

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1712 of 2012

To

FIRST APPEAL No. 1718 of 2012

With

FIRST APPEAL No. 1993 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 & 1 - Appellant(s)

Versus

ZAVERBEN WD/O UDESANG MOHAN & 1 - Defendant(s)

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Appearance :

MR PP BANAJI, ASST. GOVERNMENT PLEADER for Appellant(s) : 1 - 2.

None for Defendant(s) : 1 - 2.

MR KM SHETH for Defendant(s) : 1.2.1 - 2.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 31/07/2012

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 22.03.2010 passed by the learned Principal Senior Judge, Bharuch in Land Reference Case Nos. 232 to 239 of 2004 by which the claimants have been awarded additional compensation at the rate of Rs.48.40 paise per Sq.Mtr. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer.

[2] The Executive Engineer, Narmada Project, Jambusar made a proposal to the State Government to acquire the land of village Kora, Taluka Jambusar, District - Bharuch for the purpose of construction of Narmada Canal under the Narmada Project. State Government was satisfied that the land mentioned in the said proposal was likely to be needed for the public purpose. Therefore, a Notification under Section 4 of the Act was issued which was published in the Official Gazette on 15.03.2002. The original claimants opposed the proposed acquisition. After considering their objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the same, the State Government was satisfied that the lands of Village – Kora, Taluka – Jambusar, District Bharuch which were specified in the Notification published under Section 4 of the Act were needed for the public purpose of construction of the Narmada Canal. 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.2.00 per Sq.Mtr. for the said land. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they 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, Bharuch which were registered as Land Reference Case Nos.232 to 239 of 2004.

[3] This Court has heard Mr.PP.Banaji, learned Assistant Government Pleader for the appellants and Mr.K.M.Sheth learned Counsel for the claimant/claimants. 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 respondents herein – original claimants, Shri Bhagwansang Ishwarbhai was examined at Exh.23. Claimant – Bhagwansang mentioned that the land acquired was highly fertile and they were earning income of Rs.80,000/- per square from the sale of the

agricultural produce. He also stated that earlier lands of village Kavli were acquired by the State Government and those claimants have preferred applications under section 18 of the Act being dissatisfied with the award of the land acquisition officer and the Reference Court has awarded the amount of compensation at the rate of Rs.28 per Sq.Mtr. as additional amount of compensation. It is also stated that against the judgment of village Kavli the government has not preferred appeal before the higher forum and the said judgment is accepted by the government. It is also stated that village Kora is just adjoining to village Kavli.

[5] On behalf of the appellant herein 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 map at Exh.21 of Jambusar Taluka which shows that the land of village Kora is adjoining to village Kavli. The Claimants have also produced copy of 7/2 extract which reflects that the claimants were able to get agricultural crops. On

appreciation of evidence, the reference court has rightly considered Exh.19 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. Kavli and Kora are same in nature and fertility. So far as village Kavli is concerned, Notification under section 4 was issued on 27.03.1995 whereas in the present case, notification under section 4 was issued on 15.03.2002. So far as adjoining village Kavli is concerned, Reference Court had awarded Rs.28 per sq.mtr. Considering this aspects and considering period of 8 years and keeping in mind increase of 10% per year, Reference Court awarded Rs.22.40 per sq.mtr (10% of Rs.28 = Rs.2.80 x 8 years) so far as present case is concerned. The Reference Court assessed the marked value of the acquired lands of present reference cases $\text{Rs.28} + \text{Rs.22.40 ps.} = \text{Rs.50.40 ps per sq.mtr.}$ and as the Special Land Acquisition Officer already awarded Rs.2 per sq.mtr., therefore, after deducting Rs.2/- from Rs.50.40 ps., the Reference Court awarded Rs.48.40 paise per sq.mtr.

[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-Kora for the purpose of determining market value of the lands acquired in the instant case.

[8] This Court further finds that the lands of Village-Kavli were acquired for the public purpose of construction of Narmada Canal pursuant to the Notification under Section 4 of the Act published in the Official Gazette on 27.03.1995 whereas in the instant case, Notification for acquiring the lands of Village-Kora was published under Section 4 of the Act on 15.03.2002 and in view of the time gap of about seven years, the claimants would be entitled to benefit of rise in price of the lands at the rate of 10 percent per annum. It is argued by the learned Counsels for the parties that if the amount of compensation is calculated on this basis, it would meet the ends of justice.

[9] Therefore, the claimants are entitled for Rs.19.60 per sq.mtr (10% of Rs.28 = Rs.2.80 x 7 years) + Rs.28.00 = Rs.47.60 paise per sq.mtr. as compensation.

[10] In view of above, the Appeals partly succeed. The judgment and award dated 22.03.2010 passed by the learned Principal Senior Civil Judge, Bharuch in Land Reference Case Nos.232 to 239 of 2004 awarding compensation to the claimants at the rate of Rs.48.40 paise per Sq.Mtr. is hereby modified and it is held that the claimants in all would be entitled to get compensation at the rate of Rs.47.60 per Sq.Mtr. 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.]

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