

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3165 of 2000

with

Civil Application No. 421 of 2001

and

Civil Application No. 11532 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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

DISTRICT DEVELOPMENT OFFICER

Versus

VAGESING DIPSING

Appearance:

MS SEJAL K MANDAVIA for appellant No. 1
MS SHRADDHA TRIVEDI AGP for appellant No. 2
MS SONALI R DESAI for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 31/01/2002

ORAL JUDGEMENT

1. By means of filing this appeal under the

provisions of Section 54 of the Land Acquisition Act, 1894 ('the Act' for short) read with Section 96 of the Code of Civil Procedure, 1908 ('the Code' for short), appellants, the acquiring body and the Special Land Acquisition Officer seek to challenge the judgment and award dated December 24, 1999 rendered in Land Acquisition Reference Case No.87 of 1987 by the learned Civil Judge (S.D.), Bharuch by which the market value of the acquired land of the respondents came to be determined at Rs.625/- per Are and accordingly while allowing the reference sought by the respondents, awarded additional compensation of Rs.515/- per Are (Rs.625 Rs.110 paid by the Land Acquisition Officer = Rs.515/-) together with statutory benefits under section 23 (I-A) and 23 (2) and interest under Section 28 of the Act.

2. A few material facts giving rise to this appeal may be highlighted which are as under.

2.1. The State of Gujarat intended to acquire the land for public purpose of allotting plots to the land losers in village Angareshwar, Taluka and District Bharuch. The Special Land Acquisition Officer issued notifications under Sections 4 and 6 of the Act on August 30, 1984 and June 5, 1986 respectively for the purpose of acquiring the land of Block No. 335 paiki of S.No.170/2 admeasuring 61 Are of village Angareshwar, Taluka and District Bharuch belonging to respondents. The Land Acquisition Officer thereafter issued notification under Section 9 of the Act and after making inquiry under Section 11 of the Act, determined the market value of the acquired land at Rs.110/- per Are together with the statutory benefits available under the Act against the claim made by the claimants at the rate of Rs.625/- per Are. The respondents/claimants who are the owners of the acquired land aggrieved by the determination of the market value made by the Land Acquisition Officer sought reference under Section 18 of the Act from him. The Land Acquisition Officer, therefore, referred the reference to the District Court, Bharuch wherein the respondents/claimants stick to their claim at Rs.625/per Are. The said reference was placed for adjudication before the learned Civil Judge (S.D.), Bharuch.

2.2. On behalf of the claimants, claimant No.2 Ajitsing Dipsing Rathod was examined at Ex.24. He has also relied upon the documents, that is, sale instance of the remaining part of the very land which was entered into between him and third party in the year 1983 wherein it was decided to sell 53 Gunthas of land in consideration of Rs.31,000/- The sale deed was executed

in the year 1988. During his oral testimony he has also testified that the acquired lands were irrigated lands and annual income from the said land was approximately Rs.8000/- to Rs.10,000/- per acre. No evidence was led on behalf of the referer.

2.3. On appreciation and evaluation of the evidence, the learned Civil Judge (S.D.), considering the agreement to sell of the year 1983 and the sale deed of the year 1988 for the remaining portion of the acquired land, determined the market value of the acquired land at Rs.625/- per Are and then deducted the amount of Rs.110/per Are which was awarded by the Land Acquisition Officer and held that the claimants are entitled to get Rs.515/per Are as additional compensation for their acquired land together with statutory benefits available under the Act to which reference is made earlier, which has given rise to the present appeal at the instance of the acquiring body, that is, District Development Officer, District Panchayat, Bharuch and Special Land Acquisition Officer, Bharuch.

3. Ms. Sejal Mandavia, learned advocate for appellant No.1 and Ms. Shraddha Trivedi, learned AGP jointly contended that the reference court has wrongly relied upon Banakhat dated September 15, 1983 produced at Ex.29 and Banakhat dated March 24, 1984 produced at Ex.36 as well as sale deed at Exhs. 30 and 37. What is emphasized by them is that the Special Land Acquisition Officer has looked into the nature of the land and awarded Rs.110/per Are which is just and proper. It is also emphasized by them that the documents which were relied upon by the claimants before the Court were not produced before the Land Acquisition Officer, therefore, reference court ought not to have relied upon those documents. The learned Judge has wrongly relied upon the reported decision in the case of Collector of Baroda v. Haridas Maganlal, 10 GLR 412. It is asserted by them that there are two methods of determining the market value of the acquired land, one is sale instances and second is the capitalization of the annual income of the acquired land on the basis of the expert opinion. In the instant case there is no evidence of the expert to determine the fertility of the land. So far as the sale instance Ex.30 is concerned, it was executed in the year 1988 which cannot be made a basis for determining the market value of the acquired land. They, therefore, urged that the judgment and award determining the market value of the acquired land at Rs.625/- per Are is erroneous, without any material on record and, therefore, same is liable to be quashed and set aside by allowing

this appeal and thereby dismissing the reference sought for by the claimants.

4. Ms. Sonali Desai, learned advocate for the respondents/claimants contended that the learned Judge has very rightly relied upon the agreement to sell at Ex.29 which was entered into in the year 1983 by the present claimants in favour of Bhagwansing Prabhatsing Rathod for the remaining part of the very land which was released by the Land Acquisition Officer subsequently for which the actual sale deed was also executed in the year 1988. What is asserted by her is that there is ample evidence to determine the market value of the acquired land, that is, the method of capitalization of the annual income of the acquired land and claimant No.2 himself has testified that they were taking crop of Rs.8000 to Rs.10000 per year per acre. The said land was irrigated land and facility of well was also available. Therefore on considering that method also determination of market value at Rs.625/- per Are is just and reasonable which cannot be called excessive or on higher side. She, therefore, urged that there is no substance in this appeal which is liable to be dismissed.

5. At the outset, it may be stated that law in the matter to be considered while determining the compensation envisaged under Section 23 of the Act is now well settled by catena of decisions of the Supreme Court. There is no dispute that to find out the market value of the acquired land two methods are available, one is to consider the sale instances of the lands situated in the immediate vicinity of the land acquired and the second method is capitalization of the annual income of the acquired land on the basis of the expert evidence. Where there is no sale of comparable land, one of the methods which may be used to assess the annual income from the land which the owner have been deriving or expected to derive is capitalization of such income by adopting appropriate multiplier. The Supreme Court in the case of Executive Director v. Sharad Chandra Bisoi, (2000) 6 SCC 326 = AIR 2000 SC 2619 has reiterated the aforesaid principles.

6. Keeping in forefront the aforesaid principles laid down by the Supreme Court in various pronouncements, whether determination of the market value by the learned Civil Judge (S.D.), of the acquired land of the respondents can be called just, reasonable, fair, adequate or excessive and on higher side. To answer the aforesaid question, let us examine the evidence adduced before the reference court.

7. On behalf of the claimants, claimant No.2 Ajitsing Dipsing Rathod was examined vide Ex.24. He has inter alia testified that the land of block No.335 paiki, Survey No.170/2 is acquired by the State Government for the public purpose of allotting plots to the land losers by issuing notification under sections 4 and 6 of the Act on August 30, 1984 and June 5, 1986 respectively. The Land Acquisition Officer has awarded Rs.6710/- on September 9, 1986. He further testified that initially 114 gunthas of land was acquired. Out of the said land 53 Gunthas of land was released by the Government from the acquisition and remaining 61 gunthas of land was acquired. For the 53 Gunthas of land which was released by the Land Acquisition Officer, an agreement to sell was entered into with one Bhagwansing Prabhatsing Rathod in the year 1983 in consideration of Rs.31,000/- and the sale deed was actually executed in the year 1988. The agreement to sell and sale deed both are produced at Ex.29 and 30 respectively. Besides this he has also testified that near the acquired land there is a plant of GNFC and IPCL. The acquired land was fertile and there are two wells in the village including irrigation scheme for the last 35 to 40 years. Their main crop was cotton and they were getting approximately Rs.8,000 to Rs.10,000 per year per acre from the said land after incurring nominal expenses of Rs.300 to Rs.400 per acre. It may be appreciated that this witness successfully withstood the test of cross-examination and nothing adverse is brought on record. It is also required to be noted that on behalf of the referer no witness was examined nor any documentary evidence was relied upon to show how the value of the acquired land was determined at Rs.110/- per Are. It is true that the reference court has relied upon Exh.29 and 30 which are agreement to sell entered in the year 1983 and sale deed executed in the year 1988, respectively. It is true that this Court in the case of Collector Baroda (supra) has determined the market value of the land acquired on the basis of the agreement to sell and held that agreement to sell can be a basis for fixation of the market value. This judgment is of the year 1968. Law has been explored much in advance and as per the decision of the Supreme Court, agreement to sell cannot be considered as a basis for determination of the market value and actual sale and that too a genuine sale can only be considered for determination of the market value.

8. There is ample evidence that initially 114 Gunthas of land came to be acquired and thereafter 53 gunthas of land was released by the Land Acquisition

Officer. So far as 53 gunthas of land which was released by the Land Acquisition officer is concerned, the claimant No.2 had entered into an agreement to sell the same with one Bhagwansing Prabhatsing Rathod in the year 1983 and the sale deed was also executed in the year 1988. To corroborate the said evidence on behalf of the claimants, Bhagwansing Prabhatsing Rathod is examined at Ex.28. He inter alia testified that he made a Banakhat in the year 1983 for the sale of 53 gunthas of land in consideration of Rs.31,000/- He has also testified that the actual sale deed was executed in the year 1988. He has produced the original of the banakhat as well as sale deed at Ex.29 and 30. Therefore, in my view, the agreement to sell which was made in the year 1983 cannot be called imaginary or bogus or with a view to get more compensation, otherwise, sale deed would not have been executed in the year 1988. Besides this, if we apply the method of capitalization of annual income from the agricultural land, in that case also there is ample evidence that the claimants used to get Rs.8,000 to Rs.10,000 per acre by way of return from the said land by cultivating the said land. The said fact was not controverted in cross-examination. If we do not consider the figure of the return from the land at Rs.8000 per acre per year as it is on higher side and consider a conservative figure of Rs.3,000 per acre per year, in that case it would come to Rs.75/- per Are per year and then applying a most conservative multiplier of 10, the annual income from the acquired land within a span of ten years would come to Rs.750/- per Are and the learned Judge has assessed and determined the market value at Rs.625/- per Are. Moreover, the market value claimed by the claimants from the very beginning by filing objections pursuant to the issuance of the notification under Section 9 of the Act was also Rs.625/Therefore, in my view, the market value fixed by the reference Court cannot be called at all excessive or on higher side. On the contrary, the learned Judge has determined just, fair, reasonable and adequate market value of the acquired land. The learned Judge has also deducted the amount of Rs.110/- per Are which was determined and paid by the Land Acquisition Officer and then awarded total compensation of Rs.515/per Are together with statutory benefits under Section 23 (I-A) and 23 (2) of the Act with interest under Section 28 of the Act.

9. On the facts and in the circumstances of the case, no error is committed by the reference court in determining the market value of the acquired land. No ground is made out by the appellants for interference with the impugned judgment and award. Therefore, I do

not deem it expedient that the said judgment requires any interference at the hands of this court and resultantly the appeal deserves to be dismissed.

10. For the foregoing reasons, the appeal fails and accordingly it is dismissed. However, with no order as to costs.

11. Civil Application No. 421 of 2001 is filed by the applicants/appellants wherein this Court has stayed the impugned judgment and award on condition that the appellants shall deposit the entire amount of the award with interest before the reference court within four weeks. Pursuant to the same the appellants have deposited the said amount on June 16, 2001 as reported by Ms. Sonali Desai, learned advocate for the respondents. She further states that the said amount has been invested in a nationalized bank initially for a period of one year in the name of Nazir with further condition to renew it till disposal of this appeal.

12. So far as Civil Application No. 11532 of 2001 which is filed by respondents for disbursement of the amount of the award which is invested in the name of the Nazir is concerned, since the appeal is dismissed, this application also deserves to be rejected. Hence, both the Civil Applications stand disposed of with a direction that the amount under impugned judgment and award which is deposited by the opponent and invested in the nationalized bank in fixed deposit scheme in the name of the Nazir shall be recalled and the total amount under the award be paid to the respondents/claimants forthwith. Since the appeal is dismissed, interim relief granted in Civil Application No. 421 of 2001 is vacated. Rule issued in each of the application is discharged with no order as to costs.

(A.M. Kapadia, J.)

(karan)