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IN THE COURT OF 2nd. ADDL.SR. CIVIL JUDGE AT JAMNAGAR.

**Land Reference Case No.42/11
(Consolidated with)
L. R. Case No. 43, 44,45/2011
Ex-16**

(L.R.C. No.42/11)

Megha Kala,
Age :- Adult,Occupation : Agriculture,
Residing at Chandragadh,
Taluka & District : Jamnagar.

(L.R.C. No.43/11)

Sabhaya Hardas Jesa,
Age :- Adult,Occupation : Agriculture,
Residing at Chandragadh,
Taluka & District : Jamnagar.

(L.R.C. No.44/11)

Khima Lava
Age :- Adult,Occupation : Agriculture,
Residing at Chandragadh,
Taluka & District : Jamnagar.

(L.R.C. No.45/11)

Natha Raghav
Age :- Adult,Occupation : Agriculture,
Residing at Chandragadh,
Taluka & District : Jamnagar. Applicants

Vs.

(1) Dy. Collector,
Lal Bunglow
Jamnagar.

(2) Executive Engineer,
R & P Department,
Jamnagar

..... Opponents.

Appearance :

Ld. Adv. Mr. R.M. Sonchhatra for the applicants.
Ld. Adv. Mr. R.V. Raval for Opponent No.1
Ld. Adv. Mr. B.C.Sukhpariya for the Opponent No.2

-: J U D G M E N T :-

(1) That the claimants herein have filed these Land Reference Cases U/s.18 of the Land Acquisition Act, 1984 (hereinafter referred to as "the Act") for enhancement of compensation awarded by the Special Land Acquisition Officer by his Award Dtd 22-03-2010 (**LAQ Case No. 18/08**) made under Sec.11 of the Act.

(2) All these land reference cases arising out of one and common Award dtd 22/03/2010 declared by the Dy. Collector and Land Acquisition Officer in L.A.Q Case No.18/2008 and that the contentions raised by all the claimants in these land reference cases are common and as the common question of law and facts involved in these reference cases. The Court has ordered to consolidate these Land Reference Cases and these land reference cases will be heard together by this common judgment and that the parties have led their evidence in Land Reference Case No. 42/2011 as it is treated to be main petition.

Short facts of Land reference cases.

(3) That the lands of the claimants situated in village Chandragadh, Taluka & District : Jamnagar were sought to be acquired for the purpose of construction of Padana Patiya to Changa Patiya approach road Scheme. That the Notification U/s.4 (1) of the Act was issued, which was published in the official Gazette on 25-04-08 and the interested persons were thereafter served with the notices U/s.9(3)(4) for determination of the compensation payable to them. The claimants claimed the compensation before the Special Land Acquisition Officer at Rs.500/- per Sq. Meter. However, having regard to the materials

placed before him, the Special Land Acquisition Officer, by his Award No.18/08 Dtd.22-03-2010, offered compensation to the claimants at the rate of Rs. 8/- per Sq. Meter. Being aggrieved and dissatisfied with the amount of compensation award passed by the Special Land Acquisition Officer, the claimants submitted applications in writing U/s.18 of the Act and requiring the Special Land Acquisition Officer to refer the matter to the Court of Law for the purpose of determination of just and adequate amount of compensation payable to them. Accordingly the present references were made to the District Court, Jamnagar which were registered and then transferred to this Court for hearing and disposal in accordance with Law. That the claimants have claimed compensation as per mentioned in the amount at Ex-1 the details of acquired lands and its measurement given in Statement annexed to award of Land Acquisition Officer and there is no dispute regarding the measurement and description in respect of the acquired lands.

(4) It is the case of the claimants that their lands acquired by the opponents having fertile and high potential and were capable to fetching more value. However, the Special Land Acquisition Officer had not considered the said aspect while fixing market value of their acquired lands. That the lands of the claimants were irrigated lands. However, the Special Land Acquisition Officer had not taken into consideration the relevant factors which were required to be considered while fixing the price for compensation for the lands acquired. That the Land Acquisition Officer had fixed the market value of the acquired lands based on sale instances of low prices which were cited in award. That the Land Acquisition Officer could have considered the reasonable value prevailed at the time of acquisition at the time of acquisition taken place which he had not done so and he fixed the amount of compensation merely on the basis of surmise of certain sale transactions of low prices, therefore, the compensation awarded to

claimants is inadequate.

(4.1) It is further stated by the claimants that, due to acquisition of their lands claimants had to suffer a loss. The said aspect was not considered by the Special Land Acquisition Officer and he had committed grave error in determining the actual price of lands under acquisition. Thus, the claimants have stated that considering the above grounds, the amount of compensation as prayed for Rs. 500/- per Sq. Meter for Jirayat land should be awarded to them with the other statutory benefits of interest, solatium etc.

(4.2) In the matter opponent No.1 has appeared through the Ld. A.G.P. Mr. R.V.Raval and have submitted any written statement vide Exh.11 The opponent No.2 has filed written statement vide Exh.6 with D-List at Exh.10 respectively and submitted that Dy. Collector & Special Land Acquisition officer has granted the proper compensation and other reliefs and as such the present reference is requires to be rejected.

(5) The opponent No.2 further argued that claimants did not produce any documentary evidence before Special Land Acquisition Officer for consideration and compensation awarded by the Land Acquisition Officer to the claimants is quite, adequate and reasonable and it is neither low nor inadequate in any way. It is also contended that Land Acquisition Officer has passed the Award after taking into consideration all the relevant factors and surrounding development of acquired lands prevailed at the time of acquisition. It is contended that claimants at the time of survey and inquiry, did not claim the amount as claimed in previous case, hence not acceptable. Therefore, claimants Reference Cases are bad under law of limitation, and claimants were heard at the time of acquisition and they have been given opportunities to produce relevant papers of their land as per natural justice. They

were called upon for compensation. The Land Acquisition Officer has taken into consideration all relevant factors of the acquired land and considering the last five years sale instances. The Land Acquisition Officer had not committed an error in awarding the compensation to the claimants. Thus, the compensation. Thus, the compensation as claimed by the claimants is highly exaggerated, excessive and exorbitant. Moreover, there is no cogent evidence produced by the claimants in support of their claims. Ultimately, it is contended that the claimants are not entitled to get the additional amount of compensation from the opponents. Thus, the opponents have requested to dismiss all the Land Reference Cases with costs.

(6) Considering the pleadings of the parties, the issues were framed in all cases. As the issues framed in these reference Cases are the same, the issues in all these reference cases 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 applicant/s ?
- (3) Whether the LAR case is filed within limitation ?
- (4) Whether the applicant/s are interested person in the acquired land ?
- (5) What order and award ?

(7) My findings on the above stated issues are as under :-

- (1) In negative
- (2) In negative
- (3) In affirmative.
- (4) In affirmative.
- (5) As per final order.

(8) Thereafter, the this matter is fixed for the evidence. In this matter, applicant No.1 Megha Kala and applicant No.3 Khima Lava both died during course of trial and legal heirs above deceased have been not joined in the proceedings and other applicants neither produced documentary evidences nor adduced the oral evidence and other evidences to prove their case. In this regard, notice were duly served upon the applicants, even though they choose to remain absent.

(9) Still, however, on the next date neither the applicants nor his advocate has turned up to comply the order of the Court or to produce/adduce the evidence and hence, this Court has closed the applicants' right to evidence and post the matter for opponent's evidence.

(10) As there is no additional evidence in the matter, this matter is taken for passing the order. Then after the matter has been taken for passing award as per section-26 of the Land Acquisition Act.

:: R E A S O N S ::

(11) Before determination of this case, it would be necessary to see legal position first governing Land Reference Cases. It is well settled that the reference application cannot be treated as a suit and the said reference cannot be dismissed for default for the simple reason that either party does not participate in the proceeding. The reference judge has to make its award as per provision of Section-26 of the Land Acquisition Act which reads as under;

26. Form of awards.—(1) *Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts*

(if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), respectively of the Code of Civil Procedure, 1908 (5 of 1908).

(12) In view of the above legal position, the award which the Court passes as a Reference Court must be in the form of a Judgment containing the statement of the ground for the award whether claimant or opponent participate in the reference proceeding or not. It is not open for the court to dispose off the reference stating that the claim of the claimant is dismissed or that the reference is rejected. It is the duty of the Court to make award as contained in Section-26 of the Land Acquisition Act.

(13) Furthermore, in this connection it has been held by the Hon'ble Supreme Court in **726 "Khazan Singh v. Union of India" reported in AIR 2002 SUPREME COURT** that *"The reference made by a Collector under S. 18 of the Land Acquisition Act, 1894 cannot be dismissed for default. The provisions of Ss. 18, 20, 26 make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under S. 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default".*

Issue No. 1 to 4 :-

(14) The issue No. 1 to 4 have been discussed conjointly since they are interrelated with each other and to avoid repetition of the discussed fact and evidences.

(15) In this case, the issues have been framed on dated 01/07/2017 and thereafter, the matter is posted for recording of the evidence of the applicant. sufficient opportunities have been given the applicants but they have not adduced/produced the evidence and hence, their right to file the evidence is closed by this Court. When the applicants have filed these references, the burden of proof is lies upon the applicants to prove their case and the position of the claimants 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.

(16) Hon'ble High Court of Patna in a matter reported in **AIR 1970 Pat 209** has observed that the "*In Sanjiva Row's Law of Land Acquisition and Compensation, revised and enlarged by J.P. Singhal, Fifth (1966) edition, at page 808, under item (k), it has been stated that "Order XII of the Code of Civil Procedure cannot be applied to proceedings under Section 18 of the Act. Once a reference is made under Section 18, the court must make an award under Section 26, irrespective of whether the person, at whose instance the reference has been made, does or does not appear before the Court, or fails to produce evidence in support of*

his objection. A reference proceeding cannot abate. The application of Order XXII is inconsistent with the very nature and scope of the proceeding under Section 18."

(17) In this case, after giving the more than sufficient opportunities the applicants have not adduced/produced the evidence and as such the matter is decided as per the provisions of Land Acquisition Act.

(18) Furthermore, it is well settled law that the burden of proof is lies upon him, who affirms and not upon him who denies. In this case the initial burden is on the applicants to prima facie satisfies the Court that the award passed by the Dy. Collector is inadequate or disproportionate and the applicants are entitled to more compensation than that of which has been awarded by the Dy. Collector. Then after the onus would be shift to the opponents to prove the actual market value of the land acquired. In this connection, the Hon'ble Apex Court has held in para-9 of its pronouncement namely **"Gafar vs. Moradabad Development Authority" reported in AIR 2007 SCW 5372** that *"As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award. The Reference Court, in our view, could not give any adequate or tenable reasons for adopting the value it did. No evidence was clearly or properly discussed to justify a finding that the claimants had made out a case for enhancement of compensation. As observed by the High Court, it appears that on the materials available, even the amount awarded by the Awarding Officer was on the high side since he adopted the sale instance of a small extent of land and applied it to the larger extents that had been acquired under these*

notifications even without any deduction".

(19) So in view of aforesaid position of law, it is for the claimant to prove that the award passed by the Dy. Collector is inadequate and the claimant is entitled to more compensation over and above the award passed by the Collector under Section-11 of the Land Acquisition Act.

(20) Furthermore 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;

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.*

(21) Furthermore the award made by the Collector under Section-11 shall be final and conclusive as between the Collector and the persons interested in view of Section-12 of the Land Acquisition Act which reads as under.

12. Award of Collector when to be final .—(1)
Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(22) So the award passed by the Sp. Land Acquisition officer (Dy. 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.

(23) So in view of the aforesaid discussion and reasons, the applicants cannot be said to have proved that the award passed by the Dy. Collector is inadequate or disproportionate since the applicants have not led any evidence to prima facie prove that the said amount of compensation awarded by the Dy. Collector is inadequate or disproportionate. Conversely the opponents have also not led any evidence to prove that applicants have filed these references are bar of limitation and applicants are interested person in the acquired land. Hence, I answered the issue No. 3 & 4 are in affirmative. So it transpires to this Court both the parties have failed to prove their respective submission by leading evidence in the Court and hence, the issue No. 1 to 4 are accordingly.

Issue No. 5 :-

(24) In view of the aforesaid reasons and discussion, I hereby pass following final order on issue No.5, in the interest of justice.

:: FINAL ORDER ::

1. The reference application No.42/2011 & 44/2011 are hereby abetted. Due to death of applicants.
2. The remaining reference application Nos. 43/2011 & 45/2011 are hereby ordered to be disposed off as are hereby ordered to be dismissed without any interference to the awarded amount of compensation to the claimants.
3. It is hereby further ordered that the applicants are not entitled any additional or enhanced amount of

compensation than the amount of compensation awarded by the Sp.Land Acquisition Officer (Dy. Collector.)

4. Award be drawn accordingly.
5. There shall be no order as to costs.

Pronounced in the open Court on this 30th day of June -2018.

Date : 30-06-2018.
Place : Jamnagar

(G.M.Ahir)
2nd Additional Senior Civil Judge,
Jamnagar.
Code No.GJ-00808