by the petitioners to set aside order dated December 24, 1992 is rejected and the petitioners are directed to deposit the amount of compensation for well with the respondent.

The petitioner no.1 is a Co-operative Housing Society registered under the provisions of the Gujarat Co-operative Societies Act, 1961. An application was made by petitioner no.1 to the Collector, District : Kheda for acquiring land for the public purpose of constructing residential houses for the members of petitioner no.1 society. Pursuant to the said application, acquisition proceedings were initiated and ultimately, survey no.521/3 of Mahemadavad was acquired by the State Government. The Land Acquisition Officer had made his award under section 11 of the Land Acquisition Act, 1894 on March 22, 1987, which is produced by the petitioners at Annexure-C to the petition. Thereafter an application dated October 4, 1992 was made by owner of survey No. 521/3 to the respondent seeking compensation for the well which was situated in the acquired land and by order dated December 24, 1992, the respondent directed petitioner no.1 to pay a sum of Rs. 37,897.40 ps. as compensation for well to the owner of the land acquired. That order is produced by the petitioners at Annexure-E to the petition. On receipt of the said order, the petitioners made an application dated May 13, 1998 requesting the respondent to set aside order dated December 24, 1992. However, application dated May 13, 1998 is rejected by the respondent vide order dated June 15, 1998 which is produced at Annexure-A to the petition. Feeling aggrieved by these two orders, the petitioners have filed present petition and claimed reliefs to which reference

is made earlier.

Heard the learned Counsel for the parties. One of the grounds on which two impugned orders are challenged is that the petitioners were not given any opportunity of being heard by the respondent before passing the orders. The fact that the petitioners were not heard by the respondent before passing the impugned orders is not in dispute. There is no manner of doubt that the impugned orders have been passed in clear violation of the principles of natural justice and, therefore, are liable to be set aside.

For the foregoing reasons, the petition succeeds. Prayer made in Para-7(a) of the petition is granted. It is however clarified that it would be open to the respondent to pass appropriate orders after affording an opportunity of being heard to the petitioners. Rule is made absolute accordingly, with no order as to costs.