

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 673 of 2008
To
FIRST APPEAL No. 689 of 2008
With
FIRST APPEAL No. 690 of 2008
To
FIRST APPEAL No. 697 of 2008**

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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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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THE SPL. LAND ACQ. OFFICER AND OTHERS

Versus

ISMAIL MUSA VALI

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Appearance :

FIRST APPEAL Nos.673 to 689 of 2008

MR SS SHAH, GOVERNMENT PLEADER with MS TRUSHA PATEL, AGP
for Appellants.

MS RENU SINGH for MR YN RAVANI for Respondent.

FIRST APPEAL Nos.690 to 697 of 2008

MR SS SHAH, GOVERNMENT PLEADER with MR DR CHAUHAN, AGP
for Appellants.

MS RENU SINGH for MR YN RAVANI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/08/2008

ORAL JUDGMENT

1. By way of these appeals, the appellants have challenged judgment and award dated 31-12-2004 passed by learned Civil Judge (S.D.), Bharuch in Land Acquisition Reference Nos.808 to 824 of 1997 and Land Acquisition Reference Nos.757 to 764 of 1997, whereby said reference cases were partly allowed and the claimants are held entitled to get Rs.1770/- per Are as additional amount of compensation and orders regarding solatium and interest were also made.

2. Lands of original claimants, which are subject matter in these appeals are situated in the sim of village Kurchan, Taluka-Amod, District – Bharuch, which were acquired for the purpose of construction of Tanchha Sub Minor Canal under Narmada Project.

3. Heard, learned AGP, Ms.Trusha Patel and Mr.D.R.Chauhan for the appellants and learned advocate, Ms.Renu Singh for the respondents. At the outset, it is submitted by both the sides that the issue involved in these appeals is squarely covered by the decision of this Court dated 22-8-2008 rendered in First Appeal Nos.2914 to 2930 of 2008, wherein this Court has observed as under:

“6. Learned AGP, Ms.Patel appearing for the appellants submitted that while granting additional compensation, learned

Judge has failed to appreciate that the claimants could not prove that compensation awarded by Special Land Acquisition Officer is inadequate and improper. She also submitted that while granting additional amount as compensation, learned Judge has committed an error by considering progressive rise in the price of the lands at 10% and compensation should have been awarded at flat rate. She, therefore, submitted that judgment and award of the reference Court may be quashed and set aside.

7. On the other hand, learned advocate, Ms.Renu Singh appearing for the respondents supported the judgment of the Reference Court and submitted that this Court being appellate Court may not reverse the finding of the Reference Court in view of decision of the Apex Court in the case of OM PRAKASH (DEAD) BY LRS. AND OTHERS v. UNION OF INDIA AND ANOTHER reported in (2004) 10 SCC 627, wherein it is held as under in paragraph 11:

“11. In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750/- per bigha as on 30-10-1963. The High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively up to the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on this basis, the fair market value would be Rs.1,28,889/- per bigha. In case progressive increase is allowed @

10% for the entire period, the amount will work out to Rs. 1,08,397/- per bigha. Allowing appreciation @ 12% for every year, not cumulatively, but at a flat rate of 12% per annum from 1963 to 1983, the amount would work out to Rs. 56,112/- per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs. 16,750/- per bigha fixed in the case of Dharambir and others v. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked out the market value of the lands on various bases and keeping in view the fact that between 8-12-1982 and 2-6-1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,255/- per bigha.”

8. I have considered the submissions made on behalf of the parties and also gone through the judgment of the reference Court and other relevant documents. In my view, reference Court has rightly relied upon earlier award while awarding amount of compensation by computing progressive rise at 10% and the same is in accordance with the decision of the Apex Court in Om Prakash and Others (supra). Therefore, the view taken by the reference Court is just and proper and the same is not required to be interfered with. No other evidence is shown to me to take a contrary view.

9. For the reasons stated herein above, these appeals deserve to be dismissed and the same are dismissed with no order as to costs.”

5. As submitted by both the sides, issue involved in these appeals is covered by earlier decision of this Court. Therefore, reasonings given by this Court while dismissing First Appeal Nos.2914 to 2930/2008 will govern present appeals also. Therefore, in view of reasonings given in aforesaid appeals, which are reproduced herein above, it is held that reference Court has rightly relied upon earlier award while awarding amount of compensation by computing progressive rise at 10% and the

same is in accordance with the decision of the Apex Court in Om Prakash and Others (supra). Therefore, the view taken by the reference Court is just and proper and the same is not required to be interfered with. No other evidence is shown to me to take a contrary view.

6. For the reasons stated herein above, these appeals deserve to be dismissed and the same are dismissed with no order as to costs.

(K.S.Jhaveri, J.)

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