

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 1354 of 2013****With****FIRST APPEAL NO. 1355 of 2013****With****FIRST APPEAL NO. 3566 of 2012****With****FIRST APPEAL NO. 2854 of 2013****TO****FIRST APPEAL NO. 2855 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE JAYANT PATEL****and****HONOURABLE MR.JUSTICE Z.K.SAIYED**

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 ?

GENERAL MANAGER....Appellant(s)**Versus****PATEL RAMABHAI KHETIDAS & 1....Defendant(s)**

Appearance:

MR AJAY R MEHTA, ADVOCATE for the Appellant(s) No. 1
MR HS SONI, AGP for Respondent No.2 in FA Nos.1354 to 1355 of 2013 and
FA No.3566 of 2012
MR DHAWAN JAYSWAL, AGP for Respondent No.2 in FA No.2854 to 2855
2013
MR AV PRAJAPATI, ADVOCATE for the Defendant(s) No. 1

CORAM: HONOURABLE MR.JUSTICE JAYANT PATEL
and
HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 30/09/2013

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)

1. As in all appeals, common questions arise, the same are being considered simultaneously.
2. The First Appeal Nos.1354 and 1355 of 2013 have been directed against the judgment and the award passed by the Reference Court in Land Acquisition Reference Case Nos.1775 and 1776 of 2011, whereby the Reference Court has awarded additional compensation at Rs.88/- per sq.mtr., plus statutory benefits under Section 23(1-A) and solatium under Section 23(2) and the interest under Section 28 of

the Land Acquisition Act (hereinafter referred to as 'the Act').

3. The First Appeal Nos.2854 and 2855 of 2013 have been preferred by the original claimants against aforesaid the very judgment and the award of the Reference Court for enhancement of the compensation.

4. Whereas the First Appeal Nos.3566 of 2012 has been preferred by the acquiring body against the judgment and award passed by the Reference Court in Land Acquisition Reference Case No.282 of 2011, whereby the Reference Court has awarded additional compensation at Rs.76/- per sq.mtr., plus statutory benefits under Section 23(1-A), solatium under Section 23(2) and the interest under Section 28 of the Act. The original claimants have not preferred any appeal against the aforesaid judgment of the Reference Court for enhancement of the compensation.

5. The short facts of the case in First Appeal Nos.1354 and 1355 of 2013 are as under :-

The lands at Village : Jotana for the project of O.N.G.C. were to be acquired under the Act. The notification under Section 4 of the Act was published on 3.10.2009 and the notification under Section 6 of the Act was published on 12.4.2010 and the award was passed on 21.2.2011 and the Land Acquisition Officer awarded compensation at Rs.32/- per sq.mtr. As the land owners - ori.claimants were not satisfied with the compensation, they raised the dispute under Section 18 of the Act and demanded compensation at Rs.2,000/- per sq.mtr. Such disputes were referred to the Reference Court for adjudication being Land Acquisition Reference Case Nos.1775 and 1775 of 2011. The Reference Court at the conclusion of the references passed the above referred judgment and the award. Under the circumstances, the

acquiring body has preferred appeals for reduction of amount of compensation. Whereas the original claimants have preferred appeals for enhancement of the compensation.

6. The facts of the First Appeal No.3566 of 2012 are that the acquisition of the land was at the very Village : Jotana, but the distinguishing facts are that the notification under Section 4 of the act was published on 2.3.2006 and the notification under Section 6 of the Act was published on 27.2.2007 and the award was passed on 18.8.2008. The Special Land Acquisition Officer has awarded compensation at Rs.13/- per sq.mtr. As the land owner – original claimant was not satisfied with the compensation, he raised the dispute under Section 18 of the Act and demanded compensation at Rs.500/- per sq.mtr. The said dispute was referred to the Reference Court for adjudication in Land Acquisition

Reference Case No.282 of 2011. The Reference Court at the conclusion of the reference passed the above referred judgment and the award. Under the circumstances, the acquiring body has preferred the appeal for the reduction of the amount of compensation. The original claimants have not preferred any appeal for enhancement of the compensation.

7. We have heard Mr.Ajay Mehta, learned counsel appearing for the ONGC – acquiring body in all the appeals. We have heard concerned learned AGP appearing for the Special Land Acquisition Officer. We have also heard Mr.A.V.Prajapati, learned counsel as well as Mr.Jayesh Patel, learned counsel for Mr.A.J.Patel on behalf of the original claimants appearing in the respective matters.

8. The perusal of the judgment of the Reference Court shows that the Reference Court has relied upon the earlier decision of the

Reference Court in the Land Acquisition Reference Case No.282 of 2011 dated 2.3.2006 for acquisition of the land at Village : Jotana only and the compensation awarded therein. The perusal of the award passed by the Reference Court shows that the Reference Court has relied upon its earlier decision for acquisition of land at Village : Modipur in Land Reference Case Nos.963 to 974 of 2009, whereby for acquisition of the land, the compensation was determined at Rs.82.50 ps. per sq.mtr., in a case, where the notification under Section 4 of the Act was published on 3.6.2005. The Reference Court, thereafter, has considered the appreciation at the rate of 10% per annum and accordingly as such the compensation at Rs.88.68 ps., per sq.mtr. and as Rs.13/- was already awarded as compensation by the Land Acquisition Officer, the additional amount of compensation has been awarded by rounding the figure of Rs.76/- per sq.mtr.

9. In the Land Reference Case Nos.1775 and 1766 of 2011 (First Appeal Nos.1354 and 1355 of 2013), the Reference Court has relied upon its previous decision in the above referred Land Reference Case No.282 of 2011, whereby the additional compensation was awarded at Rs.76/- per sq.mtr., but as the notification under Section 4 was published on 3.10.2009, the appreciation has been considered at the rate of 10% per annum and, thereafter, the Reference Court has arrived at the market value at Rs.119.71 ps. per sq.mtr., and out of the said amount, since Rs.32/- per sq.mtr., was already awarded as the compensation, it has arrived at net figure of Rs.87.71 ps. and by rounding of the figure, has awarded Rs.88/- per sq.mtr., as the additional amount of compensation.

10. We may first consider the merit of the First Appeal No.3566 of 2012.

11. In our view, if the Reference Court has relied upon its previous decision for awarding of compensation in a land acquisition matter, where the land was located in the adjoining Village : Modipur such an approach could not be said to be erroneous, more particularly, when there was no evidence produced before the Reference Court showing any distinguishing circumstances or any other evidence for higher market value of the land at Village : Jotana. The other aspect considered by the Reference Court for appreciation at the rate of 10% per annum for the time gap in the notification under Section 4 of the previous judgment and the notification under Section 4 in the present matter is also by now well settled. Under these circumstances, we do not find that for awarding additional compensation at Rs.76/- per sq.mtr. the Reference Court has committed any error in First Appeal No.3566 of 2012.

12. However, the facts and the evidence led before the Reference Court in Land Reference Case Nos.1775 and 1776 of 2011 were different, inasmuch as apart from the earlier decision of the Reference Court in the Land Reference Case No.282 of 2011, the additional evidence was produced in the present group of matters for the land allotted by the Government to the Gujarat Water & Sewage Board in the year 2004 and the valuation made by the District Valuation Committee for allotment of such land at the very Village : Jotana. Not only that, but the valuer, Shri Navinbhai Kantibhai Solanki at Ex.15 was examined and through him the documents and the records of Valuation Committee were produced on behalf of the claimants. The said witness was also cross-examined by the opponent before the Reference Court. As per the Valuation Report, through the Valuation Committee the value was assessed at Rs.200/-

per sq.mtr., and the area allotted by the Government to the Gujarat Water & Sewage Board was at Rs.10,000/- per sq.mtr. It is on account of the said additional evidence came on record in the present group of matters, as per the original claimants, the Reference Court ought not to have relied upon its earlier decision in the Land Reference Case No.282 of 2011. It is submitted on behalf of the original claimants by the learned counsel Mr.Prajapati that if the valuation report is considered read with the decision of this Court in the case of **State of Gujarat through Special Land Acquisition Officer Vs. Amaji Mohanji Thakore, reported in 2010 (3) GLH 447**, the original claimants would be entitled for higher compensation. It was submitted by the learned counsel for the original claimants Mr.Prajapati that if the aforesaid valuation report is taken into consideration and thereafter towards N.A. factor deduction

is made of 30% and towards distance factor the deduction is of 10%, total 40%, then also, the valuation in the year 2004 would be of Rs.120/- per sq.mtr. Further there will be appreciation at the rate of 10% per annum in the aforesaid amount and there is time gap of about 05 years in the present case, since the notification under Section 4 of the Act has been published in the year 2009 in the present case. Accordingly, if the appreciation is considered at the rate of 10% per annum, Rs.60/- may be required to be added and consequently the amount would come to Rs.180/- per sq.mtr. As against the same, the Reference Court has assessed the market value at Rs.119.71 ps., and, therefore, in his submission, error has been committed by the Reference Court. Hence the appeals are preferred by the original claimants for enhancement of the compensation.

13. Whereas Mr. Mehta, learned counsel

appearing for the acquiring body as well as concerned learned AGP on behalf of the Special Land Acquisition Officer submitted that if for the very village the compensation is fixed by the Reference Court in Land Reference Case No.282 of 2011 and the reliance is placed by the Reference Court upon the said decision, such an approach could not be said to be erroneous and hence the compensation may not be enhanced by this Court.

14. We find that the contention raised on behalf of the original claimants for enhancement of the compensation deserves consideration. Had it been a case, there was no evidence of valuation made by the District Valuation Committee and the only evidence available was of previous decision of the Reference Court and had the Reference Court gone by the previous decision, the matter may be different and possibly one may not find

fault with the decision of the Reference Court. However, in a case where there was proper evidence led for the valuation made by expert body for the valuation of the land allotted by the Government to any citizen or any public body, it was required for the Reference Court to go by opinion of expert as against its previous decision, wherein no such evidence was led on behalf of the original claimants and consequently not considered.

15. At this stage, we may refer to the decision of this Court in the case of **State of Gujarat Through Special Land Acquisition Office & Anr. Vs. Amaji Mohanji Thakore, 2010 (3) GLH 447**, wherein this Court had an occasion to consider the aspect of two different yardsticks to be applied in a welfare State for fixation of the price or the value when the land is to be allotted by the Government to the citizen and in a case

where the land is to be acquired by the Government from the citizen. At para-21 it was observed by the Court as under :-

"In any welfare State, Government cannot have a dual stand for the same subject. If the land of a citizen is to be acquired, Government has to pay the market price of the land as per the provisions of the Act. Government cannot contend that it shall not pay the market price, since as per the Act it is obligatory on the part of the Government or the acquiring Body to pay the market price as per the provisions of the Act. Similarly when the Government is to allot the land to the citizen or any organization, may be for private or public purpose, it has to be the market price, unless the allotment is for a specific public purpose or by way of a separate class, where a specific concession in the market price is made permissible. In any case, where the reduction of the market price for a specific rate is made permissible, such would be lesser than the market price. These cases where the concession or reduction is to be made, would not exceed the market price. Therefore, it is clear that unless the land is allotted at a concessional price, in normal circumstances when the Government is to allot the land to its citizen or to any body, the price would be the market prices to be fixed by the competent authority by the Government. Hence, we cannot countenance the stand on the part of the learned Addl. Government Pleader that if the Government is to allot the land to any citizen or a body, higher price shall be fixed as the market price, whereas if the Government is to acquire

the land belonging to any citizen or any organization, it shall pay lesser price of the land. To say in other words, if the Government is to allot 'A' land belonging to it to any citizen or to any organization, it will charge 'B' price, but if the very 'A' land is belonging to the citizen and the Government is to acquire under the Land Acquisition Act, the Government shall pay price lesser than the 'B' price to the citizen or the organization. If such is permitted, in our view, it would result into discriminatory and arbitrary approach on the part of the State Government, which cannot be countenanced by the constitutional Court in a welfare State. As observed earlier, if the very 'A' land is acquired belonging to the citizen by the Government, the Government would be required to pay the price, in any case, not less than 'B' price and to be more specific, Government would be required to pay the price, in any case, not lesser than the price fixed by it for the purpose of allotment of the land to any citizen or organization, of course, subject to the change in the nature and character of the land, if any."

16. In view of the aforesaid, we find that the valuation of the land made for allotment to the Gujarat Water & Sewage Board was one of the strong reliable evidence for assessment of the market value and the Reference Court committed an error in not properly considering the said aspect. If the

valuation made is considered of Rs.200/- in the year 2004 and, thereafter, as observed by this Court in the above referred decision in the case of **State of Gujarat (Supra)**, appropriate deduction of 30% towards N.A.factor and 10% towards distance factor are considered and total 40% deduction is made, the market value in the year 2004 may come to Rs.120/- per sq.mtr. 10% appreciation per year is, by now, well-settled for assessment of the market value. Accordingly, since the notification under Section 4 of the Act in the present case has been published in the year 2009, appreciation will have to be considered for 05 years and such appreciation would come to Rs.60/- and accordingly, the value would come to Rs.180/- (Rs.120+60) of the land at Village : Jotana in the year 2009. Out of the said amount Rs.32/- per sq.mtr., is already awarded as the compensation, Rs.148/- per sq.mtr., would be the additional amount of compensation which

was required to be awarded and not the compensation at Rs.88/- per sq.mtr., as awarded by the Reference Court.

17. In view of the aforesaid observations and discussions, the judgment and the award passed by the Reference Court in Land Acquisition Reference Case Nos.1775 and 1776 of 2011 deserves to be modified to the extent that the original claimants would be entitled to additional compensation at Rs.148/- per sq.mtr., for the land under acquisition.

18. The other benefits awarded by the Reference Court in both the group of matters under Section 23(1-A) of the Act for increase in the market value and solatium under Section 23(2) of the Act are by way of statutory in nature and, therefore, we are not inclined to interfere with the said part of the direction issued by the Reference Court in both the group of appeals.

19. However, on the aspect of interest awarded by the Reference Court under Section 28 of the Act is concerned, Mr. Mehta, learned counsel appearing for the acquiring body raised the contention that the interest could not have been awarded from the date of notification under Section 4 of the Act but could only be awarded from the date of taking over of the possession and not with the word 'whichever is earlier' and consequently, from the date of notification under Section 4 of the Act and not from the date of taking over of the possession.

20. Whereas, it was submitted by the learned counsel appearing for the original claimants that in all the matters, the interest under section 28 of the Act is awarded from the date of taking over of the possession or from the date of notification under section 4 of the Act, whichever is earlier, and the same has been ordered by the Reference Court in

the present matter and therefore, this Court may not interfere with the said aspect.

21. We may refer to section 28 of the Act for ready reference, which reads as under:

"28. Collector may be directed to pay interest on excess compensation -

If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court.

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from die date on which possession is taken, interest at the rate of fifteen per centum per Minimal, shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."

22. As per the above referred provision, if the Court finds that the Collector ought to have awarded compensation of a particular

amount but not awarded, the Court while passing the award may direct the payment of interest on such excess amount from the date on which he took possession of the land to the date of payment of such excess into the Court. The aforesaid shows that the interest is on the principal amount of compensation and also on the increase in the market value under section 23(1A) of the Act and solatium under section 23(2) of the Act as per the decision of the Apex Court in the case of Sunder v. Union of India reported in (2001) 7 SCC 211.

23. At this stage, we may also refer to section 34 of the Act, which reads as under:

"34. Payment of interest -

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 1[nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry".

24. The aforesaid provision shows that the requirement to pay compensation or to get the amount deposited is prior to taking over of the possession of the land. Further, if the principal amount of compensation is to be considered, the relevant date would be the date of notification under section 4 of the Act. To say in other words, the price or the market value assessed on the date when the notification under section 4 of the Act has been published is the price to be paid as compensation to the land owner. It is not a matter where the price or the compensation fixed on the date of notification under section 4 of the Act is already being paid, but is a matter where the additional

compensation is yet to be paid. If the land owner is to receive the compensation at a later date, on the basis of the price prevailing on an earlier date, there is no reason as to why the interest should not be made available to the land owner from that date and the reason being that the person concerned is deprived of the amount of compensation from the date on which the price is assessed and was payable as per the scheme of the Act. Even if the matter is considered by way of compensatory measure, then also, the interest would be payable on the amount fixed and finalised from the relevant date. We make it clear that the matter may be different in a case where the possession is taken over prior to the date of notification under section 4 of the Act, but in a case where the notification under section 4 is published and thereafter, the award has been passed and may be that the possession is taken over at the later date, the interest in

our view should be applicable from the date of the notification under section 4 or from the date of taking over of compensation, whichever is earlier.

25. There is additional reason for interpreting the provision accordingly inasmuch as there is not bar operating on the power of the Court to award interest and the discretion is left to the Court to award interest. When the Court finds that the particular amount of compensation based on the market value assessed on the date of the notification under section 4 of the Act was payable, but not paid, the interest can be made available to the land owner. When it is a matter of exercise of sovereign power for taking over the land of the citizen, the interpretation which may lean in favour of the land owner so as to sufficiently compensate for the acquisition of the land should be the preferred.

26. In view of the aforesaid, we find that no interference is called for to the direction of the Reference Court for awarding of interest under section 28 of the Act from the date of the notification under section 4 of the Act or from the date of taking over of the possession, whichever is earlier.

27. In view of the aforesaid observations and discussions, First Appeal No.1354/13 and 1355/13 are dismissed. In First Appeal No.2854/13 and 2855/13, it is observed and directed that the original claimant shall be entitled to compensation at the rate of Rs.148/- per sq.mtr., with the increase in the market value under section 23(1A) and solatium under section 23(2) of the Act and interest under section 28 of the Act. Such appeals shall stand partly allowed to the aforesaid extent.

28. In First Appeal No.3566/12, it is observed

that since there is no cross-objection or cross appeal, there is no question to be considered for enhancement of the compensation even though the land is situated at the very village Jotana. Hence, the said appeal shall stand disposed of accordingly.

29. Considering the facts and circumstances, no order as to costs.

(JAYANT PATEL, J.)

(Z.K.SAIYED, J.)

KKS/bijoy

(correction is carried out in para no.28 as per the order dated 22/10/2013 passed below office note)