

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 1351 of 2014****With****FIRST APPEAL NO. 1352 of 2014****TO****FIRST APPEAL NO. 1365 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

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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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KOLI DEVSHI BHAGVANJIBHAI....Appellant(s)

Versus

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

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Appearance in FA 1351 of 2014 to 1358 of 2014

(MR SURESHM SHAH), ADVOCATE for the Appellant(s) No. 1
 MR MEHUL S SHAH, ADVOCATE for the Appellant(s) No. 1
 MR DHAWAN JAYSWAL, AGP for the Respondents(s)

Appearance in FA 1359 of 2014 to 1365 of 2014

(MR SURESHM SHAH), ADVOCATE for the Appellant(s) No. 1
 MR MEHUL S SHAH, ADVOCATE for the Appellant(s) No. 1
 MR KABIR HATHI, AGP for the Respondents(s)

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 09/05/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1. As common question of law and facts arise in these three groups of appeals, they are disposed of by this common judgment and order.

2. All these appeals are admitted. Shri Dhawan Jayswal, learned AGP and Shri Kabir Hathi, learned AGP waives service of notice of admission on behalf of respective respondents in respective appeals.

3. In the facts and circumstances of the case and as all these appeals are as such covered by the decision of the Division Bench of this Court passed in First Appeal No. 2883 of 2011 and other allied First Appeals and with the consent of the learned advocates appearing on behalf of the respective parties, present appeals are taken up for final hearing today.

1st Group of Appeals

4. Feeling aggrieved and dissatisfied with the impugned common judgment and award passed by the learned Reference Court – learned Additional Senior Civil Judge, Dhrangdhara dated 31.03.2009 passed in LAR Nos. 70 of 2005, 76 of 2005, 80 of 2005, 85 of 2005, 93 of 2005, 87 of 2005, 89 of 2005, 92 of 2005, 100 of 2005, 106 of 2005 and 54

of 2005, the appellants herein – original claimants have preferred respective First Appeal Nos. 1351 of 2014, 1352 of 2014, 1357 of 2014, 1358 of 2014, 1359 of 2014, 1360 of 2014, 1361 of 2014, 1362 of 2014, 1363 of 2014, 1364 of 2014 and 1365 of 2014 to enhance the amount of compensation awarded by the learned Reference Court.

2nd Group of Appeals:

5. Feeling aggrieved and dissatisfied with the impugned common judgment and award passed by the learned Reference Court – learned Additional Senior Civil Judge, Dhrangdhara dated 31.03.2009 passed in LAR Nos. 5 of 2003, 4 of 2003 and 3 of 2003, the respective appellants herein – original claimants have preferred First Appeal Nos. 1353 of 2014, 1354 of 2014 and 1355 of 2014 to enhance the amount of compensation awarded by the learned Reference Court.

3rd Group of Appeals:

6. Feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned Reference Court – learned Additional Senior Civil Judge, Dhrangdhara dated 31.03.2009 passed in LAR No. 37 of 2005, the appellants herein – original claimants have preferred present First Appeal No.1356 of 2014 to enhance the amount of compensation awarded by the learned Reference Court.

7. In all these cases, the lands situated at village Merupur, Susvav, Siroi and Sundargadh of Taluka Halvad came to be acquired under the provisions of the Land Acquisition Act

(hereinafter referred to as 'the Act') for the public purpose – Brahmani Irrigation Scheme. That so far as the first group of appeals being First Appeal Nos.1351 of 2014, 1352 of 2014, 1357 of 2014, 1358 of 2014, 1359 of 2014, 1360 of 2014, 1361 of 2014, 1362 of 2014, 1363 of 2014, 1364 of 2014 and 1365 of 2014 arising out of LAR Nos. 70 of 2005, 76 of 2005, 80 of 2005, 85 of 2005, 93 of 2005, 87 of 2005, 89 of 2005, 92 of 2005, 100 of 2005, 106 of 2005 and 54 of 2005 is concerned, the notification under Section 4 of the Act came to be published on 24.04.1997. That the declaration u/s. 6 of the Act came to be published on 19.09.1998. That thereafter the Special Land Acquisition Officer declared the award u/s. 11 of the Act and awarded the compensation at the rate of Rs. 6.35 per sq. meter for irrigated land and Rs. 4.25 per sq. meter for non-irrigated land.

8. So far as the second group of appeals being First Appeal Nos. 1353 of 2014, 1354 of 2014 and 1355 of 2014 arising out of LAR Nos. 5 of 2003, 4 of 2003 and 3 of 2003 is concerned, the notification under Section 4 of the Act came to be published on 16.09.1999. The notification u/s. 6 of the Act came to be published on 11.05.2000. That thereafter the Special Land Acquisition officer declared the award u/s. 11 of the Act and awarded Rs.7.50 per sq. meter for irrigated land and Rs. 5 per sq. meter for non-irrigated land.

9. So far as the third group of appeal being First Appeal No.1356 of 2014 arising out of LAR No. 37 of 2005 is concerned, the notification under Section 4 of the Act came to be published on 24.04.1997. That the declaration under Section 6 of the Act came to be published on 19.09.1998. That

thereafter the Special Land Acquisition Officer declared the award u/s. 11 of the Act and awarded the compensation of Rs.6.35 per sq. meter for irrigated land and Rs.4.25 per sq. meter for non-irrigated land.

10. As the claimants were not satisfied with the aforesaid compensation they raised dispute and demanded compensation at Rs.50/- per sq.mtr. for irrigated land and Rs.35/per sq. mtr. for non irrigated land. Such disputes were referred to the Reference Court for adjudication. The Reference Court, at the conclusion of the references passed the judgment and award dated 31.03.2009 whereby the Reference Court assessed the market price of the land in question at Rs.14/- per sq.mtr.(in the reference cases where section 4 notification issued is dated 24.04.1997), out of which after deduction of the amount of compensation already paid, it has awarded additional compensation of Rs. 7.65 per sq. mtr. for irrigated land and Rs.9.75 for non irrigated land and assessed the market value at Rs.17/- per square metre (in the reference cases where section 4 notification issued is dated 16.09.1999), out of which after deduction of the amount of compensation already paid, it has awarded additional compensation of Rs. 9.50 per sq. mtr. for irrigated land and Rs.12 per square metre for non irrigated land. The Reference Court has awarded solatium @ 30% u/s. 23(2), increase in the market value u/s. 23(1A) and also interest under section 28 of the Act. Under the circumstances, the present appeals before this Court.

11. The aforesaid facts can be broadly classified into two categories; one would be the cases where the notification

under section 4 of the Act was published on 24.04.1997 of different villages and the another would be the cases where the notification under section 4 of the Act was published on 16.06.1999. It is undisputed position that all the acquisitions of the land are for the very project since the irrigation scheme was spread over in all the areas of the different villages. Different parcels of the land from the aforesaid four villages, viz., Sundargadh, Siroi, Susvav and Merupar have been acquired.

12. Shri Mehul S. Shah, learned advocate appearing on behalf of the appellants – original claimants has heavily relied upon the judgment and order passed by the Division Bench of this Court dated 17.10.2011 in First Appeal Nos. 2883 of 2011 and other allied appeals, by which, with respect to the lands acquired of very villages and for which the notification u/s. 4 of the Act came to be published on 24.04.1997 and 16.09.1999 respectively and the lands acquired for the very project, the Division Bench of this Court has held that the claimants shall be entitled to an additional amount of compensation at the rate of Rs. 15/- per sq. meter for irrigated land and Rs.12/- per sq. meter for non-irrigated land for the lands acquired for which the notification u/s. 4 of the Act came to be published on 24.04.1997 and has awarded an additional amount of compensation at the rate of Rs.17/- per sq. meter for irrigated land and Rs.14/- per sq. meter for non-irrigated land for which the notification u/s. 4 of the Act was published in the year 1999 i.e. 16.09.1999. Therefore, relying upon the aforesaid decision it is requested to allow the present appeals and modified the impugned judgment and award accordingly.

13. Shri Jayswal, learned AGP and Shri Kabir Hathi, learned AGP appearing on behalf of the respective respondents in respective appeals are not in a position to dispute the above.

14. We have heard the learned advocates appearing on behalf of the respective parties at length. We have also perused the impugned judgment and award passed by the learned Reference Court. We have also gone through and considered the decision of the Division Bench of this Court dated 17.10.2011 passed in First Appeal Nos. 2883 of 2011 and other allied first appeals.

15. At the outset, it is required to be noted that in First Appeal Nos.1351 of 2014, 1352 of 2014, 1357 of 2014, 1358 of 2014, 1359 of 2014, 1360 of 2014, 1361 of 2014, 1362 of 2014, 1363 of 2014, 1364 of 2014 and 1365 of 2014 arising out of LAR Nos. 70 of 2005, 76 of 2005, 80 of 2005, 85 of 2005, 93 of 2005, 87 of 2005, 89 of 2005, 92 of 2005, 100 of 2005, 106 of 2005 and 54 of 2005 as well as in First Appeal No.1356 of 2014 arising out of LAR No. 37 of 2005, the notification u/s. 4 of the Act was published on 24.04.1997 for the lands acquired of village Sundargadh, Siroi and Susvav of Halvad Taluka. So far as First Appeal Nos. 1353 of 2014, 1354 of 2014 and 1355 of 2014 arising out of LAR Nos. 5 of 2003, 4 of 2003 and 3 of 2003 is concerned, the notification u/s. 4 of the Act was published on 16.09.1999. In First Appeal No. 2883 of 2011 and other allied matters, with respect to the lands acquired of village Sundargadh, Siroi, Merupur and Susvav of Halvad Taluka, which came to be acquired for the very project – Brahmani Irrigation Scheme, the Division Bench of this Court has determined and awarded an additional

amount of compensation at the rate of Rs. 15/- per sq. meter for irrigated land and Rs.12/- per sq. meter for non-irrigated land wherein the notification u/s 4 of the Act came to be published on 24.04.1997 and has determined and awarded an additional amount of compensation at the rate of Rs.17/- per sq. meter for the irrigated land and Rs. 14/- per sq. meter for non-irrigated land for the acquired lands for which the notification u/s 4 of the Act came to be published on 16.09.1999.

16. In view of the above, the present appeals are also required to be allowed to the aforesaid extent and the impugned judgment and award passed by the learned Reference Court is required to be modified to the aforesaid extent.

17. In view of the aforesaid observations and discussion, it is observed and held that all the original claimants whose lands have been acquired by the notification under section 4 of the Act on 24.04.1997 would be entitled to an additional compensation at Rs.15/- per sq. meter for irrigated land and at Rs.12/- per sq. meter for non-irrigated land. Such claimants shall also be entitled to the solatium under section 23(2) of the Act, increase in the market value under section 23(1A) of the Act and interest under section 28 of the Act.

18. It is observed and directed that all the original claimants whose lands have been acquired by notification under section 4 of the Act on 16.09.1999 would be entitled to an additional compensation at Rs.17/- per sq. meter for irrigated land and at Rs.14/- per sq. meter for non-irrigated land. Additionally,

they shall also be entitled to the solatium under section 23(2) of the Act, increase in the market value under section 23(1A) of the Act and interest under section 28 of the Act.

19. If the amount of additional compensation is not deposited with the reference court, the same shall be deposited within a period of eight weeks from the receipt of the judgment of this Court.

20. All the appeals are partly allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.

(M.R.SHAH, J.)

(R.P.DHOLARIA,J.)

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