

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1331 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI  
and  
Hon'ble MR.JUSTICE J.R.VORA

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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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PADMAVATI WD/O BHAILAL GHELABHAI AMIN

Versus

SPECIAL LAND ACQUISITION OFFICER  
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Appearance:

MR SURESH M SHAH for Petitioner No. 1  
MR MEHUL S SHAH for Petitioner No. 1  
MS MANISHA LAVKUMAR AGP for Respondents  
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CORAM : MR.JUSTICE N.G.NANDI  
and  
MR.JUSTICE J.R.VORA

Date of decision: 28/03/2002

ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. In this Special Civil Application under Articles 226 and 227 of the Constitution of India, the petitioner prays for a direction to withdraw and/or to cancel the acquisition proceedings and the award passed pursuant thereto insofar as it relates to the petitioner's land admeasuring 16.32 gunthas out of survey No. 1535 of village Mahudha, District Kheda, Taluka Kapadvanj, Nadiad Road and also requiring the respondents to determine the compensation payable by the respondents for the wrongful and illegal use, occupation, possession and enjoyment of the petitioner's land.

2. The say of the petitioner is that the petitioner is the owner of the piece and parcel of land bearing Survey Nos. 602 and 1535 known as "Vojifo" in the village Mahudha, District Kheda, Taluka Kapadvanj, Nadiad Road, admeasuring 1.4 hectares. That the petitioner learnt that a portion of the said land admeasuring 16.32 gunthas out of Survey No. 1535, more particularly described in Annexure Exhibit-B has been acquired by respondent No.1 for the purpose of constructing a canal for the Narmada Project and that pursuant thereto possession thereof has also been taken. The say of the petitioner further is that the petitioner was not served with the Notice under Sections 9/3 and 9/4 of the Land Acquisition Act (hereinafter referred to as the "Act"), with the result, the petitioner could not participate in the proceedings for determination of the compensation and the petitioner also could not request for making a reference under Section 18 of the Act. It is stated by Mr.S.M. Shah, learned Advocate for the petitioner that since the petitioner was not served with the Notice under sections 9(3) and 9(4) of the Act, no request was made by the petitioner for Reference under Section 18 of the Act.

3. The respondents have filed affidavit-in-reply refuting the say of the petitioner, inter alia, contending that out of Survey No. 1535 of village Mahudha, land admeasuring 0.83 Are 97 Sq. meters, out of which 16 Are 32 sq. meters were acquired for the purpose of constructing a canal of Narmada Project and thus the remaining land in the said survey No. 1535 is 0.67 Are 65 sq. meters. That the Notification under Section 4 was published in the Government Gazette on 16.1.1991 and it was published in the daily "Naya Padkar" and "Prabhat" on 23.2.1991. The same was published in the Notice Board of the Gram Panchayat on 4.5.1991 and also at the Taluka Office of the Mamlatdar on 30.4.1991. So the last publishing date of the Notification under Section-4 of the Act was on 4.5.1991.

It is the further say of the respondents that the Notice under Sections 9/1 and 9/2 were displayed at the Office of the Gram Panchayat on 9.10.1991 and Notice under Sections 9(3) and 9(4) were served on the land holders on the same day i.e. on 9.10.1991. That the petitioner was not present at the relevant time and that is why the said Notice was not served on the petitioner. That the Land Acquisition Officer declared the Award on 13.12.1991 and the said land was acquired by the Acquiring Body and constructed the canal and at present the canal is in existence.

4. It is stated that under Section 11A of the Act, the Land Acquisition Officer awarded the compensation at the rate of Rs. 2.60 per sq. meter. The Reference court enhanced the compensation to Rs. 20 per sq. meter which was confirmed by the High Court in Appeal being First Appeal No. 1310/98 preferred by the State Government.

That the matter was further carried to the Supreme Court by way of Spl. Leave Petition being SLP No. 4230/99 to 4265/99. The Supreme Court confirmed the compensation awarded at the rate of Rs. 20/- per sq. meter and dismissed the Special Leave Petitions.

5. Apart from the service or other wise of the Notice under Section 9(3) and 9(4) of the Act, what emerges is that in the Reference under Section 18 of the Act filed by the claimants, the Reference Court awarded compensation at the rate of Rs. 20 per sq. meter, and the same was confirmed by the High Court in Appeal u/S. 54 of the Act preferred by the State Government, and later on confirmed by the Supreme court in the Special Leave Petitions, as stated in the affidavit-in-reply filed by the respondents.

It is stated by Mr. S.M. Shah, learned advocate for the petitioner that for redetermination of compensation, the claimant would file an application under Section 28A of the Act, and the Special Land Acquisition Officer be directed suitably to decide the same within three months from the date of receipt of application on the line of the compensation redetermined as above.

6. Section 28A of the Act provides as under :

- (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court.

PROVIDED that in computing the period of three months within which an application to the Collector shall be made under his sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

- (2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.
- (3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.

7. It will be seen from the above that when the present petitioner is covered under the same notification and awarded compensation by the Land Acquisition Officer under Section 11-A of the Act, would be entitled to the redetermination of the compensation as fixed by the Reference Court in the case of other claimants under the same Notification. The Special Land Acquisition Officer has fixed the compensation at the rate of Rs. 2.60 per sq. meter for the present petitioner also. The present petitioner did not request for a Reference under Section 18 of the Act for redetermination of the compensation

fixed by the Reference Court. The other persons covered under the same Notifications and awarded compensation at the rate of Rs. 2.60 per sq. meter requested for Reference under Section 18 of the Act and their compensation has been redetermined by the Reference Court at Rs.20 per sq. meter which came to be confirmed by the Supreme Court as observed above.

8. The petitioner did not prefer the Reference under Section 18 of the Act. However, by virtue of the provisions contained in Section 28A of the Act, the petitioner is also entitled to request for redetermination of the compensation as fixed by the Reference Court and confirmed by the Supreme Court in Special Leave Petitions.

9. In view of the above, the petitioner may move an appropriate application under Section 28A of the Act before the Special Land Acquisition Officer and on such application being filed by the petitioner, the Special Land Acquisition Officer is directed to decide the same within three months from the date of receipt of the same on the lines of the compensation enhanced by the Reference Court under Section 18 of the Act, confirmed by the High Court in First Appeal No. 1310/98 and again confirmed by the Supreme Court in Special Leave Petitions No. 4230/99 to 4265/99. The amount of compensation, that may be redetermined by the Land Acquisition Officer on the above lines, be paid to the claimant within three months from the date of the order by the Special Land Acquisition Officer in this behalf under Section 28A of the Act.

12. In the result, the petition stands disposed of accordingly. Rule accordingly. No order as to costs.

(N.G. Nandi, J.) (J.R. Vora, J.)