

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No.5353 of 2006
To
FIRST APPEAL No.5391 of 2006**

For Approval and Signature:

**HONOURABLE MR. JUSTICE J.M.PANCHAL
&
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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2ND ADDITIONAL SPECIAL LAND ACQUISITION OFFICER - Appellant

Versus

PREMJIBHAI KEHARBHAI & ORS. - Respondents

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Appearance :-

First Appeal Nos.5353 to 5370 of 2006:

MR SS SHAH, GP for Appellant.
MR GM AMIN for Original Claimants.
None for Respondent No.2.

First Appeal Nos.5371 to 5391 of 2006:

MR KRUNAL D. PANDYA, AGP for Appellant.
MR GM AMIN for Original Claimants.
None for Respondent No.2.

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**CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

Date : 28/12/2006

COMMON ORAL JUDGMENT

(Per: HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

Admitted. Mr.G.M.Amin, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. What is challenged in these 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, is common award dated August 31, 2005, rendered by the learned 2nd Additional Senior Civil Judge, , Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.384 of 2002 to 422 of 2002, by which the claimants have been awarded additional amount of compensation at the rate of Rs.39/- per square metre for their acquired lands over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.2.00 per square metre by his award dated January 22, 1999.

3. The Executive Engineer, R & B, Panchayat Division No.1, Jilla Panchayat, Bhadra, Ahmedabad, proposed to the State Government to acquire the lands of Village : Navda, Taluka: Dhandhuka, District: Ahmedabad for the public purpose of construction of Navda-Hebatur Road. On perusal of the said proposal, the State Government was satisfied that the lands specified in the proposal 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 August 5, 1998. The landowners were thereafter served with the notices as required by Section 4(1) of the Act. On receipt of notices, landowners opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5-A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village: Navda, specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of Navda-Hebatpur Road. Therefore, a declaration under

Section 6 of the Act was issued, which was published in the official gazette on November 30, 1998. The interested persons were thereafter served with the notices for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and demanded compensation at the rate of Rs.50/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated January 22, 1999 offered compensation to the claimants at the rate of Rs.2/- per square metre for their acquired lands. 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 their cases to the Court. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were registered as Land Acquisition Case Nos.384 to 422 of 2002.

4. On behalf of the claimants, witness

Premjibhai Keharbhai was examined at Exhibit 25. The witness claimed in his evidence that the lands acquired in the instant case were highly fertile and that each claimant was earning net income of Rs.40,000/- per year per *vigha* from the sale of agricultural produces such as cotton, cumin-seeds, til, wheat, etc. The witness further stated that his village Navda was fully developed and that lands of adjoining village Chokdi were similar, in all respects, to the lands acquired in the instant case. The witness produced previous award of the Reference Court relating to the lands of Village: Chokdi at Exhibit 24 and claimed that on the basis of the said award, the claimants should be awarded enhanced compensation. Though this witness was cross-examined at length on behalf of the appellant, nothing substantial could be elicited nor the assertion made by the witness that the lands, which were acquired from Village : Chokdi were similar to the lands acquired in the instant case, could be demonstrated to be untrue. On behalf of the appellant, witness Mr.Pankajbhai Audhiya, who was then discharging duties as 2nd Additional Special Land Acquisition

Officer, Ahmedabad, was examined at Exhibit 27. Though it was mentioned by the witness that the Special Land Acquisition Officer had determined the amount of compensation payable to the claimants after taking into consideration the relevant factors, he had to admit in his cross-examination that he had no personal knowledge regarding the lands acquired and was deposing before the Court on the basis of official record available with him.

5. On appreciation of evidence adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Chokdi was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired from village Navda. On the basis of the said previous award, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.39/- per square metre by the impugned award, giving rise to the instant appeals.

6. This Court has heard Mrs.Krina P. Calla, learned Assistant Government Pleader for the appellant, and Mr.G.M.Amin, learned counsel for the original claimant(s) in each appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimant(s), which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though the witness for the claimants failed to substantiate his assertion that each claimant was earning net income of Rs.40,000/- per year per *vigha* from the sale of agricultural produces, there is no manner of doubt that the lands acquired in the instant case were irrigated lands and that different crops were being raised thereon by the claimants. This fact stands proved from the contents of 7/12 extracts produced by the claimants, relating to the acquired lands, at Exhibits 15 to 22. The record does not indicate that the claimants had claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the

Reference Court relating to the lands of Village: Chokdi. For the purpose of claiming enhanced compensation, previous award of the Reference Court relating to the lands of village Chokdi was produced at Exh.24. Exhibit 24 indicates that the lands of village Chokdi were acquired for the public purpose of construction of canal under Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on June 7, 1993. Therein, the Special Land Acquisition Officer had awarded compensation at the rate of Rs.1.20 Ps. per sq.mt. for irrigated lands and Rs.0.80 Ps. per sq.mt. for non-irrigated lands. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos.2720 of 1996 to 2731 of 1996. On the basis of evidence produced in the said case, the Reference Court by judgment and award dated January 10, 2005 awarded additional amount of compensation to the claimants at the rate of Rs.27.60 Paise per square metre. During the course of hearing of these appeals, the learned Assistant

Government Pleader has brought to the notice of this Court a simple copy of the judgment of the High Court delivered in First Appeal Nos.5081 to 5092 of 2006 on December 18, 2006. It indicates that the award of the Reference Court rendered in Land Acquisition Case Nos.2720 of 1996 to 2731 of 1996 was challenged by the acquiring authorities before the High Court in First Appeal Nos.5081 to 5092 of 2006 and the High Court by judgment dated December 18, 2006 came to the conclusion that the claimants, whose lands were acquired from Village: Chokdi, were entitled to compensation at the rate of Rs.25/- per square metre. On re-appreciation of evidence adduced by the claimants, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon the previous award of the Reference Court relating to the lands of village Chokdi for the purpose of determining the market value of the lands acquired in the instant case from village Navda, more particularly when the assertion made by the witness for the claimants that the lands of village Chokdi and the lands acquired in the instant case were similar, in all respect, could not be successfully

assailed by the acquiring authorities. It is well-settled that the previous award of Reference Court relating to the lands of a Village, which has attained finality, can be treated as a good evidence and relied upon for the purpose of determining the market value of similar lands acquired from the adjoining village. As noticed earlier, compensation payable to the claimants, whose lands were acquired from village Chokdi is reduced by the High Court to Rs.25/- per square metre and, therefore, on the basis of the previous award of the Reference Court relating to the lands of village Chokdi, the claimants in the instant cases, would be entitled to get compensation, in all, at the rate of Rs. 25/- per square metre. The record further shows that the notification under Section 4(1) of the Act was published in the Official Gazette on June 7, 1993 for acquiring the lands from village Chokdi, whereas in the instant case, the notification under Section 4(1) of the Act was published in the Official Gazette on August 5, 1998 and, therefore, in view of the time-gap between the two notifications issued under Section 4(1) of the Act, 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, this Court is of the opinion that the claimants, in all, would be entitled to get compensation at the rate of Rs. 37.50/- per square metre. Therefore, the impugned award deserves to be modified and to that extent, the appeals will have to be allowed in part.

For the foregoing reasons, all the appeals succeed. The judgment and award dated August 31, 2005 rendered by the learned 2nd Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpur, in Land Acquisition Case Nos.384 of 2002 to 422 of 2002 awarding additional amount of compensation to the claimants, in all, at the rate of Rs.39/- per square metre over and above the compensation awarded to them by the learned Special Land Acquisition Officer at the rate of Rs.2/- per sq.mt. is hereby modified and it is held that the claimants would be entitled to, in all, compensation at the rate of Rs.37.50/- per square metre for their acquired lands. The other benefits, which have been granted to the claimants by

the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed 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 immediately.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra