

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19684 of 2007
 With
 SPECIAL CIVIL APPLICATION No. 21243 of 2007
 To
 SPECIAL CIVIL APPLICATION No. 21255 of 2007
 With
 SPECIAL CIVIL APPLICATION No. 12964 of 2007
 With
 SPECIAL CIVIL APPLICATION No. 17879 of 2007
 With
 SPECIAL CIVIL APPLICATION No. 19649 of 2007
 With
 SPECIAL CIVIL APPLICATION No. 19650 of 2007
 With
 SPECIAL CIVIL APPLICATION No. 19677 of 2007
 To
 SPECIAL CIVIL APPLICATION No. 19680 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

=====

- 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 ?

=====

ARUN LAND CORPORATION - Petitioner(s)

Versus

THE SPECIAL LAND ACQUISITION OFFICER & 1 - Respondent(s)

=====

Appearance :

MR AR MAJMUDAR for Petitioner(s) : 1,
 MR. SS SHAH, G.P. FOR RESPONDENT NO.1 IN
 SCA NOS.21251 TO 21255 OF 2007

MR APURVA DAVE, AGP for Respondent(s) : 1 IN
SCA NOS.12964, 21243 TO 21250 OF 2007
AND MS B. KOTECHEA, AGP FOR RESPONDENT NO.1
IN SCA NOS.19684, 17879, 19649, 19650
19677 TO 19680 OF 2007,
MR HM PARIKH for Respondent(s) : 2.2.1

=====

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/08/2008

COMMON ORAL JUDGMENT

- 1.As the common order of the lower Court is under challenge in this group of petitions with similar facts, they are being considered by this common judgement.
- 2.The petitioner has prayed for appropriate writ to quash and set aside the order passed by the learned Presiding Officer of the Fast Track Court No.11 dated 6.1.2007 below Application Ex.10, whereby the direction was given to the petitioners to deposit the amount at the rate of Rs.2/- per sq. ft. together with the solatium and other amount with interest.
- 3.Heard Mr.Majmudar, learned Counsel appearing for the petitioner and Mr.Parikh, learned Counsel for respondent No.2/1 in Special Civil

Application No.19684 of 2007. Mr.Parikh declared before this Court that in so many cases the amount of compensation is petty and, therefore, the land owners have no capacity also to represent the cases and, therefore, they might not have appeared.

4. Upon hearing the learned Counsel appearing for both the sides it appears that it is not in dispute that for challenging the impugned order of the lower Court, which comprises of various persons, in respect of one of the parties to the proceedings, the petitioner had preferred Special Civil Application No.5255 of 2007 before this Court and this Court (Coram: R.R. Tripathi, J.), after hearing both the sides had, inter alia, observed at para 4 as under:-

"4. Taking into consideration the contents of Exh. 10 and the order under challenge, this Court finds that the learned Judge has not committed any error in passing the order. The petition is found without any substance. The petition is dismissed."

5. It was further observed at para 5 & 6 as under:-

"5. Learned advocate Mr.Majmudar at this juncture requests that the interim relief granted earlier be continued for six weeks.

As the Court has not found any substance in the petition and has rejected the petition, the request cannot be acceded to. Besides, this is a case of money decree and, therefore also, interim relief is not requested to be continued, hence, the request is rejected.

6. The fact that this Court has rejected this Special Civil Application, the direction of the learned Judge of depositing the amount within one month is reiterated. The petitioner is directed to deposit the amount within one month from the date of the receipt of the copy of this order."

6.Ultimately the notice was discharged and the interim relief was vacated. As such in view of the fact that the Coordinate Bench of this Court has taken the view in respect of the very order concerning to one of the parties to the

proceedings, similar order or the similar position could continue to the extent that the petition could be dismissed by this Court and there could be further direction to the petitioner to deposit the amount within one month as ordered by the lower Court.

7. But it appears and it is also an admitted position that against the aforesaid order dated 2.5.2007 passed by this Court in SCA No.5255 of 2007, the matter was carried before the Apex Court by the petitioner and ultimately, the Apex Court vide its decision dated 31st October, 2007 in Civil Application No.5078 of 2007 (Arising out of S.L.P. (C) No.21035 of 2007), passed the order as under:-

" Delay of 2 days in filing the Special Leave Petition is condoned.

Sh. H.A. Raichura, Advocate, accepts notice for respondent-claimants who are the only contesting respondents. Service on them is waived.

Leave granted.

With the consent of counsel for the parties, the appeal is being disposed of at the preliminary stage itself.

Respondent no.1-State acquired 78 hectares, 12 acres and 54 sq. mtrs. of land in Village Gorva, Gujarat in the year 1974 for Gujarat Housing Board. Since, despite lapse of considerable period of time, the acquisition process did not complete, 94 owners of the said land entered into an agreement with the appellant-Corporation on 16.12.1978. By virtue of the said agreement, it was the responsibility of the appellant to award the price of the land to the claimants at the rate of Rs.1.35 sq. ft. The agreement also provided that if any amount in excess of the said rate is allowed in the award, the same be given to the appellant-Corporation.

By its award dated 10th October, 1980, the Land Acquisition Officer determined the compensation by dividing the Land into four categories. Out of the 94 claimants, 42 claimants refused to abide by the agreement. Consequently, the appellant-Corporation filed a civil suit being Civil Suit No.156 of 1980 praying, inter alia, for a decree that the appellant is entitled to the additional amount payable over and above Rs.1.35 per sq. ft.

Reference Court held that the Land Acquisition Officer had erroneously divided the land into four categories as all the lands are continuous and fixed the compensation at a uniform rate of Rs.1.83 per sq.ft. In respect of 3 out of the 4 categories. Insofar as the 4th group, pertaining to 36 hectares of land was concerned, the Reference Court fixed the compensation at Rs.3.71 per sq. ft.

Being aggrieved by the order of the Reference Court, the Gujarat Housing Board, the appellant herein and some of the land-owners filed 71 appeals in the High Court. By its common order, the High Court, while admitting the appeals, directed that the amount of Rs.99,83,011/- be deposited in a nationalised bank for a period of five years. The High Court reduced the compensation in respect of the aforesaid 4th group to 1.88 per sq. ft.

The appellant and the land-owners who also disputed the locus of the appellant to claim the amount, challenged the said order before this Court. This Court, by order dated 06th February 2002, enhanced the compensation and fixed it at the rate of Rs.2.00 per sq. ft. with solatium at the rate of 30% and the interest. In view of the said order, the High Court disposed of the First Appeals by passing a common order.

In the meantime, a fresh agreement was entered into between the appellant and the land-owners on 18th April 1994. As per the said agreement, the land-owners were entitled to the compensation at the rate of Rs.2.00 per sq. ft. Any amount, over and above the said amount, i.e. solatium and interest was to be retained by the appellant. Except 7 claimants, rest of the claimants settled the matter with the appellant.

On an application filed by the appellant, the High Court on 04th October, 2002 ordered that the amount deposited pursuant to its order be transferred to the Reference Court for disbursal. Pursuant to the order of the Reference Court passed on 23rd December, 2002, the appellant withdrew the entire amount, i.e., the compensation at the rate of Rs.2.00 per sq. ft. as well as the solatium and interest.

Respondent-claimants along with certain other land-owners filed applications claiming interest on the amount deposited pursuant to the order of the High Court. By its order dated 06th January 2007, the Reference Court allowed the said applications and issued following directions:

"Applications allowed. It is ordered that Arun Land Corporation should pay compensation amount at the rate of Rs.2.00 per sq. ft. and solatium amount, interest amount or any other amount and calculating such amount and interest received thereon till date on any rate pay the same to other applicant on same rate of interest upto date of payment."

Aggrieved by the said order, the appellant-Corporation filed Special Civil

Application before the High Court which has been dismissed by passing the impugned order. The said order is challenged before us.

Counsel for the parties have agreed that the land-owners/claimants would be entitled only to the amount of compensation at the rate of Rs.2.00 sq. ft., as ordered by this Court. The amount, over and above the said amount, viz., solatium and interest is payable to the appellant in terms of the agreement dated 10th April 1994.

The amount in the present case was withdrawn by the appellant pursuant to the order of the Reference Court dated 23rd December, 2002. Accordingly to the counsel for the appellant, the compensation at the rate of Rs.1.35 per sq. ft. has already been paid to the claimants whereas according to the counsel for respondent-claimants the said compensation has been paid only to some

of the land-owners and not to all of them.

It is further contended by counsel for the respondent-claimants that the appellant had withdrawn the amount with interest in December 2002 and the land owners are entitled to interest on the balance amount at the same rate at which the interest has been paid to the appellant by the Land Acquisition Officer. Counsel for the appellant concedes that the appellant is liable to pay interest on the excess amount, viz., Re.0.65 per sq. ft. from the date of withdrawal of the amount by it till its realisation along with interest at the same rate at which it has received from the bank.

Accordingly, as per statements made by the counsel for the parties it is directed that the appellant shall pay to the land-owners price of the land @ Rs.2/- per sq. ft. minus the actual amount paid to them along with interest at the rate at which it

received from the Bank from 23.12.2002 till its actual disbursement. The appellant shall be entitled to retain the amount of solatium and the amount of interest.

If any of the land owners has not been paid the amount of compensation at the rate of Rs.1.35 per sq. ft., the appellant shall be liable to pay the difference along with interest at the same rate as agreed to by the appellant hereinabove.

We understand that apart from the present Special Civil Application which is under challenge, there were similar applications before the High Court which have been disposed of against which no Special Leave Petition has yet been preferred.

Counsel for the appellant states that as regards the other cases, the Corporation will abide by the order passed by us today. Counsel for the respondent-claimants also

assures us that in case the appellant complies with the undertaking given by it today the other claimants in the connected cases would not raise any dispute. This concession is being made by the counsel for the parties to avoid multiplicity of litigation, as the point raised and decided in the remaining cases is also the same.

Counsel for the appellant is granted five weeks' time to disburse the amount to the present respondent-claimants as also the claimants in remaining cases pertaining to the land in question.

The appeals are disposed of accordingly with no order as to costs."

8. The aforesaid shows that the order of the lower Court, which was subject matter of the petition before this Court in SCA No.5255 of 2007 and which is the subject matter of the present petition concerning to the other parties, who

were covered by the order of the lower Court, is modified to the extent as under:-

" That the appellant shall pay to the land owners the price of the land at the rate of Rs.2/- per sq. ft. minus the actual amount paid to them along with interest at the rate at which it received from the Bank from 23.12.2002 till its actual disbursement. The appellant shall be entitled to retain the amount of solatium and the amount of interest.

If any of the land owners has not been paid the amount of compensation at the rate of Rs.1.35 per sq. ft., the appellant shall be liable to pay the difference along with interest at the same rate as agreed to by the appellant hereinabove."

9. It is true that the matter before the Apex Court was pertaining to one of the parties to the proceedings covered by the common order and so far as the other parties to the proceedings are concerned, the same was not the subject matter

before the Apex Court. However, it appears that the said factum of challenge by separate petition to the very order before this Court was brought to the notice of the Apex Court and the Apex Court did make the observations concerning thereto as under:-

"We understand that apart from the present Special Civil Application which is under challenge, there were similar applications before the High Court which have been disposed of against which no Special Leave Petition has yet been preferred.

Counsel for the appellant states that as regards the other cases, the Corporation will abide by the order passed by us today. Counsel for the respondent-claimants also assures us that in case the appellant complies with the undertaking given by it today the other claimants in the connected cases would not raise any dispute. This concession is being made by the counsel for

the parties to avoid multiplicity of litigation, as the point raised and decided in the remaining cases is also the same."

10. Therefore, it is apparent that so far as the present group of petitions are concerned, the aforesaid observations were made and they would hold the field.

11. In view of the aforesaid directions of the Apex Court, the rights of the parties shall be governed in the same manner as observed and directed by the Apex Court in the above referred matters, since fact situations are common and there is also common order, which is the subject matter in the present petitions too.

12. Mr. Parikh, learned Counsel appearing for the claimants, however, attempted to submit that in the order of the Apex Court there was direction to deposit the amount within time bound programme and there was further direction to disburse the amount. He submitted that the petitioner has not deposited the amount as per the declaration made before the Apex Court in

respect of the present cases and, therefore, Court may not modify the order of the lower Court, as per the directions issued by the Apex Court. He also submitted that the claimants have not received a single penny after the order passed by the Apex Court, since the objection is raised by the petitioner against the withdrawal and, therefore, this Court may consider the matter accordingly.

13. Whereas on behalf of the petitioner, Mr. Majmudar, learned Counsel submitted that as per the affidavit filed, the petitioner has deposited the requisite amount by way of compliance of the order passed by the Apex Court. He also submitted that if there is any bonafide mistake on the part of the petitioner in calculation of the amount, the petitioner has no objection in depositing the remaining amount, if any.

14. It appears that the learned Counsel for the claimant has placed on record the calculation of the amount as was required to be deposited by the petitioner with the lower Court by way of

compliance of the order of the Apex Court and so is the case so far as the claimant is concerned, who has put up the calculation by contending that the declaration made before the Apex Court has not been complied with.

15. In my view, it would essentially require the examination such aspects, after considering and calculating the exact amount as has become due and whether the amount is deposited or not. Such exercise can be undertaken by the lower Court, which is seized with the proceedings of the execution. Further, in view of the observations made by the Apex Court pertaining to the other petitions, which are now to be considered, it would not be a case to make departure therefrom than the view taken by the Apex Court in respect of the very common order for one of the parties and to take a different view in respect of other parties.

16. Not only that, but once the view is taken by the Apex Court in respect of the very common order, considering the facts and circumstances of the case, the judicial discipline demands that the

same view be taken by this Court, unless it is expressly made permissible by the Apex Court to take a different view by this Court. Even if the declaration made before the Apex Court is not complied with, it cannot be termed as questions open on all aspects, unless it is so expressly permitted by the Apex Court. If the declaration made before the Apex Court is not complied with and the respondent claimants are seeking any further order by way of a consequence of non-compliance, it would for the concerned claimants to approach before the Apex Court and in absence of any clarification thereof, this Court would not be in a position to take a different view than the view taken by the Apex Court in respect of the very common order, which, in any case, is binding to the parties as well as to this Court.

17. In view of the above, it appears that the following directions shall meet with the ends of justice:-

(a) The order passed by the trial

Court, which is impugned in the present respective petitions, shall stand modified on the same line and to the same extent as per the order passed by the Apex Court dated 31st October, 2007 in Civil Appeal No.5078 of 2007. The aforesaid shall be without prejudice to the rights of the respondent claimants to move before the Apex Court for modification, if they are so advised.

(b) The lower Court, which is seized with the proceedings, shall ensure that the declaration made and the direction issued on the same line as ordered by the Apex Court is complied with in the present cases also by undertaking the exercise of the calculation, if any, and whether the amount is fully deposited by the petitioner or not. It will be open to the lower Court to direct the petitioner to deposit the remaining balance amount, if any, as may be determined by the lower Court in the even it finds that the petitioner has not deposited the amount

as per the declaration made before the Apex Court and the petitioner shall deposit the amount within a period of two weeks from the date of order, which may be passed by the lower Court. The aforesaid exercise for calculation and finalization of the amount shall be completed within a period of two months from the date of receipt of the order of this Court.

(c) It is further observed that it would be open to the concerned claimants to seek withdrawal of the amount, which has already been deposited by the petitioner with the lower Court and such disbursement shall be made by 'Account Payee' cheque and the said exercised shall also be completed within a period of one month from the date of receipt of the order of this Court.

18.All the petitions are partly allowed to the aforesaid extent. Rule made absolutely accordingly. Direct service is permitted.

29.8.2008

(Jayant Patel, J.)

vinod