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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AT LALPUR

Land Reference Case No. 218/ 06 to 233 / 06)

Main L R Case No. 218/06.

CLAIMANTS/APPLICANTS:

Land Reference Case No.218/06:

- (1) Manhar Jantilal Viramgama
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 219/06

- (1) Vinod Jantilal Viramgama
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 220/06

- (1) Pravin Jantilal Viramgama
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 221/06

- (1) Dipak Kumar Chhaganbhai Viramgama
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,

Dis. Jamnagar.

Land Reference Case No 222/06

- (1) Kanjibhai Gordhanbhai
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 223/06

- (1) Mohanbhai Gordhanbhai Bhalodia
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 224/06

- (1) Parshotambhai Ambabhai,
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 225/06

- (1) Govindbhai Mandanbhai,
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 226/06

- (1) Bhagwanji Govindbhai,
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 227/06

- (1) Jivanbhai Vallabhbhai Ladani
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 228/06

- (1) Hansaben Jivanbhai Ladani,

age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 229/06

- (1) Nathabhai Lakhbhai
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 230/06

- (1) Samir Kacharabhai Ladani
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 231/06

- (1) Minaben Kacharabhai Ladani
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 232/06

- (1) Muktaben Bavanji ladani,
age- Adult, Vill.- Gingni,
Ta.- Jamjodhpur,
Dis. Jamnagar.

Land Reference Case No 233/06

- (1) Rasiklal Samji Ladani,
age- Adult, Occup.- Farmer,
Vill.- Gingni, Ta.- Jamjodhpur,
Dis. Jamnagar.

Versus

OPPONENTS:

- (1) Deputy Collector,
Land Acquisition and
Rehabilitation (irrigation),
Vill.-Jamnagar, Tal- Jamnagar
Dist.- Jamnagar.
- (2) Executive Engineer,
Und Irrigation Department,
Vill-Jamnagar
Dist.- Jamnagar.

Appearance :

❖ **Ld. Advocate Shri. R.J. Trivedi for the Claimants**

❖ **Ld. AGP Shri. R.V. Raval for the Opponents**

: J U D G M E N T :

That the claimants herein have filed these land reference cases Under Section 18 of the Land Acquisition Act, 1984 (hereinafter referred to as the "The Act") for the enhancement of compensation awarded by the Special Land Acquisition Officer by his award dated 04th January, 2006 in compensation case No. 25/2003, Under Section 11 (1) of the Act.

1. Present reference cases arising out of the award of L.A.Q. Case No. 25/2003 declared by Land Acquisition Officer, Deputy Collector Land Acquisition and Rehabilitation (Irrigation) Jamnagar, with regard to the Lands in question of village- Gingni, Ta. Jamjodhpur, Dis. Jamnagar. That contention raised by all the claimants in these land

reference cases are common and as the common question of law and facts involved in these land reference cases, all these reference cases had been ordered to be consolidated vide order passed below Exh. 9. Thus, the present reference cases are decided by this common judgment and the parties have led their evidence in L.R. Case No. 218/06 as it is treated to be main petition.

2. Notification Under Section 4 of the Act of L.A.Q. Case No. 25/2003 has been issued on dated 09.12.2004 and Notification Under Section 6 was issued on dated 18.07.2005 in L.A.Q. Case No. 25/2003.

Brief facts of the claimants case are that the lands of the claimants situated in village- Gingni, of Taluka- Jamjodhpur, District- Jamnagar were acquired for the purpose of fulzar (Ko. Ba.) Irrigation project and land acquisition officer has awarded the compensation at the rate of Rs. 650/- per Are for non-irrigated land, and pass his award on 04.01.2006, being dissatisfied with the amount of the compensation awarded by the Land Acquisition Officer and claimants have requested references Under Section 18 and therefore, this present land reference has been made.

3. The claimants have contended in their reference cases that they are not agreed with the award passed by the Land Acquisition Officer and the amount of compensation awarded by the Land Acquisition Officer is not adequate no notice has been served upon the claimants Under Section 9 of the Act. On the date of acquisition, the lands of the claimants were irrigated land and the facilities of irrigation were there and they were cultivating the land with modern technique and they were taking two or three crops in a year like Eshab Ghool, Cotton, Tobacco, Wheat etc, and they were earning

Rs. 45,000/- per bigha. There are factories, godown, residential societies, dispensary, High School, Panchayat Office, Library are situated nearby their acquired land. The land acquisition officer has not taken in to consideration the documents produced by the claimants and therefore, they have claimed the amount of compensation at the rate of Rs. 100/- per sq. meter.

After due service of the notice to the opponents, the opponents have appeared and filed their written-statement at Exh. 7 wherein opponent have denied the facts stated in the references by the claimants and contended that the award passed by the opponent is legal, proper and reasonable. The opponent have rightly calculated the valuation of the land and the award passed by the Land Acquisition Officer by considering evidences and sale-instances, therefore, the claimants are not entitled for the enhance compensation as prayed by them.

4. The claimants have produced the following oral as well as documentary evidence in support of their cases:

ORAL EVIDENCE

Sr. No.	Particulars	Exhibit
1.	Affidavit of Examination-in-Chief of Manhar Jantilal Viramgama (claimant of L.R.C. No. 218/2006).	22

DOCUMENTARY EVIDENCE

Sr. No.	Name of Documentary Evidence	Exhibit
1.	Copy of Village from no. 7/12, survey no. 227 of	16

	village- Gingni.	
2.	Copy of Village from no. 7/12, survey no. 216 of village- Gingni.	17
3.	Copy of Village from no. 7/12, survey no. 227 of village- Gingni.	18
4.	Copy village form no. 16 (Kuva Patrak) of village-Gingni.	19
5.	Copy of Khetivadi Utpaan bazar samiti, Jamjodhpur, Patrak-10 for the year 2002 to 2006.	20
6.	Copy of agenda, meeting held on 14/08/2001 done for government land by District Valuation Committee.	21

Claimants' evidence closed on dt. 09/07/2018

5. The opponents have not submitted any evidence in their support, therefore, evidence of opponents was closed on 16/07/2018.
6. Claimants have submitted his written arguments at Ex. 23 and learned advocate DGP Shri, R.V. Raval, has orally argued on behalf of the opponents.
7. Considering the pleadings of both the parties following Issue were framed in these reference cases at Exh. 8.

-: ISSUES :-

- (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) What order and award ?

8. My findings on the above issues are as under:

1. Issue No. 1 - In affirmative;
2. Issue No. 2 - Yes- at the rate of Rs. 22/- per. sq. mtr. for irrigated land and at the rate of Rs. 16/- for non-irrigated land;
3. Issue No. 3 - In Negative;
4. Issue No. 4 - As per final order;

-: REASONS :-

ISSUE NO. - 3: -

9. In this case, the opponents have raised the dispute of limitation and therefore, this issue required to be decided first and therefore, this

Court is required to decide a question of limitation as to whether the present reference cases are filed beyond a period of limitation prescribed in the Act or not. Section 18 of the Act provides for reference to Court:

Section 18:(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the person interested.

(2)The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made:-

(a) if the person making it was present or represented before the collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, Sub-section(2), or within six months from the date of the Collector's award, whichever period shall first expire.

10. Thus, looking to the provisions of Section 18 of the Act, it clearly speaks that, clause(b) of the proviso to Section 18 requires a person interested to make an application to the Collector requiring him to refer the matter for determination of the Court, within six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award whichever period first expires, if he or his representative was not present before the Collector at the time of making the award. That a period of six months

provided from the date of award for making an application seeking reference, where the applicant did not receive a notice under section 12(2) of the Act. While providing six weeks from the date of receipt of notice under Section 12(2) of the Act.

11. That the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'date of award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If, the person interested or his authorized representative was not present when the award is made and if he does not receive the notice U/Sec.12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

12. The opponent have contended that they have served notice Under Section 12(2) of the Act and contended that the references are time-barred but considering the provision of Section 18 (1) notice must be accompanied by a copy of award. **The Hon'ble Supreme Court in the judgment reported in 2012 (3) GLR, Page 2065, in the Case of Premji Nathu vs. State of Gujarat and Anr.**

The Hon'ble Supreme Court held, if notice under Sec. 12 (2) is not accompanied by a copy of award, owner of person interested cannot effectively exercised his right to seek reference within six weeks under Sec. 18(2)(b)--Hence, application filed beyond six weeks from date of receipt of

notice not time-barred--Further, it is for State Government to show that notice under Sec. 12(2) was accompanied by a copy of award-- Further, the Court giving benefit of this judgment to those who have not approached this Court or High Court-- Judgment by High Court of Gujarat reversed.

13. Now, keeping in mind the principle laid by the Hon'ble Supreme Court in the aforesaid judgment the opponent have contended that they have served the notice Under Section 12 (2) of the Act to the claimant. There is no where stated that the copy of award was sent to the claimant. Therefore, the principle laid-down by the Hon'ble Supreme Court in the aforesaid judgment is fully applicable to the present case of the claimants. Therefore, it cannot be said that the land reference cases filed by the claimants are time-barred.
14. That the claimants have specifically stated that the notice U/sec.12(2) of the Act were not served to them and when they came to know about the award, they filed these references. That the burden to prove that the land reference cases is filed beyond the period of limitation is on the opponent. It is on record that there is no evidence to show that the notice under Sec.12(2) of the Act was tendered personally to the claimants or that they refused or accept it. There is no such evidence to show that the person interested were present either in person or through his representative when the award was passed. Considering the above discussions, the opponent have failed to prove that the reference cases filed beyond the prescribed period of limitation. Therefore, I do not agree with the submissions made by the opponents that the present reference cases are time barred. Therefore, I answer issue No. 3 in negative.

ISSUES NOS. - 1 and 2: -

15. Since, both issues are interlinked with each other, the same has been discussed here together.

Present reference has been file by the claimants being dissatisfied and disagree with the award passed by the Land Acquisition Officer in L.A.Q. case no. 25/03. The land of the claimants belong to the village-Gingni, Dist- Jamnagar. The land acquisition officer has awarded the compensation Rs. 650/- per Are for the non-irrigated land. According to the claimants the compensation awarded by the Land Acquisition Officer is not reasonable and adequate. Therefore, they have demanded the compensation at the rate of Rs. 100/- per sq. mtr.

16. In order to prove their claim the claimants have lead oral as well as documentary evidences. The claimants claim the enhance compensation on the basis of yield. On behalf of the claimants, one witness Manhar Jantilal Viramgama, who is the claimant of L.R.C. no. 218/2000 at Exh. 22 and he stated that, the land acquired under these references were highly fertile, according to the said witness each claimant was able to take different crops in the three different seasons. The witness further stated that claimants was taking ground-nut, tuvar, sugarcane, cotton etc, then after in winter season they were taking the crops of wheat, corn, sugarcane, mustard, garlic etc. It is further say of the claimant that, they were taking a crop of ground-nut and they were able to raise 50 to 60 Maunds ground-nuts per bigha and they were also raise the crop of cotton 45 Maunds per

bigha and a crop of wheat they were raise 70 to 80 Maunds per bigha, over and above, they were earning Rs. 30/- to 40/- thousand per season and all the claimants were selling their agriculture produce at Jamjodhpur marketing yard, witness has produced extracts Exh. 20 of the Jamjodhpur, marketing yard Indicating as to what were the price of the cotton, cumin-seeds, wheat, ground-nut etc. at the relevant time, witness has also produced the 7/12 extract relating to the land acquired at Exh. 16 to 18. The witness has also produced the copy of village form no. 16 at Exh. 19 in order to prove that there were the irrigation facilities in their acquired land.

17. Claimants have cross-examined by learned A.G.P. in this cross-examination the claimants have denied that their lands were not fertile and irrigated. The claimant has admitted that he has not produced any documentary evidence indicating that each claimant was able to raise the different crops i.e., ground-nut, tuvar, wheat, mustard etc., Looking to the deposition of the claimant and cross-examination it emerged from the deposition of the claimant that the claimant were able to raise the different crops on their acquired lands as stated by the claimant, but at the same time no documentary evidences has been produced in order to prove the fact that they were taking different crops in three different seasons as stated by him.
18. Now, considering the evidence produced by the claimants on record and the deposition of the claimant. It is proved that the claimants have not produced any documentary evidences to prove the fact that they were cultivating the acquired land and they were able to raise the different crop in three different season, but the claim of the

claimants are getting support from the deposition of other witnesses and 7/12 extracts produced by the claimants. It is proven that claimants were able to raise different crops in their acquired land.

19. The claimants have relied upon the documents produced at Exh. 21, which is the valuation determined by the valuation committee for the various villages to Jamnagar district for the decision of the Collector for the determination of the market price of the lands which is to be allotted to the particular organization in different villages and contended that the village-Gingni is situated nearer to the village-Sidsar and the valuation committee has determined the value of the land which is to be allotted to the Umia Mataji Mandir Trust at the rate of Rs. 200/- per sq. mtr. and the claimants asked for the enhanced compensation at the rate of Rs. 200/- sq. mtr. for the acquired land, but looking to the evidence produced by the claimants there is no evidence has been produced to prove that the village Sidsar is situated nearer to the village Gingni. The claimants have relied upon the judgment reported in 2010 (3) GLH 447 in the case of State of Gujarat through **Special Land Acquisition Officer ad Anr. vs. Amaji Mohanji Thakore**, wherein it is held that the valuation made by the valuation committee of Government for fixation of price for allotment of land to an organization or citizens under Bombay Land Revenue Code, 1860 can be taken into consideration, but there in these cases claimants are not entitled for the enhanced compensation on the basis of document produced at Exh- 21 and the judgment relied by the claimants are not applicable to the case of the claimants.

Ld. Advocate for the claimants has submitted in the written

argument at Exh. 23 that the oral evidence of the claimants should be consider while assessing the market value of the acquired land and in this case the claimants have prove their case and they are entitled for the enhance compensation. The claimants have relied upon the judgment reported in **(1997) 2 Supreme Court Cases, pg. 693 in the case State of Gujarat and others vs. Rama Rana and others**, wherein, the Hon'ble Supreme Court has held in Para 5.

"5. It is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale-deeds, is the realised value of the crop. Normally, they should have produced the statistics from the Agriculture Department as to the nature of the crops and the prices prevailing at the time. But unfortunately, neither claimants nor the Government took any steps to adduce the best evidence. It is a fact that the Government have failed to adduce any evidence in that behalf. However, we cannot reject the oral evidence of the witnesses on that ground alone. The court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man, i.e., whether he would be willing to purchase the land at the rates proposed by the court. On the touchstone of this, the court should evaluate the evidence objectively and dispassionately and reach a finding on compensation. The reference court has accepted the evidence of the Sarpanch to be that of a reliable person. Therefore, we proceed on that premise. The appropriate multiplier should be of 10 years as settled by several judgments of this Court. Necessarily, 50% of the net value towards

cultivation expenses requires to be deducted. The award of the reference court as confirmed by the High Court stands set aside and the value of the crop as determined by the reference court at Rs. 2050 as average annual income stands upheld. Multiplier of 10 years should be applied and deduction of 50% towards cultivation expenses should be made. After giving deduction, the balance will be the net value of the land. On that basis, the claimants are entitled to Rs. 20,500 per acre with solatium @ 30% on enhanced compensation and interest on enhanced compensation @ 0.9% per annum for one year from the date of taking possession and 15% per annum till date of deposit into the Court under the Act as amended by Act 68 of 1984, namely 30% solatium on the enhanced compensation, interest on the enhanced compensation from the date of taking possession for one year at 9% and thereafter at 15% till date of deposit."

20. The hon'ble Supreme Court in the aforesaid judgment laid down the principle that the court has statutory duty to the society to subject the oral evidence to a great scrutiny and determine the market value of the land acquired after applying the test of normal prudent man i.e., whether he would be well known to the land at the rate proposed by the Court. The Court should evaluate the evidence objectively and dispassionately and reach the finding on the compensation.

Now, looking to the principle laid down in the aforesaid judgment by the Hon'ble Supreme Court and considering the facts of the present case and the evidence produced by the claimants. The claimants have stated that they were able to raise the crop of ground-nut, cotton,

wheat, cumin-seeds etc., and they were taking three crops in three different seasons, but no documentary evidence has been produced by the claimants, but as the claimants have produced the 7/12 extract of, their acquired land at Exhs. 16 to 18. It is transpired from that the claimants were mostly raised the crop of ground-nut therefore, if it is presumed that the claimants were able to raise 20 maunds of ground-nut per bigha and the price prevailing at the rate of Rs. 355/- per maunds at the relevant time as per extract Exh. 20, then, if it is multiplied by 20 ($20 \times 355 = 7100$) it will come to Rs. 7100/- the claimants were getting gross income of ground-nut per bigha and in the judgment reported 1990 (O) GLHEL -HC 204823 of Hon'ble Gujarat High Court in the case of **heirs of Decd Ratilal Chaturbhai Patel vs. State of Gujarat** in the aforesaid judgment Hon'ble High Court has held that, 50% should be deducted toward the cultivation cost from the gross income Rs. 7100/- divided by 2, ($7100/2 = 3,550$), the net income which was derived by each claimant would come Rs. 3,550/- per bigha per year and as per the aforesaid judgment of Hon'ble Supreme Court if multiplier of 10 is applied to the figure of Rs. 3,550/-, the net figure would be Rs. 35,500/-, in order to determine the price of the land acquired per sq. mtr., the said figure divided by 1600/- ($35,500/1600 = 22$) the claimants would get Rs. 22/- per sq. mtr, therefore, it becomes clear that claimants would be entitled for the compensation at the rate of Rs. 22/- per sq. mtr., for irrigated land and if 25% deducted to arrive at the value of the non-agriculture land in view of the judgment reported in **2007 (2) GLR pg. 1678** in the case of **Executive Engineer vs. Thakur Pradhanji**. It would come to Rs. 5.50/- rounded up Rs. 6/- deducted from the value of irrigated land ($22-6=16$), Rs. 16/- per sq. mtr., would be market price of the non-

irrigated land therefore, claimants are entitled for the Rs. 16/- per sq. mtr., for non-irrigated land and in view of the above discussion I am of the opinion that the land acquisition officer award is inadequate and unreasonable, therefore, claimants are entitled for the enhance compensation at the rate of Rs. 22/- per sq. mtr, for irrigated land and Rs. 16/- for non-irrigated lands with all the consequential benefits available, therefore, I answer for the issue no.1 and 2 in affirmative.

ISSUE NO. - 4: -

22. In view of above discussions made in issue no.1, 2, and 3, I pass following final order for issue no. 4, in the interest of justice:

: ORDER:

1. The present Land reference cases are hereby partly allowed with proportionate cost.
2. The claimants are entitled to get an additional market price of their acquired land at the rate of Rs.22/- per sq. mtr. for the irrigated land and Rs. 16/- per sq. mtr. for the non-irrigated Land., with interest on the aggregate amount of acquired lands at the rate of 9%p.a. from the date of taking possession till one year and thereafter at the rate of 15%p.a. till realization.
3. The claimants are also entitled for additional compensation at the rate of 12%p.a. under Sec.23(1-A) and 30% solatium under Sec.23(2) of the L. A. Act, with interest @ 9%p.a. from the date of taking over possession till one year and thereafter @15%p.a. till realization of the amount payable under Sec.28 of the Act.
4. The amount of compensation awarded and/or already paid by the Special Land Acquisition Officer to the claimants shall be deducted

from the amount of compensation as determined by this Court.

5. That the calculation of the amount of the compensation payable to the claimants be attached along with this judgment which form the part and parcel of this judgment.
6. Copy of this judgment be placed in all above Land reference cases.

Award be drawn-up accordingly.

Pronounced in the Open Court today on 15th December, 2018.

Date: 15 /12/2018
Place: Lalpur,

(Hasmatmiya Nabimiya Kazi)
Principal Senior Civil Judge
Lalpur
JUDGE CODE : GJ-00411