

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1671 of 2007****To****FIRST APPEAL No. 1686 of 2007****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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STATE OF GUJARAT AND ANOTHER**Versus****RAMABHAI MAGANBHAI AND ANOTHER**

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Appearance :

MR SS SHAH, GP with MS TK PATEL, AGP for the Appellants

MR KM SHETH for Defendant(s) : 1,

DS AFF.NOT FILED (R) for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 29/08/2008****COMMON ORAL JUDGMENT**

1. By way of this appeal, the appellant - State has challenged the judgment and award of the Reference Court dated 10.09.2004 in L.A. Case Nos.641 to 656 of 1998, whereby compensation of Rs.32.80 per sq. mtr. was granted over and above the

compensation already awarded by the Special Land Acquisition Officer.

2. The brief facts, as emerging from record, are as under:-

2.1 The lands of the original claimants situated at village Hathijan, Tal.: Dahegam, Dist.: Gandhinagar was acquired for the purpose of Narmada Yojna Main Canal under the Narmada Project. Notification under Section 4 of the Land Acquisition Act, 1894 was published on 28.01.1994, whereas Notification under Section 6 of the Act was published on 29.01.1996. After following due procedure, the Special Land Acquisition Officer, by his award dated 31.03.1997, awarded compensation @ Rs.25,000/- per Hector for non-irrigated land and Rs.37,500/- per Hector for irrigated land as against the claim of Rs.1,00,000/- per Vigha, i.e. Rs.62/- approximately per sq. mtr. made by the claimant.

2.2 Being aggrieved by aforesaid award of Special Land Acquisition Officer, the original claimants preferred References under Section 18 of the Act. The said References were heard by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural), who vide his judgment and award dated 10.09.2004 was pleased to award compensation @ Rs.32.80 per sq. mtr., over and above the compensation already awarded by the Special Land Acquisition Officer for the acquired land. Being aggrieved by it, the appellants herein have filed these appeals.

3. Heard Ms.Trusha Patel, learned AGP appearing for the appellants and learned advocate Mr.K.M.Sheth appearing on behalf of the respondent No.1

4. Learned AGP Ms.Patel submitted that Special Land Acquisition Officer had granted Rs.2.70 inspite of that, the Reference Court has by granted Rs.25.30 additional compensation per sq. mtr. and thereby a mistake is committed by the Reference Court while passing impugned award. She submitted that even if earlier award is accepted, even then amount awarded is on higher side. In the present case, Section 4 notification was published on 28.01.1994 and there is a gap of 2 years and 4 months and therefore, the claimants are entitled to increase of 23.3%. She invited attention of the Court to paragraph Nos.8 and 9 of the award, which read as under:-

“8. Applicants have produced relevant documents like 7 and 12 and evidence of the sale transaction of last 5 years. The map of the village is also produced. Opponent side has examined their office bearer. Now it is well settled that if the land of the same village were previously acquired then 10% rise for each year should be given to the land owners. There is judgment of Gujarat High Court reported in 39/1 G.L.R. page No.1130 in which following ratio is held.

“(A) Land Acquisition Act (1 of 1894), S.23 Determination of compensation award made by the High Court in respect of acquisition of land in the same village taken as a guide - Appreciation

in the value of land @ 10% per annum accepted.
Award modified accordingly. (See. Para 8)."

Second Authority is 1992(1) G.L.H. 417 in which it is held that:-

"the main anxiety of the authority or the Court should be to ascertain and find out the fair and just amount of value of the land under acquisition. The mandate of section 23 of the Act is to see that the affected person in an acquisition proceedings is placed in the same position, as far as possible, as he would have been, had there been no acquisition."

9. The both judgment clearly applies to present case and applicants are entitled to 10% rise per year. Now the land of village Bahiyal which is also in picture in present case, were acquired in 1991 in Land Acquisition Case No.8/90, 9,90, 10,90. The applicants in previous cases had preferred references and ultimately, Court awarded Rs.25.30 ps. additional compensation per sq. mtr. In my view according to settled position, the previous award is guide for present case. The copy of previous award produced in this matter. In previous case notification was published on 29/9/91 whereas in the present case, Notification under Section 4 was published on 28/1/94 according to learned advocate there is 3 years difference between date of notification."

5. The learned AGP submitted that in the present case, the Reference Court has awarded additional amount of Rs.28 over and above the amount awarded by the Special Land Acquisition Officer and amount awarded by earlier award of Rs.25.30 and increase of

Rs.23.3% even if increase of Rs.6.52 is given, the total amount that can be awarded for irrigated lands comes to Rs.34.52 and therefore, the amount of Rs.36.55 is required to be reduced.

8. In above view of the matter, the claimants will be entitled to in all Rs.30.77 additional amount for the irrigated lands. It is clarified that if there are non-irrigated lands, the claimants of the non-irrigated lands will get only Rs.23.02. The appeals are allowed to the aforesaid extent. Rest of the award of the References Court is not disturbed. No costs.

(K.S.Jhaveri, J.)

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