

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No.1943 of 2006**

**To**

**FIRST APPEAL No.1954 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE J.M.PANCHAL**

**AND**

**HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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**SPECIAL LAQ OFFICER & ANR - Appellants**

**Versus**

**KANTIBHAI BHAGVASDAS PATEL & ANR. - Respondents**

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**Appearance :**

MR SS SHAH, Government Pleader in First Appeal Nos.1943 to 1948 of 2006 and MR LR PUJARI, Assistant Government Pleader in First Appeal Nos.1949 to 1954 of 2006 for Appellants.

MR AJ PATEL for Original Claimants.

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**CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL**

**and**

**THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

**Date : 30/10/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)**

The above numbered appeals filed under

Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated February 7, 2005 rendered by the learned 2<sup>nd</sup> Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Ahmedabad, in Land Acquisition Case Nos.143 of 1999 to 154 of 1999 by which the claimants are awarded additional compensation at the rate of Rs.25.30 ps. per square metre for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.50 ps. per square metre, by his award dated July 30, 1998.

2. A proposal was received by the State Government from the Executive Engineer, Construction Division No.4/4, Narmada Canal, Mehsana, to acquire agricultural lands of Village Ghelada, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was

satisfied that the lands of Village Ghelada were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on May 27, 1996. The landowners were served with the notices under Section 4 of the Act and they opposed the proposed acquisition. After considering their objections, a report under Section 5-A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village Ghelada specified in the notification published under Section 4(1) of the Act were needed for the public purpose of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on January 6, 1997. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.50/- per square metre.

However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1.50 ps. per square metre by his award dated July 30, 1998. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Ahmedabad (Rural) at Ahmedabad, where they were registered as Land Acquisition Case Nos.143 of 1999 to 154 of 1999.

3. On behalf of the claimants, witness Patel Vinubhai Harjivandas was examined at Exhibit 34. Over and above stating that the lands acquired were highly fertile and that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per year per vigha

from the sale of agricultural produces, the witness produced two previous awards for consideration of the Court. One award related to the lands of Village Madrisana whereas another related to the lands of Village Fatehpura. The witness mentioned in his testimony before the Court that the lands, which were subject matters of previous two awards relating to Village Madrisana and Village Fatehpura, were similar in all respects to the lands acquired in the instant case from Village Ghelada. He also produced 7/12 extracts of the lands acquired, at Exhibits 16 to 31 to establish that the lands acquired were irrigated lands. Though the witness was cross-examined at length by the learned District Government Pleader for the appellants, nothing could be elicited to doubt his assertion that the lands, which were subject matter of the previous acquisition from Village Madrisana and Village Fatehpura were similar in all respects to the lands acquired in the instant case.

4. On behalf of the appellants, witness

Patel Ambalal Bechardas, who was then discharging duties in Ahmedabad Division, was examined at Exhibit 36. In his cross-examination, the witness had to admit that the boundary of Village Ghelada was touching the boundary of Village Madrisana. It was also admitted by this witness that crops like *juvar*, *bajra*, cereals, etc. were being grown on the lands acquired and that similar crops were also being raised on the lands of Village Madrisana, which were acquired earlier.

5. On the basis of evidence adduced by the parties, the Reference Court in the instant case was of the opinion that two previous awards relating to the lands of Village Madrisana and Village Fatehpura were relevant and furnished goods guidance for the purpose of determination of market value of the lands acquired in the instant case. The Reference Court noticed that notification under Section 4(1) of the Act was published in the official gazette on June 20, 1995 for the purpose of acquiring the lands of Village Madrisana whereas notification under

Section 4(1) of the Act was published in the official gazette on September 5, 1992 for acquiring the lands from Village Fatehpura and as there was time gap of about one year in publication of notifications, which were subject matter of previous awards and notification issued in the instant case, the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum. On the basis of this principle, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.25.30 ps. per square metre by the impugned award, giving rise to the instant appeals.

6. This Court has heard Mr.L.R.Pujari, learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned counsel for the claimants, in each appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which contains oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though it was claimed by the witness for the claimants that the lands acquired in the instant case were highly fertile and that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per year per vigha from the sale of agricultural produces, no documentary evidence could be adduced to substantiate the said claim. The record does not indicate that the claim of the claimants for enhanced compensation was based on the yield or on the basis of comparable sale instances. What was relied upon by them was two previous awards of the Reference Court, one of which was relating to the lands of Village Madrisana and another was relating to the lands of Village Fatehpura. The previous award relating to the lands of Village Madrisana is produced at Exhibit 32. It indicates that the lands of Village Madrisana were acquired for public purpose of construction of Narmada Canal pursuant to publication of notification under Section 4 of the Act in the official gazette on June 20, 1995. Therein, the Special Land Acquisition Officer had offered

compensation to the claimants at the rate of Rs.2.10 ps. per square metre by his award dated September 30, 1996. Feeling aggrieved, the references were sought and the Reference Court by judgment and award dated August 31, 2004, awarded compensation to the claimants at the rate of Rs.25.10 ps. per square metre. Again, Exhibit 33, which is a previous award of the Reference Court relating to the lands of Village Fatehpura indicates that the lands of Village Fatehpura were acquired for the public purpose of construction of Narmada Canal pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on September 5, 1992. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.25 ps. per square metre by his award dated August 16, 1994. Feeling aggrieved, the references were sought and the Reference Court by judgment and award dated November 12, 2002 awarded compensation at the rate of Rs.20/- per square metre. It may be mentioned that for acquiring the lands of Village Madrisana, notification under Section

4(1) of the Act was published on June 20, 1995 and notification under Section 4(1) of the Act for acquiring the lands of Village Fatehpura was published in the official gazette on September 5, 1992 whereas in the instant case, notification under Section 4(1) of the Act was published in the official gazette on May 27, 1996. In view of the time gap between the publication of notifications in the official gazette, this Court is of the opinion that the Reference Court was justified in granting rise in price of the lands to the claimants at the rate of 10% per annum. The calculation of compensation payable to the claimants on the basis of the previous two awards of the Reference Court relating to the lands of Village Madrisana and Village Fatehpura is not disputed by the learned counsel for the appellants. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court, to which settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court

to take a different view than the one, which is taken by the Reference Court. This Court is of opinion that the appeals, which lack merits, deserve to be dismissed.

For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

***[J.M.PANCHAL, J.]***

***[SMT. ABHILASHA KUMARI, J.]***

Rajendra