

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2578 of 2006
To
FIRST APPEAL No. 2586 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE 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 - Appellant
Versus

AMRUTBHAI SANKARDAS & 1 - Respondents

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Appearance :

MR SUNIT S SHAH, GOVERNMENT PLEADER for appellant in First Appeal
Nos.2578/2006 to 2581/2006. MR LR PUJARI, A.G.P. for Appellant in
First Appeal Nos.2582/2006 to 2586/2006.
MR AJ PATEL for claimants

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 30/10/2006

COMMON ORAL JUDGMENT

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

The abovenumbered 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 November 30, 2004, rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAQ), Ahmedabad (Rural) at Ahmedabad, in Land Acquisition Case Nos.2375 of 1996 to 2383 of 1996, by which the claimants are awarded additional amount of compensation at the rate of Rs. 21.60 Ps. per sq.mt. for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs. 2.10 Ps. per sq.mt. by his award dated September 16, 1996.

2. The Executive Engineer, N.P.M.C. Division No.4/4, Mehsana proposed to the State Government to acquire lands of village Madrisana, Taluka : Viramgam, for the public purpose of Narmada Project. On consideration of the said proposal,

the State Government was satisfied that the lands of village Madrisana were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on April 16, 1994. Thereafter the owners of the lands were served with notices issued under Section 4 of the Act and they opposed the proposed acquisition. After considering their objections, the report under Section 5A(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 Madrisana, which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on February 17, 1995. 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 compensation at the rate of Rs.25000/- per Bigha (roughly Rs.10.51 Ps. per sq.mt.). However, having regard to the materials placed before him, the Special Land Acquisition Officer by his Award dated September 16, 1996 offered compensation to the claimants at the rate of Rs. 2.10 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad, where they were registered as Land Acquisition Case Nos.2375 of 1996 to 2383 of 1996.

3. On behalf of the claimants, witness Lavjibhai Somabhai was examined at Exh.21. It may be

mentioned that before the Reference Court, the claimants claimed compensation at the rate of Rs.50/- per sq.mt. 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 bigha per year from the sale of agricultural produces, the witness produced two previous awards in support of the enhanced claim advanced by the claimants. One previous award was relating to the lands of this very village; whereas another was relating to the lands of village Fatehpura. The witness mentioned in his testimony before the Court that the lands, which were acquired earlier from this very village, were similar, in all respects, to the lands acquired in the instant case, and the lands acquired in the instant case were also similar to the lands of village Fatehpura which were acquired earlier. According to this witness, fertility of the lands of village Fatehpura and that of village Madrisana were similar and even crop pattern was also similar. Though this

witness was cross-examined by the learned District Government Pleader for the appellant, nothing substantial could be elicited so as to doubt his claim that the lands which were acquired from village Fatehpura were similar in all respects to the lands acquired in the instant case.

4. On behalf of the appellant, witness Ambalal Bechardas Patel, who was then discharging duties as Deputy Engineer, Narmada Development Board, was examined at Exh.38. In cross-examination, the witness had to admit that he had no personal information regarding the lands acquired in the instant case and was deposing before the Court on the basis of the official record. The witness pleaded ignorance that the boundaries of village Fatehpura and of village Madrisana were touching each other.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that two previous awards of the Reference Court

i.e. one relating to the lands of this very village and another relating to the lands of village Fatehpura were relevant and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The learned Judge noticed that there was time-gap between the notification which was published in the Official Gazette for acquiring lands from village Fatehpura and the notification which was published in the Official Gazette for acquiring lands from village Madrisana in the instant case and, therefore, the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum. On the basis of price of lands indicated in the previous awards as well as the principle that a claimant is entitled to reasonable rise in price of land at the rate of 10% per annum if there is gap of time between publication of notifications under Section 4(1) of the Act, the Reference Court in the instant case has awarded additional amount of compensation at the rate of Rs. 21.60 Ps. per

sq.mt. by the impugned award, giving rise to the abovenumbered appeals.

6. This Court has heard Mr.L.R.Pujari, learned Assistant Government Pleader for the appellant and Mr.A.J.Patel, learned counsel for the claimants in each appeal. This Court has also taken into consideration 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 witness Lavjibhai Somabhai, who was examined on behalf of the claimants, that the lands acquired were highly fertile and that each claimant was earning net income of Rs. 35,000/- to Rs. 40,000/- per bigha per year from the sale of agricultural produces, no evidence could be produced to substantiate the same. The record does not indicate that the enhanced compensation was claimed by the

claimants on yield basis or on the basis of comparable instances of sale. What was relied upon by the claimants in support of their claim for enhanced compensation was two awards i.e. one relating to the lands of this very village and another relating to the lands of village Fatehpura. The previous award of the Reference Court relating to the lands of this very village was produced at Exh.19. It indicates that the lands from this very village was 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 June 20, 1995; whereas in the instant case, notification issued under Section 4(1) of the Act was published in the Official Gazette on April 16, 1994 i.e. prior to 14 months. It is true that post-notification sale can be taken into consideration if the claimant establishes that there was no rise in price of land after issuance of Section 4 notification and similarly, previous award also can be relied upon if it is

established that there was no rise in price of land after award was made. However, no evidence was adduced by the witness for the claimants to indicate that after publication of notification under Section 4(1) of the Act in the Official Gazette on April 16, 1994 for acquiring lands in the instant case from village Madrisana, there was no rise in price of lands when another notification was published in the Official Gazette on June 20, 1995 for acquiring lands from this very village. Under the circumstances, this Court is of the opinion that the Reference Court was not justified in placing reliance on Exh.19 for the purpose of determining market value of the acquired lands in the instant case. Having regard to the facts of the case, Exh.19 will have to be kept out of consideration while determining market value of the lands acquired in the instant case.

8. Once Exh.19 is kept out of consideration while determining the market value of the lands

acquired in the instant case, the Court is left with no other relevant evidence, except Exh.20, which is previous award of the Reference Court relating to the lands of village Fatehpura for determining market value of the acquired lands in the instant case. It may be stated that witness Lavjibhai Somabhai, examined on behalf of the claimants, in terms asserted on oath before the Court that the lands which were acquired in the instant case from village Madrisana and the lands which were acquired earlier from village Fatehpura were similar in all respects and even crop pattern was also similar. This statement is not effectively challenged in his lengthy cross-examination by the learned District Government Pleader. Though the witness examined on behalf of the appellant has pleaded ignorance, the record would show that the boundaries of village Fatehpura and village Madrisana are touching each other. Having regard to the nature of evidence adduced by the claimants, this Court is of the opinion that the Reference Court did not commit

any error in placing reliance on Exh.20 for the purpose of determining market value of the lands acquired in the instant case. Exh.20 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. In the said case, Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.25 Ps. per sq.mt. by his award dated August 16, 1994. Feeling aggrieved, the claimants had sought references and the Reference Court by judgment and award dated November 12, 2002 awarded additional amount of compensation to the claimants at the rate of Rs.18.75 Ps. per sq.mt. Thus, the claimants, whose lands were acquired from village Fatehpura, were, in all, awarded compensation at the rate of Rs.20/- per sq.mt. As is evident from the record of the case, notification issued under Section 4(1) of the Act was published in the Official Gazette for

acquiring lands of village Fatehpura on September 5, 1992; whereas in the instant case, notification issued under Section 4(1) of the Act was published in the Official Gazette on April 16, 1994. Thus, there was gap of about 20 months in publication of notifications issued under Section 4(1) of the Act and, therefore, the claimants would be entitled to reasonable rise in price of the lands at the rate of 10% per annum. If the amount of compensation is calculated on this basis, the claimants would be entitled to compensation, in all, at the rate of Rs.23/- per sq.mt and not at the rate of Rs.23.70 Ps. per sq.mt. as is awarded by the Reference Court. On reappraisal of evidence adduced by the parties, this court finds that correct findings of facts have been arrived at, to which correct principles of law have been applied and, therefore, the impugned award cannot be set aside as a whole as is claimed by the appellant, but the impugned award deserves to be modified by holding that the claimants would be entitled to

compensation at the rate of Rs. 23/- per sq.mt.

For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated November 30, 2004 rendered by the learned 2nd Extra Assistant Judge, Special Judge (LAQ) Ahmedabad (Rural) at Ahmedabad, in Land Acquisition Case Nos.2375 of 1996 to 2383 of 1996 awarding compensation to the claimants at the rate of Rs.23.70 Ps. per sq.mt. for their acquired lands is hereby modified, and it is held that the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt. The other directions contained in the impugned award are not interfered with at all and are hereby upheld. The appeals are allowed only to the extent indicated hereinabove. 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 .]