

Reference Received On Date: 25-04-2007

Reference Instituted On Date:30-05-2012

Reference Decided on Date : 25-06-2018

Duration Year Months Day

**In the Court of Principal Senior Civil Judge,
At: Dhoraji.**

**L.A.R. MAIN Case No-106/2009
(L.A.R . Group CaseN0.107/09,109/09)**

Exhibit-15

Applicant: 1. Manubha Devubha Jadeja.
At. Bhola, Ta; Dhoraji,
Dist-Rajkot.

2. Kadarkha Sidikha
At. Bhola, Ta; Dhoraji,
Dist-Rajkot.

3. Hiteshbhai Laljibhai
At. Bhola, Ta; Dhoraji,
Dist-Rajkot.

V/S.

Opponent: The State Of Gujarat.

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

Learned Advocate for the Applicant: H.B.Shah,.J.A.Vyas.
Learned A.G.P for the Opponents : K.M.Parekh.

JUDGMENT

1. Being aggrieved, dissatisfied and having feeling of the inadequate compensation awarded to the claimant for the land acquired and award made in view of Section-11 of the Land Acquisition Act by the Collector, the present applicant has preferred to apply for reference under Section-18 of the said Act for the enhancement of the compensation awarded to the applicant.
2. The Court issued a notice to the parties in LAR No.106/09 vide Exh.4,5,6,9, and LAR No.107/09 vide Exh.9 and LAR No.9 of the said reference specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day in view of Section-20 of the said Act. The Ld. Advocate for the applicant as well as Ld. A.G.P for the opponents appeared before the court. The Ld. Advocate J.A.Vyas for the applicant gave consolidate application vide Ex.10 and the court grant that application. Further, Then after the Court has proceeded to hear the reference. The issues have been framed vide exhibit-8. The notices were also served to the applicant side which is produced at exhibit-9.The Applicant also filled his diposition (chief Examination) on oth vide Exh.12 but applicant has not present before the court for cross

examination .Than, the applicant and his advocate have 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 31-3-2018. Then after the Ld. A.G.P for the opponents has submitted the closing pursis of the opponents vide exhibit-14. Then after the matter has been taken for passing award as per section-26 of the Land Acquisition Act.

3. The following issues were framed vide Exhibit-8 which are as under.

Sr. No	Issues
1	Whether the Climant are interested person in the acquired land ?
2	Whether it is proveds that the compensasion awarded by the LandAcquisition Officer is inadequate ?
3	If yes, what additional compensasion should be awarded to the claimant ?
4	What order ?

- 4) The reply of the above issue are as under;

1. Negative
2. Negative
3. Negative
4. As per final order.

Reasons for the decision

- 5) 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).

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.

- 6) 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"*.
- 7) The issue no-1 & 2 have been discussed conjointly since they are interrelated with each other and to avoid repetition of the discussed fact and evidences. 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.*

- 8) Furthermore 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 the Collector is inadequate or disproportionate and the applicant is entitled to more compensation than that of which has been awarded by the 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 v. 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". So in view of aforesaid position of law, it is for the claimant to prove that the award passed by the 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.

- 9) 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.*

- 10) 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.*

(2)

So 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.

- 11) So in view of the aforesaid discussion and reasons, the applicant cannot be said to have proved that the award passed by the Collector is inadequate or disproportionate 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 disproportionate. Conversely the opponents have also not led any evidence to prove that there exist no cause of action remained in favor

of the applicant against opponents. So it transpires 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 & 2 are in negative.

- 9) So in view of the aforesaid reasons and discussion, I hereby pass following final order on issue no-3 in the interest of justice.

:-: FINAL ORDER :-:

1. The present Group reference applications are 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. There shall be no order as to cost.

Pronounced and signed today in an open court on June, 15, 2018.

Date : 15-06-2018

Place: Dhoraji.

(Bhavinkumar Jitendrarai Pandya)

Principal Senior Civil Judge,
Dhoraji.

Judge Code: GJ- 00554.