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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE

AT LALPUR

Land Reference Case No.168 to 169 of 2008

Main reference case no. 168/2008

CLAIMANTS/APPLICANTS:

Land Reference Case No.168/08

- (1) Jagabhai Hamirbhai,
age- Adult, Vill.-Nana Khadba,
Ta.- Lalpur Dis.- Jamnagar.

Land Reference Case No.169/08

- (2) Arjanbhai Pababhai,
age- Adult, Vill.-Nana Khadba,
Ta.- Lalpur Dis.- Jamnagar.

Versus

OPPONENTS:

- (1) Deputy Collector,
Land Acquisition and Rehabilitation (Irrigation),
Jamnagar.
- (2) Executive Engineer,
Und irrigation division,
Jamnagar.

Appearance :

❖ **Ld. Advocate Shri. J.A. Vyas for the Claimants.**

❖ **Ld. A.D.G.P. 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 29th March, 2008 in compensation case No. 11/2006, Under Section 11 (1) of the Act.

1. Present reference cases arising out of the award of L.A.Q. Case No. 11/2006 declared by Special Land Acquisition officer, Deputy Collector, Jamnagar, with regard to the Lands in question of village-Nana Khadba, Ta. Lalpur, 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 below Exh.9, the present reference cases are decided by this common judgment and the parties have lead their evidence in L.R. Case No. 168/2008 as it is treated to be main petition.
2. Notification Under Section 4 of the Act of L.A.Q. Case No. 11/2006 has been issued on dated 10.03.2007 and Notification Under Section 6 was issued on dated 25.06.2007 in L.A.Q. Case No. 11/2006.

Brief facts of the Claimants case are that the lands of the

Claimants situated in village- Nana Khadba, of Taluka- Lalpur, District-Jamnagar were acquired for the purpose of Sasoi-2 Irrigation project and land acquisition officer has awarded the compensation at the rate of Rs. 300/- per Are and passed his award on 29.03.2008, being dissatisfied with the amount of the compensation awarded by the Land Acquisition Officer and Claimants have requested reference Under Section 18 and therefore, these present land references 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 land of the claimant was 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, cumin seeds, Pearl Millet etc, and they were earning Rs. 36,000/- 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 claimant and therefore, he has claimed the amount of compensation at the rate of Rs. 100/- per sq. meter.
4. The opponents have not appeared and not filed their written-statement as their right to file W/S has been closed on dt.02/03/2017. Therefore, no written statement has been filed on behalf of the opponents.

5. The claimants have produced the following oral as well as documentary evidence in support of his case:

ORAL EVIDENCE

Sr. No.	Particulars	Exhibit
1.	Affidavit of Examination-in-Chief Jagabhai Hamirbhai.	15

DOCUMENTARY EVIDENCE

Sr. No.	Particulars	Exhibit
1.	Copy of agenda, meeting held on 14/08/2001 done for government land by Zila Mulyankan Samiti.	16
2.	Copy of monthly valuation patrak, Khetivadi Utpan Bazar Samiti- Jamjodhpur for the year 2003-2005.	17
3.	Original sale receipt of ground-nut sold by Patel Damjibhai Khimjibhai, dt. 24.07.2006.	18
4.	Original sale receipt of ground-nut sold by Patel Damjibhai Khimjibhai, dt. 06.08.2004.	19
5.	Original sale receipt of ground-nut sold by Patel Damjibhai Khimjibhai, dt. 03.07.2006.	20
6.	Original sale receipt of Chilli sold by Patel Damjibhai Khimjibhai, dt. 05.07.2002.	21
7.	Original sale receipt of ground-nut sold by Patel Damjibhai Khimjibhai, dt. 24.06.2001.	22
8.	Original sale receipt of Math (seed) sold by Patel Damjibhai Khimjibhai, on 19.03.2002.	23
9.	Original sale receipt of Sesame sold by Patel Damjibhai Khimjibhai, on 14.03.2001.	24

6. The opponents have produced the following oral evidence in support of their case:

ORAL EVIDENCE

Sr. No.	Particulars	Exhibit
1.	Affidavit of Examination-in-Chief Pravin Chandra Valabhdas Makadiya.	26
2.	Closing pursis.	10

No documentary evidence on behalf of the opponents has been produced, therefore the evidence of the opponents has been closed by this court. on dt. 05/09/2018.

7. Claimant have submitted his written argument at Ex. 28 and no argument advanced on behalf of the opponents as the opponents has not remained present and his right was closed by the court.
8. Considering the pleadings of both the parties following Issue were framed in this reference case at Exh. 6.

-: I S S U E S :-

- 1). Whether the Compensation Awarded by land acquisition officer is inadequate and unreasonable ?
- 2). Whether the applicant is entitled to enhanced Compensation for

the acquired land ? If yes, what amount they are entitled ?

3). Whether the reference are bar by Limitation Act ?

4). What order ?

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

1. Issue No. 1 - In negative;

2. Issue No. 2 - In negative;

3. Issue No. 3 - In negative;

4. Issue No. 4 - As per final order;

-: REASONS :-

ISSUES NO. - 1 and 2: -

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

Present land reference cases has been filed by the claimants being disagreed and dissatisfied by the award passed by the Land Acquisition Officer on 29th March, 2008 in land acquisition case no.

11/06. Land acquisition officer has awarded the amount of compensation at the rate of Rs. 3/- per sq. mtr. for non-irrigated land and Rs. 1/- per sq. mtr. for the vest land the claimants have claimed the amount of Rs. 100/- per sq. mtr. On behalf of the claimants witness Jagabhai Hamirbhai, by filing affidavit of examination-in-chief at Exh. 15. according to him the compensation awarded by the land acquisition officer is not adequate and therefore, they have asked for the compensation at the rate of Rs. 100/- per sq. mtr., according to witness each claimant was able to take different crops in three different seasons. The claimants asserted that they were taking crops of ground-nut, pearl millet, Tuvar, sugarcane, cotton, cumin seeds, etc. and then after in rabi season they were taking crops like Wheat, Corn, Onion, etc. and they were taking 50 to 60 Maunds of crop of ground-nut and from other crops they were earning Rs. 30/- to 40/- thousand in each season. Witness further stated that they were cultivating the land by applying modern technique and they were using his own seeds and other hybrid seeds which they were bought and they were earning Rs. 75,000/- and by deducting the cultivation cost, he was getting Rs. 50,000/- per bigha from the crops. The said witness has cross-examined by the learned A.G.P. wherein, the claimant has admitted that he has not produced any evidence regarding the income he getting from the crops. The claimant denied that, he has got the adequate compensation but, in order to get more compensation he has filed this false reference case. He has also denied that he has received all the notice from the government.

Now, looking to the deposition of the claimant, he has stated

that he was taking crops in three seasons, but he has stated in his deposition para 3, that the compensation awarded for the irrigated-non-irrigated land Rs. 3/- per sq. mtr., therefore, it is proved that claimant has admitted that the land acquired under this reference is non-irrigated land, he has also admitted that he has not produced any evidence regarding the income they were getting from the production of crops as stated by them. The claimants has not produced 7/12 extract relating to their acquired lands, but the claimants have not produced any evidence regarding the purchase of seeds. The claimants have produced receipt of the sale of the crops to the agriculture produce market committee, Jamnagar and produced the receipt issued by Patel Nanaji Bhimji at Exhs. 18 to 24. The claimants have produced extracts from the register of Jamjodhpur marketing yard Exh. 17, indicating as to what were the price of the cotton, cumin-seeds, ground-nut. Wheat etc. at the relevant time, but no witness has been examined by the claimants to prove the said documents Exh. 17 and Exhs 18 to 24. Therefore, in my view the claim of the claimants on yield basis cannot be accepted in absence of any cogent evidence. Therefore, claimants have failed to prove their claim of enhance compensation on yield basis.

11. The claimants have further stated in his deposition that the valuation of land of his village-Mota Khadba survey no. 890 paiki was determined by the valuation committee at the rate of Rs. 25/- per sq. mtr.,. and the village Nana Khadba is adjacent to the village Mota Khadba and therefore, they are entitled to the compensation as per the valuation determined by the valuation committee, it is further

argued that, the valuation determined by the valuation committee, comprising of expert body in the field of the valuation including District Collector, T.P. authority etc., therefore, they are entitled for the amount of compensation as determined by the valuation committee. Therefore, the claimants have relied upon the valuation determined by the valuation committee and the claimants have produced the agenda of the valuation committee for decision of the valuation of the land of different villages at Exh. 16.

12. It is argued on behalf of the claimants that, when the valuation committee determined the value of the land for the purpose of allotment of the land to any citizens or organizations by the Collector can be taken in to consideration. 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.

Reliance has been placed by the claimant on the aforesaid judgment of Hon'ble High Court and also the claimant has relied upon the document produced at Exh. 16, which is the document stating the valuation of villages of Jamnagar district determined by the valuation committee in the said document the value of the land of the village-Mota Kahdba is determined as Rs. 25/- per sq. mtr., and claimant has asked for the compensation of Rs. 25/- per sq. mtr., as determined by the valuation committee in Exh. 16.

Now, looking to the said document Exh. 16, it is mere proposal put-forward by the valuation committee for the determination of market value of concerned villages. The claimants have not lead any evidence in order to prove that the village Nana Khadba is situated adjacent to the village Moto Khadba and have not also made any evidence to prove document Exh. 16, as the value determined in column 9 of the Exh. 16, which is written in hand-writing. It is settled principal of law, mere exhibition of the document is not a conclusive proof, whether the valuation determined by the valuation committee of the land of village-Mota Khadba for the allotment to the telephone department, but whether the said land is actually allotted to the telephone department or any said sale-deed executed by the government for the allotment of said land, no evidence in this regard has been produced by the claimants. Now, looking to the judgment relied by the claimants, in the case of **State of Gujarat through Special Land Acquisition Officer ad Anr. vs. Amaji Mohanji Thakore**, 2010(3) GLH, pg. 447. It is true that Hon'ble High Court of Gujarat has held that, the sale-instance or price at which government has allotted the land came to be taken into consideration by the reference court at the time of assessing the market value for the purpose of awarding compensation.

Hon'ble High Court of Gujarat has held in head note (A)-

Land Acquisition Act, 1984 -S. 23- Principle governing the determination of market value of the lands acquired--When a price is fixed by the Collector for allotment of land to any citizen or organization under the Bombay Land Revenue

Code, 1860 such action for fixation of the price is in exercise of the statutory powers-The valuation made by the valuation Committee of the Government of the nearby land for the purpose of allotment of the land to any citizen by the Collector can be taken into consideration by the Reference Court-In the instant case, the valuation was made by the Valuation Committee for giving opinion to the District Collector in exercise of the Statutory Power-The Valuation Committee is comprising of the expert body in the field of valuation, including the District Collector himself. T. P. Authority etc., -Therefore, there is no reason why the valuation made by the Valuation Committee of the Government for fixation of the price for allotment of the land at the very village by way of sale instance or price fixed by the Government for allotment of a land to an organization should not be taken into consideration.

13. Looking to the facts of the aforesaid judgment of the Hon'ble High Court in the said judgment the fact was that the government has allotted the land to the local authority i.e., taluka group water works for head works of M-2 off take point for supplying water of Narmada Project. In the said judgment the reference Court has relied upon the sale-instances which is pertaining to the allotment of land by government to the local authority i.e., taluka group water works for head works of M-2 off take point for supplying water of Narmada Project and in that case government valuation committee has determined the value of the land. Considering the valuation of the valuation committee the Collector has fixed the price and sale the

land to the particular local authority and in that case the Hon'ble High Court has held that the valuation made by the valuation committee can be taken into consideration, but here in this case whether the allotment of the land by the Collector is actually taken place ? or whether any sale-deed has been executed ? or whether the concerned department i.e., telephone department as stated in Exh. 16 has paid the amount as per the value determined by the valuation committee as mentioned in Exh. 16 ? The claimants has not produced any evidence regarding the fact that the valuation made by the valuation committee as mentioned in Exh. 16, the government has actually allotted the land to the concerned department and the transaction has been taken place in respect of the said land. Therefore, in view of the reasons stated above in my humble view, claimants have not proved the fact of Exh. 16 as relied by him. Therefore, the said document Exh. 16 cannot be relied for the determination or assessment of the market value of the land under reference. Therefore, I am of the opinion that the claimants has miserably failed to establish his claim on yield basis or on the basis of the document at Exh. 16. Therefore, claimants are not entitled for the enhance compensation as prayed by them and also failed to prove that the compensation awarded by the Land Acquisition Officer is inadequate and unreasonable. Therefore, in view of the above discussion, I answer issue no. 1 and 2 in negative.

ISSUES NO. - 3: -

14. In this case, the opponents have raised the dispute of limitation and therefore, this Court is required to decide a question of limitation

as to whether the present reference case is 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.

15. 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.

16. 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.

17. **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.**

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.

18. Now, keeping in mind the principal laid by Hon'ble Supreme Court in the aforesaid judgment the opponents have not remained present and not produced any evidence regarding the service of notice to the claimant Under Section 12 (2) of the Act to the claimants. 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. Therefore, I answer issue No. 3 in negative.

ISSUES NO. - 4: -

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

: ORDER:

1. The present Land reference case is hereby dismissed.
2. No order as to costs.
3. Copy of this judgment be placed in L.R.C. No. 169/08.
4. Decree be drawn accordingly

Pronounced in the Open Court today on 10th December, 2018.

Date: 10/12/2018
Place: Lalpur,

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