

Registration No.: LAR/39/2011
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Decided on : 28/03/2018
Duration: dd/mm/yy

IN THE COURT OF 2 nd ADDI.SENIOR CIVIL JUDGE. AT. JAMNAGAR
MAIN LAND ACQUISITION REFERENCE CASE NO. 39 OF 2011.
(L.A.R.CASE NO.39/2011 to 41/2011)

LAR/ 39/2011

Exh.14

Applicant:

- 1 Jamanbhai Shamjibhai Bhensdadiya
Age: Adult,
Reside At: Moti Banugar, Ta. Dist.Jamnagar.

LAR/ 40/2011

Applicant:

1. Prabhulal Hansraj
Age: Adult,
Reside At: Moti Banugar, Ta. Dist.Jamnagar.

LAR/ 41/2011

Applicant:

1. Prabhaben Vallabhbbhai
Age: Adult,
Reside At: Moti Banugar, Ta. Dist.Jamnagar.

VERSUS

Opponent:

1. Special Land Acquisition officer,
Deputy Collector shree Jamnagar.
Jamnagar, Dist.Jamnagar.
2. Executive Engineer,
R & B Department (state)
Jamnagar.

Appearance :

R. J. Trivedi Advocate For above all Applicants ,
K. H. Bhatt A. G. P. For Opponent 1

**Sub: Land Reference under Section-18 of the Land Acquisition
Act, 1894**

-: COMMON - JUDGEMENT :-

(1) Brief facts giving rise to the present reference are as under; These Land Acquisition reference case have arisen from the award dated **24/09/2009** passed by the learned Dy. Collector, Jamnagar in LAQ Case No. **37/2008**, u/s. 11 of the Land Acquisition Act (herein after referred to as the Act for brevity and convenience) whereby Notification under Sec.4 was issued on **21/03/2008** and Notification under Sec.6 was issued on **09/06/2009** After following due process, the learned Assistant Collector was pleased to award the Compensation for the acquired lands of village of **Motibanugar's** Revenue as mentioned below at the rate of Rs. **10/-** per sq. mt. The present claimants are dissatisfied and aggrieved by that amount of award, they made representation and asked for Rs. **5,000/-** per sq. mtr. As such, these land acquisition references under Section-18 of the Act are moved and the same are placed before the undersigned for disposal according to law.

(2) For the purpose of **Rajkot-Jamnagar-Vadinar four track** road, the lands bearing block survey number situated at of **Motibanugar's** Ta. District- Jamnagar, belonging to the claimant as shown below has been acquired are mentioned as under :

| Sr. No. | Laq Case No. | Survey Nos. |
|----------|----------------|----------------------------|
| 1 | 39/2011 | 512 Paiki 4 paiki 1 |
| 2 | 40/2011 | 512 Paiki 4 paiki 2 |
| 3 | 41/2011 | 512 Paiki 4 paiki 3 |

That the contentions raised by all the claimants in all these land reference cases are common and as the common question of law and facts are involved in these reference cases, all these reference cases were ordered to be consolidated vide order passed below Exh-**11**. Thus, this Court decides the present reference cases disposed off by this common judgment and the parties have led their respective evidence in **L.R. Case No. 39/2011** as it is treated to be main L. A.Q. petition.

(3) In response of the process served upon the opponents, they have appeared through learned Government Pleader and filed written statement at Exh.**8** contending that the amount which is awarded by the Dy. Collector, Jamnagar is quite just proper, reasonable and fair. and paid compensation dt.on **15/10/2009** .They have also denied about the averment made in respect of potential value, fertility, growth etc. It is also contended that the

applicant is also not maintainable as barred by the Law of Limitation. and accordingly the public notice was published u/s. 4 and 6 of the Land Acquisition Act and then after the notice u/s. 9(3) of the said Act has been issued to the owner and/or the interested persons of the land and accordingly the date of hearing was also fixed but the applicant has not submitted as per claimed in these application to decide the rate of compensation and moreover he has not submitted any submission or any proof or evidence by any document and therefore it was not acceptable. It is also stated that the Dy.Collector has after due diligence and considering all the relevant factors just like location, fertility of the land, crops prospect of development of the village has decided the rate of compensation, is just proper and reasonable as the same is mostly decided on the basis of average sale price of previous five years sale transactions and therefore it is stated that the award passed by the Special Land Acquisition Officer does not require to be interfered.

(4) The issues have been framed vide exhibit-9 and notices were issued to the parties of this reference. The applicant has not appeared before the Court to participate in the proceeding and not led any evidence in this case. Hence the right of the applicant to adduce her evidence has been closed by the court on **24/01/2018**.

(4/1) Thereafter the right of the opponents to adduce their evidence have been closed by the court on **14/03/2018**. Then after the matter has been taken for passing award as per section- 26 of the Land Acquisition Act.

(5) The following issues were framed vide Exhibit-9 dt. On **23/02/2017** which are as under.

- 1 Whether the applicant /s proves that the amount of compensation awarded is inadequate ?
- 2 If yes, what additional compensation be awarded to the applicants?
- 3 Whether the LAR case is filed within limitation?
- 4 Whether the applicant/s are interested person in the acquired land?
- 5 What order ?

(6) My findings on the above issues are as under.

- 1 In the Negative

- 2 In the Negative
- 3 In the affirmative.
- 4 In the affirmative.
- 3 As per Order

: R E A S O N S :

(7) Issue No. 3 : As per Section 18 (2) (b) of the Land Acquisition Act, 1894, Applicants or Claimants have to file a reference application with the period of six weeks of the receipt of the notice from the Collector or within six months the date of Collector's award, whichever period shall first expire. So far as the case on hand is concerned, the date declaration of award is **24/09/2009** and the date of sending of notices to the claimants as per Section 12 (2) of the Act , but there is nothing on record as to when the said notices were served to the claimants. It also appears that the applications are received in the Office of the Dy.Collector on **15/10/2010**. As such, when the references have been made within six months of the date of the Award, I do not have any hesitation to decide that the references have been filed within the period of limitation as prescribed in the Act.

(8) ISSUE No.1 AND 2 :- All these issues are interconnected with each other and therefore to avoid repetition and for the sake of convenience, I discuss both these issues together.

In this case, the claimant has not participated in the reference proceeding in spite of the fact of having been served notice to the applicant and having knowledge of the reference proceeding was going on. And the position of the claimant in a reference proceeding is considered to be as that of plaintiff in a suit and the reference proceeding shall be decided as per the provision of Code of Civil Procedure in view of Section-53 of the Land Acquisition Act which reads as under;

53. Code of Civil Procedure to apply to proceedings before Court.—Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall apply to all proceedings before the Court under this Act.

It is well settled law that the burden of proof is upon him who affirms and not upon him who denies. In this case the initial burden is on the applicant to

prima-facie satisfies the Court that the award passed by opponent No.1 (Deputy Collector) is inadequate or disproportionate and the applicant is entitled to more compensation than that of which has been awarded by the opponent No.1. That burden had to be discharged by the claimants then after the onus would be shift to the opponents to prove the actual market value of the land acquired or to justify the award. Thus, in view of aforesaid position of law, it is for the claimant to prove that the award passed by the Opponent No.1 is inadequate and the claimant is entitled to more compensation over and above the award passed by the Opponent No.1 under Section-11 of the Land Acquisition Act.

(9) It is also well settled that the award made by the Court in a reference proceeding shall not be less than the amount of award passed by the collector under Section-11 of the Land Acquisition Act in view of Section-25 of the Land Acquisition Act which reads as under;

Section – 25 : Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.—The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under section 11.

As Per section-12 of the act, the award passed by the Collector under section-11 is final and conclusive as between the Collector and the persons interested unless it is altered or modified by the Reference Court in a reference proceeding initiated under section-18 of the Land Acquisition Act.

(10) Thus, in view of the aforesaid discussion and reasons, the applicant fails to proved that the award passed by the Opponent No.1 is inadequate or unreasonable since the applicant has not led any evidence to prima-facie prove that the said amount of compensation awarded by the Collector is inadequate or unreasonable. Per contra, the opponents have also not led any evidence to prove that there exist no cause of action remained in favour of the applicant against opponents. So it appears to this Court both the applicant as well as opponents have failed to prove their respective submission by leading evidence in the Court. So my finding on issue no-1 to 2 are in negative.

(11) ISSUE No.4 : It is to be noted that no question / dispute referred to decide u/s 30 of L.A.Q Act by the Dy. Collector. therefore, my finding on issue no-4 is in affirmative.

(12) So in view of the aforesaid reasons and discussion, I hereby pass following final order on issue no-5 in the interest of justice.

-:: ORDER ::-

(1) The present reference application is hereby ordered to be disposed off as rejected without any interference to the awarded amount of compensation to the claimant.

(2) It is hereby further ordered that the applicant is not entitled any additional or enhanced amount of compensation than the amount of compensation awarded by the Collector.

(3) Award be drawn accordingly.

(4) Original Judgment be kept with Land Reference Case No. **39/2011** and copies of the same be kept with remaining reference cases.

(5) No order as to cost.

Signed and pronounced in the open court on this 28th day of March., 2018.

Date .28/03/2018

Place : JAMNAGAR

MR.UTTAMKUMAR NARAYANDAS SINDHI

GJ-00741

2 nd ADDI.SENIOR CIVIL JUDGE.

CIVIL COURT

JAMNAGAR