

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1722 of 2012

To

FIRST APPEAL No. 1732 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

CHANDRASINH NAGJIBAVA RANA - 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.192 to 204 of 2008, by which the Reference Court has awarded in all compensation to the claimants at the rate of Rs.82.50 paise per sq.mtr. as additional amount of compensation.

2. 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 14.02.1997. After considering objections from the claimants, necessary report contemplated under section 5A(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 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 25.04.2007. Thereafter, Land Acquisition Officer offered compensation to the present claimants at the rate of Rs.3.25 paise 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.192 to 204 of 2008.

4. On behalf of the claimants, Shri Alibhai Adambhai was examined at Exhibit – 34. 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 – Vahail at Exhibit – 32 in support of the claim of the claimants for enhanced compensation. The witness further stated in his testimony that the lands of Village – Mosam

and land of Village – Vahail were adjoining villages. It is also submitted that against the judgment of village Vahail, the government has not preferred any appeal before the higher forum and the said judgment is accepted by the government. It is also submitted that the claimants have produced copy of judgment of the reference court passed in L.R.C. No.150 of 2005 wherein the land of village Pahaj were acquired by the government for the public purpose and where the concerned claimants of the said village have been awarded Rs.5.62 paise per sq.mtrs. and being dissatisfied with the amount of compensation awarded by the officer, the claimants approached reference court by way of L.R.C.No.150 of 2005, wherein the reference court has awarded amount of compensation at the rate of Rs.57.62 paise per sq.mtrs. in all. 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, it is was submitted that claimants have failed to prove that the compensation awarded by the Special Land Acquisition Officer is inadequate and they have failed to prove that the lands under reference and under previous

award are not similar and the award passed by the Land Acquisition Officer is determined after considering several aspects and therefore, the award passed by the officer is proper.

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 – Vahial was relevant piece of evidence at Exh.32 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.82.50 paise per sq.mrs. by impugned judgment, giving rise to these appeals.

7. This Court has heard Mr.P.P.Banaji, learned Assistant Government Pleader for the appellants. From the record of the case it is evident that the evidence tendered by witness - Alibhai Adambhai at Exhibit – 34 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 – Vahail which was produced at Exhibit – 32. The previous award of the Reference Court relating to the land of adjoining village which has attained finality can be relied upon as good piece of evidence for the purpose of determining the market value of similar and nearby village. Accordingly, the reference court has relied on the judgment of adjoining village – Vahial at Exh.32 and after considering the evidence in detail, came to the conclusion that in case of village Vahial, 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 14.02.2007, therefore, considering the period of gap of 15 years and keeping in mind increase of 10% per year, the reference court awarded Rs.82.50 paise per sq.mtr. (Rs.33 per sq.mrs. as per previous award of Vahail village + Rs.49.50 paise per sq.mts. being 10% rise for 15 years i.e. $\text{Rs.3.30} \times 15$) in all. 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. In view of above, 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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