

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 157 of 2010
To
FIRST APPEAL No. 170 of 2010
With
FIRST APPEAL No. 3771 of 2011
To
FIRST APPEAL No. 3772 of 2011

For Approval and Signature:**HONOURABLE MR.JUSTICE MD SHAH**

=====

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 ?

=====

NADODA SHANKARBHAI MULJIBHAI - Appellant(s)**Versus****SPECIAL LAND ACQUISITION OFFICER & 1 - Defendant(s)**

=====

Appearance :

MR AMIT C NANAVATI for Appellant(s) : 1,

MR PP BANAJI, ASST. GOVERNMENT PLEADER for Defendant(s) : 1,

RULE SERVED for Defendant(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE MD SHAH**Date : 30/10/2012****ORAL JUDGMENT**

[1] 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 against the common judgment and award dated 30.01.2009 passed by the learned Additional Senior Civil Judge, Patan in Land Reference Case Nos.292 of 2006 to 307 of 2006 by which the appellants – original claimants have been awarded compensation at the rate of Rs.8.05 paise per Sq.Mtr. for irrigated land and Rs.2.70 paise per Sq.Mtr. for non irrigated land, over and above the compensation offered to them by the Special Land Acquisition Officer.

[2] Special Land Acquisition Officer, Mahesana made a proposal to the State Government to acquire the land of village Gochnad, Ta.Sami, District – Patan for Sardar Sarovar Narmada Nigam Ltd. on permanent basis. Therefore, a Notification under Section 4 of the Act was issued which was published in the Official Gazette on 26.04.1993. The original claimants opposed the proposed acquisition. The claimants appeared before the Special Land Acquisition Officer and claimed compensation. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1.05 paise per sq.mtr. for irrigated land and Rs.0.70 paise per sq.mtr. for non irrigated land vide award dated 29.01.1996. Therefore, the claimants submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation

payable to them. Accordingly references were made to the District Court, Patan which were registered as Land Reference Case Nos.292 to 307 of 2006.

[3] This Court has heard Mr.Amit Nanavati, learned advocate for the appellants – original claimants and Mr.PPBanaji, Assistant Government Pleader for the respondents – original opponents. This Court has also considered the impugned judgment as well as oral and documentary evidence adduced by the parties before the Reference Court.

[4] On behalf of the appellants herein – original claimants, Shri Shankarbhai Tejabhai Chaudhari was examined at Exh.15. Claimant – Shankarbhai has mentioned that the land acquired was highly fertile and they were earning income of Rs.35,000/- per bigha. He also stated that his land is adjoining to the land of village Baspa. He has further submitted that with respect to Village Baspa, the Court has awarded additional compensation of Rs.9 per sq.mtr. He has further submitted that the fertility of his acquired land of village Gochnad is similar with the land of village Baspa. The claimant has also produced copy of judgment delivered in LAR Nos.2457 of 1996 with respect to village – Baspa vide Exh.14.

[5] On behalf of the respondents herein - opponent it is stated that the claimants have failed to prove that the compensation awarded by the Special Land Acquisition Officer is inadequate and they have also failed to prove that the lands under reference and under prevision award are not similar and award passed by the said officer is proper. No evidence was led by the appellants before the Reference Court.

[6] The original claimants have produced judgment delivered by the Court with respect to village – Baspa – Exh.14 which shows that the land of village Gochnad is adjoining to village Baspa. On appreciation of evidence, the reference court has rightly considered Exh.13 as relevant piece of evidence for the purpose of determining the market value of the land acquired in the present case as the lands of both the villages i.e. Gochnand and Baspa are same in nature and fertility. So far as village Baspa is concerned, the State Government had challenged the judgment of Reference Court by filing First Appeal No.2944 of 2004 before this Court and this Court vide order dated 14.06.2005 dismissed the appeal.

[7] This Court is of the opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of village-Baspa for the purpose of determining market value of the lands acquired in the instant case and the award

passed by the Reference Court has been confirmed by this Court vide order dated 14.06.2005 in First Appeal No.2944 of 2004.

[8] This Court in First Appeal No.2944 of 2004 passed following order on 14.06.2005 and para 3 and 4 reads as under : -

“3. Having gone through the judgment and order impugned herein, this Court is of the view that the Reference Court has taken into consideration all relevant and legal aspects. It is true that the Reference Court did not have any material in the form of previous sale instances. It is equally true that the Reference Court did not have any material in the form of any expert's opinion with regard to the market value of the land in question. But the Reference Court has relied on the compensation awarded to the lands situated in the vicinity of adjoining village, relying on a decision of this Court in the case of *Special Land Acquisition Officer v. Chunilal Gangaram*, reported in 40(2) GLR 1357. The Reference Court has also considered certain other aspects which may add to the value of the land and has awarded an additional compensation of Rs.9 per sq. metre.

3. At this state, it would be appropriate to make a reference to a decision rendered by a Division Bench of this Court in First Appeal No.2664 of 2004 and other cognate matters rendered on 6.12.2004,

where similar question arose in respect of land of same village and the price fixed by the Reference Court at the rate of Rs.10 per sq. metre came to be upheld by the Division Bench.

4. *In the opinion of this Court, the Reference Court has, in fact, decided the compensation price of the land in question after taking into consideration the law of the land. So far as solatium and interest part are concerned, the award by the Reference Court is in accordance with law. The compensation involved would be approximately Rs.28,000/- and, keeping all these aspects in mind, this Court finds no merit in the appeal. The appeal must fail and stands dismissed.”*

[9] On re-appreciation of the evidence produced by the original claimants, this Court is of the opinion that the Reference Court has recorded correct findings of fact to which settled principle of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one which is taken by the Reference Court on appreciation of evidence. This Court is in agreement with the findings of the Reference Court. However, in opinion of this Court considering decision of this Court in First Appeal No.2944 of 2004, it would be just and proper if the claimants are awarded Rs.10.00 paise per sq.mter for irrigated and non irrigated lands.

[10] In view of above, the Appeals are partly allowed. The judgment and award dated 30.01.2009 passed by the learned Additional Senior Civil Judge, Patan in Land Reference Case Nos.292 to 307 of 2006 awarding compensation to the claimants at the rate of awarded compensation at the rate of Rs.8.05 paise per Sq.Mtr. for irrigated land and Rs.2.70 paise per Sq.Mtr. for non irrigated land, is hereby modified and it is held that the appellants herein - original claimants in all would be entitled to get compensation at the rate of Rs.10.00 paise per Sq.Mtr. for irrigated and non irrigated land. The other benefits granted to the claimants in the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated above. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[M.D.Shah, J.]

satish