

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1558 of 2012**  
**With**  
**FIRST APPEAL No. 1559 of 2012**  
**To**  
**FIRST APPEAL No. 1561 of 2012**  
**With**  
**FIRST APPEAL No. 1617 of 2012**  
**To**  
**FIRST APPEAL No. 1623 of 2012**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE MD SHAH**

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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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**SPECIAL LAND ACQUISITION OFFICER & 2 - Appellant(s)**

**Versus**

**IBRAHIM HAJI MAHMAD PATEL - Defendant(s)**

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**Appearance :**

MR PP BANAJI, ASST. GOVERNMENT PLEADER for Appellant(s) : 1 - 3.

MR KM SHETH for Defendant(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE MD SHAH**

**Date : 31/07/2012**

**ORAL JUDGMENT**

1. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Civil Procedure Code, 1908, the appellants have challenged the legality of common judgment and award dated 14.05.2010 rendered by the learned Additional Senior Civil Judge, Bharuch in Land Reference Case Nos. 392 to 402 of 2006, by which the Reference Court has awarded in all compensation to the claimants at the rate of Rs.72.60 paise per sq.mtr. as additional amount of compensation.

2. The Executive Engineer, Narmada Project, Division No.7, Bharuch made proposal to the State Government to acquire lands of Village – Mosam, Taluka – Vagra, District – Bharuch for the purpose of construction of Narmada canal under Narmada project. On perusal of the said proposal, the State Government was satisfied that the lands of Village – Mosam were likely to be needed for the said purpose. Therefore, Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on 09.10.2003. After considering objections from the claimants, necessary report contemplated under section 5!(2) of the Act was

forwarded by the Special Land Acquisition Officer to the State Government and on considering the said report, Government was satisfied that the land of village – Mosam, Taluka – Vagra, District – Bharuch were needed for the public purpose as mentioned above.

3. Therefore, declaration was made under Section 6 of the Act, which were published in the Official Gazette on 06.10.2004. Thereafter, Land Acquisition Officer offered compensation to the present claimants at the rate of Rs.3.16 per sq.mts. Since the said amount of compensation was inadequate, the claimants submitted application under section 18 of the Act requiring the Officer to refer their case to the Court for the purpose of determination of just amount of compensation payable to them and accordingly, reference was made to the Reference Court, Bharuch which was registered as L.R.C. No.392 of 402 of 2006.

4. On behalf of the claimants, Shri Amersangh Prabhatsangh was examined at Exhibit – 25. Over and above stating that the lands acquired were highly fertile and that each claimant was earning substantial income from the sale of the agricultural produces, the said witness produced previous award of

the Reference Court relating to the lands of village – Vahial at Exhibit – 23 in support of the claim of the claimants for enhanced compensation. The witness further stated in his testimony that the lands of Village – Vahial and lands of Village – Mosam were similar in all respects including quality. The claimant further submitted that against the judgment of village Vahial, the government has not preferred any appeal before the higher forum. The witness examined on behalf of the claimants was cross-examined by the appellants but nothing substantial could be elicited.

5. On behalf of the appellants no witness was examined nor any documentary evidence was produced for consideration of the Reference Court.

6. On appreciation of the evidence adduced by the claimants, the Reference Court was of the opinion that previous award of the Reference Court relating to the lands of village - Vahail was relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands subsequently acquired from this village. After placing reliance on the previous award of the Reference Court, the Reference Court has awarded

compensation at the rate of Rs. 72.60 paise per sq.mrs. by impugned judgment, giving rise to these appeals.

7. This Court has heard Mr.PPBanaji, learned Assistant Government Pleader for the appellants. From the record of the case it is evident that the evidence tendered by witness - Amersangh Prabhatsang at Exhibit – 25 was almost allowed to go unchallenged. The record does not indicate that the claimants had claimed enhanced compensation on yield basis or on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court relating to the lands of village - Vahial, which was produced at Exhibit – 22. Therefore, reference court has relied on the judgment of adjoining village – Vahial at Exh.23 and after considering the evidence in detail, came to the conclusion that in the case of village – Vahail, which is just adjoining village, notification under section 4 was issued on 16.09.1991, whereas in the present case, notification under section 4 of the Act was issued on 09.10.2003, therefore, considering the period of gap of 12 years, and keeping in mind increase of 10% per year, the reference court awarded Rs.72.60 paise per sq.mts. (Rs.33

awarded in the case of village Vahila + Rs.39.60 per sq.mts. Being 10% rise for 12 years). On re-appreciation of the evidence produced by the 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. No error could be pointed by the learned Assistant Government Pleader necessitating interference of this Court with the award impugned in the instant appeals. 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. Under the circumstances, the appeals are liable to be dismissed.

8. For the foregoing reasons, the appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this order as early as possible.

**[M.D.Shah, J.]**

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