

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL NO. 220 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE Z.K.SAIYED**

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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 ?
- =====

STATE OF GUJARAT & 2....Appellant(s)

Versus

ZAVERBHAI BECHARBHAI....Defendant(s)

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Appearance:

MR ALPESH BHATT AGP for the Appellant(s) No. 1 - 3

MR KM SHETH, ADVOCATE for the Defendant(s) No. 1

RULE SERVED for the Defendant(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE Z.K.SAIYED**

**Date : 30/04/2013**

**ORAL JUDGMENT**

1. By filing this appeal under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Civil Procedure Code, 1908, the appellant has challenged the legality of common judgment and award dated 29.09.2009 passed by the learned Principal Senior Civil Judge, Bharuch in Land Acquisition Reference Case Nos.283 of 2000, by which the Reference Court has awarded in all compensation to the claimants at the rate of Rs.41.79 paise per sq.mtr. as additional amount of compensation.

2. Executive Engineer, Narmada Project at Jambusar, Dist. Bharuch made a proposal to the State Government to acquire lands of Village – Umra, Ta. Jambusar, District – Bharuch for the purpose of construction of Umra Tail Minor Canal under Narmada project. On perusal of the said proposal, the State Government was satisfied that the lands of Village – Umra 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 29.02.1996. 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 – Umra 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 20.06.1996. Thereafter, Land Acquisition Officer offered compensation to the present claimants at the rate of Rs.1.60 per Sq. Mtr. Since the said amount of compensation was inadequate, the claimant submitted application under Section 18 of the Act requiring the Officer to refer his case to the Court for the purpose of determination of just amount of compensation payable to him and accordingly, reference was made to the Reference Court, Bharuch which

was registered as L.R.C. No.283 of 2000 with allied matters.

4. On behalf of the claimants, Shri Shivabhai Shanabhai was examined at Exhibit – 20. Over and above stating that the lands acquired were highly fertile and that the 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 – Dabha at Exhibit – 13 in support of the claim of the claimant for enhanced compensation. The witness further stated in his testimony that the lands of Village – Dabha was adjoining village. Against the said award, the Government preferred Appeal being First Appeal Nos.3669 of 2008 to 3684 of 2008 before this Court and same has been confirmed by this Court. It is also stated by witness Shivabhai Shanabhai that he has produced copy of the judgment of the Reference Court passed in the L.R.C. No. 862 of 1998, wherein the land of village Dabha was acquired by the Government for the public purpose and in that regard, Reference Court has awarded amount of compensation at the rate of Rs.41.00 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 he has 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 claimant, the Reference Court was of the opinion that previous award of the Reference

Court relating to the lands of village Dabha was relevant piece of evidence at Exh.13 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.41.79 paise per sq.mrs. by impugned judgment, giving rise to these appeals.

7. This Court has heard Mr. Alpesh Bhatt, learned Assistant Government Pleader for the appellants and perused the judgment delivered by this Court in First Appeal Nos. 3669 of 2008 to 3684 of 2008, which is nearby village, on which Reference Court has relied while delivered the Award. Said village Dabha is adjoining to village Umra and there is common boundary between the said villages. What was relied upon by the claimants in support of his claim for enhanced compensation was previous award of the Reference Court relating to the lands of village – Dabha which was produced at Exhibit – 13. It is admitted fact that against the judgment of village Dabha, Government has preferred Appeal before the higher forum and the said judgment is confirmed by this Court. 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 – Dabha at Exh.13 and after considering the evidence in detail, came to the conclusion that in case of village Dabha, Notification under Section 4 was issued on 15.07.1995 whereas in the present case, Notification under Section 4 of the Act was issued on 29.02.1996, therefore, there is difference of 7 months and 14 days in between two Notifications issued under Section 4 of the Act. Therefore, 10% increase per year has rightly been awarded by the

Reference Court and the Reference Court awarded Rs.43.39 paise per sq. mtr. (Rs.41/- + Rs.2.39). Therefore, the Reference Court has awarded Rs.41/- per Sq. Mtr. as additional compensation to the claimant. Therefore, 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 appeal fails and is dismissed. There shall be no order as to costs.

**(Z.K.SAIYED, J.)**

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