

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7124 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

GOVAJI VIRSANGJI THAKOR

Versus

PROJECT MANAGER

Appearance:

HL PATEL ADVOCATES for Petitioner

MR RAVI R TRIPATHI for Respondent No. 1

MR HL JANI, AGP for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 26/02/99

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Mr. R.R.Tripathi, learned Counsel waives service of notice of rule on behalf of respondent no.1. Mr. H.L.Jani, learned A.G.P. waives service of notice of rule on behalf of respondent no.2. 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 Articles 226 & 227 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order directing respondent no.1 to pay additional rental compensation to the petitioner from September 4, 1985 i.e. the date of taking over possession of the disputed land under the provisions of Section 35 of the Land Acquisition Act, 1894 till the temporary acquisition continued. The petitioner has also prayed to quash and set aside order dated March 23, 1998 rendered by the learned 2nd Joint District Judge, Mehsana in Review Application No. 149/95, which was filed for review of order passed in Land Acquisition Reference No.584/88.

2. The petitioner was owner of Block No.8 situated in the sim of village Memadpur, Taluka & District : Mehsana. The respondent no.1 had proposed on April 15, 1985 to acquire the land belonging to the petitioner temporarily for a period of one year for exploration of oil at Drill Site No.NKFR. On scrutiny of the said proposal, State Government was satisfied that the land belonging to the petitioner was needed for exploration of oil. Under the circumstances, possession of the land in question was taken on September 4, 1985 in pursuance of negotiations which had taken place between the officers of O.N.G.C. and the petitioner. Thereafter Special Land Acquisition Officer had made award for compensation on December 2, 1985 and awarded compensation to the petitioner on rental basis at the rate of Rs. 32/- per Are. The Land Acquisition Officer had also awarded compensation for standing crop. According to the petitioner, compensation awarded by the Special Land Acquisition Officer was inadequate and, therefore, by making application he required Special Land Acquisition Officer to refer the matter to the District Court for determination of compensation. Accordingly, reference was made to the District Court, Mehsana which was numbered as Land Acquisition Reference No. 584/88. In reference application, the petitioner had claimed that having regard to fertility of the land acquired temporarily as well as market value of the lands situated nearby, he was entitled to compensation at the rate of Rs. 200/- per Are. The learned 2nd Joint District

Judge, Mehsana, who heard the reference, passed award on July 2, 1994 and granted compensation to the petitioner at the rate of Rs. 120/- per Are. The Court also directed the acquiring body to pay additional amount of compensation with running interest at the rate of 6% per annum from the date of application till realisation. According to the petitioner, though the land was temporarily acquired for a period of one year, in fact, temporary acquisition had continued for a long period i.e. upto June 24, 1997 and, therefore, he was entitled to additional compensation from the date of taking over possession of the land till the date the temporary acquisition was in force. Therefore, the petitioner filed Review Application No. 149/95 in Land Acquisition Reference No. 584/88 and prayed the Court to review its earlier order and grant appropriate relief to the petitioner. The review application has been rejected by the learned Judge vide order dated March 23, 1998, giving rise to present petition. The order passed in review application is produced by the petitioner at Annexure-A to the petition.

3. The petitioner has claimed in the petition that when the rental compensation was granted at enhanced rate, the same would relate back to the date of taking over possession of the land in question and, therefore, the impugned order deserves to be set aside. It is mentioned in the petition that the learned Judge was not justified in rejecting the review application on the ground that the petitioner was paid additional compensation as per judgment of the Reference Court and, therefore, the review application was not maintainable. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

4. On notice being served, learned Counsel for respondent no.1 has produced a statement at Annexure-I indicating different payments made to the petitioner pursuant to temporary acquisition of his land. The petitioner has filed affidavit on January 22, 1999 stating that though the land was retained by O.N.G.C. from September 4, 1985 to June 24, 1997, additional compensation at the enhanced rate has not been given to him. In the affidavit it is stressed that the petitioner became entitled to receive Rs. 6,710/- per year for land admeasuring 55 Are since the date of taking over possession of land and not from the date of judgment of the Reference Court rendered in Land Acquisition Reference No. 584/88. By filing the affidavit, the

petitioner has stated that the petitioner is entitled to the reliefs claimed in the petition and, therefore, the petition should be accepted.

5. Heard the learned Counsel for the parties. The fact that the land of the petitioner was temporarily acquired under section 35 of the Land Acquisition Act, 1894 for a period from September 4, 1985 to June 24, 1997 for exploration of oil at Drill Site No.NKFR, is not in dispute. It is also not in dispute that the Reference Court had awarded additional compensation to the petitioner at the rate of Rs. 90/- per Are. Therefore, it would not be correct to say that the petitioner would be entitled to additional amount of compensation only from the date of the judgment of Reference Court and not from the date of taking over possession of the disputed land. The submission that judgment rendered by the Reference Court in Land Acquisition Reference Case No. 584/88 would not relate back to the date of taking over possession and would have effect from the date on which it was pronounced, cannot be accepted. When the Reference Court held that the petitioner was entitled to, in all, compensation at the rate of Rs. 120/- per Are, it means that the petitioner was entitled to said compensation right from the beginning i.e. from the date of taking possession till the temporary acquisition continued. The statement produced on behalf of the respondents does not indicate that the petitioner has been paid compensation as determined by the Reference Court from the date of taking possession till the date temporary acquisition continued. Therefore, we are of the opinion that the petition deserves to be accepted and appropriate directions will have to be issued to the respondents.

For the foregoing reasonings the petition succeeds. It is held that the petitioner would be entitled to compensation at the rate of Rs. 120/- per Are right from the date of taking possession till the temporary acquisition continued i.e. from September 4, 1985 to June 24, 1997. Respondent no.1 is hereby directed to make calculation of amount payable in the light of the findings recorded in this judgment as early as possible and preferably within 8 weeks from the date of receipt of the writ. The amount due shall be paid to the petitioner, after deducting the amount which is already paid to the petitioner, with 6% interest thereon as early as possible and without any avoidable delay. Rule is made absolute accordingly, with no order as to costs.

Office is directed to send writ to respondent

no.1 immediately for necessary compliance.

(patel)