

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2021 of 2001

to

FIRST APPEAL No 2034 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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? : NO

STATE OF GUJARAT

Versus

KANTIBHAI DHANJIBHAI PATEL

Appearance:

MR MUKESH PATEL, ld.AGP for appellants

MR MR AJ PATEL and MR JM PATEL for Respondents-claimants
as Caveator.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 30/04/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

Heard Mr.Mukesh Patel, learned AGP for the appellants and Mr.A.J.Patel with Mr.J.M.Patel for the respondent-claimants who appeared on caveat.

2. Admit. By consent of ld. Counsel on both the sides, all these appeals were taken up for final hearing today.

3. These First Appeals have been preferred under Sec.54 of the Land Acquisition Act ('the Act') read with Sec.96 of the Code of Civil Procedure, by the acquiring bodies from the common judgment and order dated 3.11.1999 of the ld. 2nd Extra Assistant Judge and Special Judge, (LAR), Ahmedabad (Rural), in LAR Case No.2192/96 (main) disposing a group of total 14 cases.

4. The Lands under acquistiion were acquired by notification dated 17.1.1994 under Sec.4 of the Act for the purpose of Goraiya Canal of Narmada Project. The original claimants were awarded Rs.1.10 per sq.mtr. by the award of the Land Acquisition Officer and being dissatisfied with the same and claiming Rs.30/- per sq.mtr., the claimants had sought reference under Sec.18 of the Act.

5. The claimants led oral and documentary evidence as regards the nature, potentiality and fertility of the land as also produced the awards made in the cases of lands of nearby villages which were acquired for different public purposes. On the basis of such evidence, it was found that the lands of village Detroj which were under acquisition were in vicinity of the lands of village Bhoyani and Rampur and that the lands in question were similar in nature, potentiality and fertility to the lands of those nearby villages. The judgment in respect of the lands of village Bhoyani indicated the award of Rs.11/- per sq.mtr. at the time of acquisition about 11 years ago whereas the market price of the lands of village Rampur was fixed at Rs.5.30 in cases wherein the notification under Sec.4 was published as far back as on 1.9.1983. In light of such evidence on record, the trial Court made necessary adjustments for the passage of time and found that the average market price arrived at in respect of the lands of two nearby villages which came to Rs.18/- per sq.mtr. was required to be awarded as additional compensation to

the original claimants.

6. It is found from the impugned judgment and order that the area of the lands acquired in the present cases ranges from 272 sq.mtrs. to 7061 sq.mtrs. and therefore, an additional compensation at the rate of Re.1/- would make a difference of the same amounts as far as the basic rate of compensation is concerned. It is the consistent view of this Court that the appeals should not be admitted wherein amounts involved are petty in view of the disproportionate costs and hardships likely to be caused to the parties in such litigations. In the facts of the present case, learned AGP has vehemently argued that even after accepting the adjusted market price obtaining in the nearby villages and averaging the same for the purpose of fixing the market price, the original award at the rate of Rs.1.10 per sq.mtr. as made by the Land Acquisition Officer is completely disregarded in the impugned judgment. Therefore, in substance, the appeals appear to have been preferred for the reduction of additional compensation by Rs.1.10 per sq.mtr. which would hardly have any effect beyond Rs.7,100/- at the highest in an individual case as far as the basic market price of the land under acquisition is concerned.

7. Learned Counsel Mr.A.J.Patel submitted that if at all the comparable lands of the nearby villages were to be made the basis for assessment of the market price, the cases of land acquisition from the village Bhoyani were more akin to the lands in question in terms of development, nature, fertility and potentiality. Accordingly, the market price of Rs.22.50 per sq.mtr. after adjusting the same for the passage of 11 years ought to have been made the basis for the award of compensation in cases of lands in question of village Detroj. It was submitted that village Detroj could be considered more developed in view of it having been nominated as a Taluka place.

8. Considering the facts and submissions as above, we find that the award at the rate of Rs.18/- per sq.mtr. by way of additional compensation is in no way excessive and does not call for interference in these appeals particularly in view of the fact that Rs.22.5 per sq.mtr. would be the adjusted market price if award in respect of the lands of comparable nearby villages were made the basis and as also in view of the small amounts for which the contest is carried upto this Court.

9. Learned Counsel for the respondents have fairly conceded that in case of any of the lands being new tenure lands, the respondents would have no objection to the deduction of 5% Government share in accordance with the provisions of Sec.11A of the Act. It is also conceded that the claimants shall not be entitled to interest at the rate of 9% for one year and 15% after a period of one year on the amounts awarded by way of additional compensation at the rate of 12% per year and 30% by way of solatium and that the appeals may be allowed to that extent.

10. Accordingly, all these appeals are partly allowed with no order as to costs. The impugned judgment and award shall stand modified to the extent that the amount of compensation shall be subject to deduction by way of 5% Government share in case of new tenure lands and that the interest at the rate of 9% per annum for the period of one year from the date of taking over possession of the lands and thereafter at the rate of 15% per annum till the amounts are paid shall not be calculated and paid on the amounts awarded by way of additional amount at the rate of 12% from the date of the notification under Sec.4 of the Act and on the amount awarded at the rate of 30% by way of solatium. Subject to these modifications and clarifications, the amounts due to the claimants shall be paid to them as expeditiously as possible and preferably within three months from the receipt of the copy of this order by the authority concerned. The decree shall be drawn as expeditiously as possible.

30th April 2001 (M.R. Calla, J.)

(D.H.Waghela, J.)
Sreeram.