

Received on :

Registered on :

Decided on :

Duration :

Year Month Days

Exhibit :

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, DISTRICT MAHISAGAR AT LUNAWADA**

L.A.R. No. 503/2017

OLD NO. 348/2006

{LAR No. 504/2017 (old no. 349/2006) are consolidated with 503/2017}

CLAIMANT :

LAR NO. 503/2017

1. Somabhai Kesarabhai

LAR No. 504/2017

1. Virabhai Kalabhai
2. Jorabhai Kalabhai

All claimants are reside at Gundela,

Taluka- Balasinor, Dist. Kheda (Now Mahisagar)

VERSUS

OPPONENTS :

1. The Land Acquisition/ rehabilitation Officer, Dist. Panchmahal, Godhra.

2. The Executive Engineer, Vatrak Yojana Jaher Vibhag, Modasa.
3. The State of Gujarat, Gandhinagar.

Land Reference U/s.18 Of The Land Acquisition Act

 Learned Advocate for the Claimants : Shri D.M.Patel
 Learned A.G.P. for the Opponents : Shri R. M. Gohil.

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

1. Main Facts of the LAR :

The present reference has arisen out of the award passed by the Land Acquisition Officer in award No. 39/2004 on dated 25/02/2005. The brief facts that has given rise to the present land reference are as under :

The present land acquisition reference has been preferred by the claimant u/s.18 of the Land Acquisition Act, 1894 (herein after referred to as "the Act" in short), being aggrieved & dissatisfied with the award passed by the Land Acquisition Officer, Godhra in award No. 39/2004 on dated 25/02/2005. The lands under this reference are situated at village Gundela, Ta. Balasinor, Dist. Kheda, which have been acquired for the purpose of *Sujalam Suflam spreading Canal*. After due verification, the same were sanctioned by the State Government and were sent to the Land Acquisition Officer, Godhra for acquisition proceedings.

Thereafter, the Land Acquisition Officer started acquisition proceedings and issued a Notification U/S. 4 of the Act in the Government Gazette on 28/10/2004, thereafter, in the newspapers namely "Lok Satta" on dt. 17/10/2004 and "Western times" on dt. 19/10/2004. The notification U/S 4 is lastly published on dt. 21/10/2004.

Further, the Notification U/S. 6 of the act has been issued in the Government Gazette on 16/12/2004 and in the newspapers namely "Gujarat Samachar" on 14-12-2004 & "Vadodara Samachar" on dt. 14-12-2004.

Thereafter, the notices were served to the interested parties and they were also given opportunity of being heard. Ultimately, the Land Acquisition Officer was pleased to deliver the award No. 39/2004 on 25/02/2005 wherein, the claimants were awarded Rs. 50,000/- per hectare for Jarayat agricultural land and Rs.100/- per hectare for waste land as the market value of the acquired lands, along-with 30% solatium and benefit of increase of 12% on compensation amount.

The details of the acquired land for this reference is as under:

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Village Debhari, Tal.Virpur, Dist. Kheda

Sr.	L.A.R.	Survey	Area of land acquired
No.	No.	No.	(Hec.-Are.-Sq. Mtr.)
1.	503/2017	35 paiki	00-13-40
	504/2017	35 paiki	00-09-75

.....

2. Facts of Applicant :

Being aggrieved & dissatisfied with the said award, the claimant has preferred this land acquisition reference before the Court for the enhancement of compensation and prayed for compensation at the rate of Rs. 350/- per Sq. Mtr.

This reference was filed before the Hon'ble District Court, Kheda at Nadiad which was transferred to this Court for its disposal in accordance with law.

It is alleged by the claimant that the land in question was highly fertile land and situated at village Gundela, Taluka Balasinor, which is nearby developed industrial area and highway road. The said land was fertile and the claimants used to take three crops in a year. It is the submission of the claimant that, surrounding his land, there were situated non-agricultural lands having constructions on it. Moreover, there are schools, panchayat house, post, S.T. Bus, tobacco yard, saw mill, small scale industries etc. in their village and the village is well facilitated with electricity, telephone and water supply. It is the submission of the claimant the Land Acquisition Officer has not taken into consideration all these aspects, while determining the market value of the acquired land, he has neither taken into consideration the fertility of the land, nor he has considered the future potentiality of the said land, and therefore, the Ld. Land Acquisition Officer has totally erred in arriving at the just and appropriate market value of the lands in question. Under these circumstances, the claimant, by filing the

On being served with the notices, the Ld. D.G.P. has appeared on behalf of the opponents and submitted written objections vide Exh. 7 in the present land reference, wherein it is contended that the award declared by the Land Acquisition Officer is proper & reasonable and as per the market value of the lands in question. It is contended by the opponents that the notices were served upon the interested parties, but the claimant has neither raised any objection u/sec. 9 nor he has furnished any evidence. Therefore, the submission of the claimant is false and not acceptable. Further, it is contended by the opponents that the claimant has failed to furnish any evidence pertaining to the fertility and agricultural production from his land. It is also contended by the opponents that the Land Acquisition Officer has arrived at the just and appropriate market rate, after taking into consideration the sale instances. Therefore, it is contended by the opponents that the claimant is neither entitled to any additional amount of compensation, nor solatium and interest @ 9% and therefore, the reference, filed by the claimant are required to be dismissed.

Exh. 14	Deposition on oath in form of Affidavit of Jorabhai Kalabhai
Exh. 22	village form No. 7/12 .
Exh. 04	Copy of award no. 39/2004 dt. 25/02/2005.

Exh. 15 Copy of the judgment delivered in L.A.R. No. 258/2005.

Exh. 04 Declaration Pursis

Exh. 16 Closing Pursis.

5. Evidence of Opponents :

The opponents have not been produce any evidence and filed closing pursis vide Exh. 17.

6. Arguments of Both sides :

L.A. For the applicant filed written argument vide Exh. 18 and L.A. For the opponents filed written argument vide Exh. 19. I have carefully gone through the rival arguments, submitted by both the sides.

7. Main Points of Issues :

To determine the present reference, following issues has been framed at Exh. 8 which are as under :

I S S U E S

1. Whether the claimants prove that compensation awarded is inadequate?
2. If yes, what additional compensation the claimants are entitled to?
3. Whether the reference cases filed within limitation provided U/s. 18 of the Act?
4. What order and award?

8. Finding of the Courts :

My findings for the above issues are as under :

1. In the affirmative.

2. Additional Compensation at the rate of Rs. 304/- per sq.mts.
3. In the affirmative.
4. As per the final order.

9. Genral Principles of the Awards :

Now, the cardinal principle which the Court should keep in mind is what the willing purchaser would like to pay, having regard to condition, distance, situation, area, size, facilities, future development possibilities, multipurpose use, proximity, convenience, net return of investment, etc. To access the adequate compensation, market value of the property is to be ascertained and for that, sale instance of the surrounding properties should be considered. If that best method is not possible to be restored, so as to fix the valuation which the willing purchaser would pay to the willing seller, having due regards to the condition, advantages, potential probabilities, the next method in the alternative will be to capitalize on the basis of average net income and reasonable return on the investment and lastly to rely upon the expert evidence. The person losing the property against his desire should not feel that he gets a part a rupee, but the rupee in full and the falling value of rupee should also

be borne in mind. The possible enhancement of value in future, considering the peculiar location and use of the said property should be borne in mind and additional value should be assessed.

10. Best rule of Awards in this References :

The acquired lands of the same or nearby village can be taken comparable instance if they are same fertility and potentiality. Moreover, the burden to prove that the inferior quality and potentiality of the lands lies upon the opponents.

The opponents have neither produced any documentary evidence nor examined any witness to prove the land of the present references is of inferior quality to that of the referred case and under this circumstances, the inference drawn by the opponents that compensation passed in reference of other land can not be sustained and in view of the above facts, I am of the opinion that the judgment of LAR No. 258/2005 can be taken as comparable instance.

11. Reasons of the Finding : Issue No.1 and 2 :

All this issues are inter-related, hence to avoid any ambiguity and repetition of facts, they are discussed together herein as under :

Now, on perusal of the deposition of the claimant, Jorabhai Kalabhai Baria, he has stated on oath that he is the owner of the agricultural land, situated at village Khempur, Tal. Lunawada which has been acquired for the purpose of constructing *Sujalam Suflam spreading canal*. It is stated by the claimant that his land is situated nearby developed industrial area and connected with highway road. His village Gundela, is facilitated with electricity, water supply, schools, post, S.T. Stand, telephone facilities, small scale industries, Co. Op. society and all other facilities. The claimant used the land to reap three crops in a year. He has produced the copy of the village form No. 7/12 of the said land at Exh. 22. Further, it is submitted by the claimant that the other land of the village Khempur is near from his village had been acquired earlier for the purpose *Sujalam Suflam spreading canal*. In the said matter compensation was granted by award. Pursuant to the said acquisition the aggrieved land owners had preferred L.A.R. No. 258/2005, which were tried by the Additional Senior Civil Judge, Lunawada. In the said judgment, the Hon'ble Court was pleased to award additional compensation at the rate of Rs. 304/- per Sq. Mtr., the copy of the said judgment has been furnished at Exh. 15. It is

stated by the present claimant that both the lands were equally fertile, developed and situated nearby each other in the near Taluka. Under these circumstances, he has prayed to award additional compensation at the rate of Rs. 350/- per Sq. Mtr. It is also submitted by him that, as per the norms set by the Hon'ble High Court in various judgments, he is also entitled to get interest and solatium as per Sec.23 (1) (a), 23 (2), 28(2) of the Act.

12. As per the record, the land of village Khempur had been acquired by the government and the aggrieved land owners had preferred L.A.R. No.258/2005 for enhancement of the amount of compensation. It seems that the land of both are located nearby and therefore, it can be considered as comparable instance.

However, it is the argument of the Ld. D.G.P. that the land in L.A.R. No.258/2005 is of different land and therefore, reliance cannot be placed upon the judgment passed in respect of land of another land of village as lands of different in same village cannot be of the same quality and fertility. As against this argument of the Ld. D.G.P., the Ld. Advocate for the claimants has invited the attention of this Court to the case of **Special Land Acquisition Officer, V/s. Ramanbhai Haribhai and Another reported in**

2002 (4) G.L.R. Pg. 3166. I have gone through the said authority and found that it is held by the Hon'ble High Court that distance between two villages cannot by itself derogate the claim of the claimants unless evidence is led on that behalf to show that quality and potentiality of such land is inferior.

In the said matter **the Hon'ble High Court has relied upon the judgment reported in 2001 AIR (SCW) 2417 Thakarsibhai Devjibhai & Ors. V/s. Executive Engineer, Gujarat & Anr.** The principles laid down in the above authority is very much applicable to the case on hand and as per the said judgment it is a burden upon the opponents to prove that the land of same village is of inferior quality and having less potential value than that of village which is situated nearby and had been acquired earlier.

On perusal of the records on hand it transpires that the Ld. D.G.P. for the opponents has made mere statement that as the villages are different it should not be taken for granted that both the lands possess same fertility and potential value but, he has failed to furnish cogent evidence to prove the same. Under these circumstances this Court is of the opinion that the opponents have

failed in discharging their burden to prove that both the land does not possess same fertility and potentiality. In view of the above discussion it is quite evident that the award passed by the Land Acquisition Officer is highly inadequate and unjust.

13. Now, on perusal of the referred judgment of L.A.R. No. 258/2005, it transpires that in the said judgment, taking into consideration all the evidences pertaining to the fertility, locality and future adaptability of the land, it was held by the Ld. Judge that the compensation @ Rs. 5/- per sq. mtr. awarded by the Land Acquisition Officer was highly unjust and inadequate, hence additional compensation @ Rs. 304/- per sq. mtr. had been awarded by the Learned Judge. In view of the above judgment and taking into consideration that both the lands are situated nearby villages, hence of the same fertility, locality and future adaptability, I am of the opinion that the said judgment can definitely be taken as a comparable instance and the present claimant are entitled to get compensation accordingly.

In present case compensation at the rate of Rs. 5.00 paisa per sq. mtr. as awarded by the Land Acquisition Officer, is highly unjust and inadequate. However, in the present reference,

the claimant has claimed for additional compensation at the rate of Rs. 350/- per Sq. Mtr. It is deposed by the claimant that he has taken three crops in a year, but, he has failed to furnish any concrete evidence to prove such his income from the said land. Moreover, the Ld. D.G.P. for the opponents has cross-examined the claimant, wherein it has been stated by the claimant that he has not produced copy of sale-deeds or any other evidence in support of his claim and under these circumstances. However, in view of the judgment of L.A.R. No. 258/2005, the present claimant is entitled to get additional compensation accordingly.

14. In the referred case of L.A.R. No. 258/2005, the notice u/s. 4 of the Act was published on 04/11/2004, whereas in the present case, the notice u/s. 4 has been published on 28/10/2004, thus there is a difference of only few days between the two notices, hence the present claimant is entitled to get price at Rs. 309/- per sqm and as the Acquisition officer had already awarded rs. 5 per square meter and therefore, the claimant is entitled to get $309 - 5 = 304$ /- per square meter.

15. The Hon'ble Supreme Court in the case of ***Sunder vs. Union of India*** reported in **2001 AIR (SCW) 3692** has been held

that, solatium paid on account of compulsory acquisition under Sec. 23 (2) forms part of the compensation awarded. State is liable to pay interest @ 9% on solatium. It is also held in the said judgment that Sec.34 enjoins on the Collector to pay interest at two tier rates. For the first stage, from the date of taking possession until disbursement of the awarded amount the rate is 9% per annum. If such disbursement is delayed beyond one year the rate of interest would escalate to 15% per annum from the date of expiry of said period of one year. This judgment is fully applicable to the case at hand.

16. Thus, in view of the above discussion and judgment delivered in L.A.R. No. 258/2005, this court comes to the conclusion that the award passed by the Land Acquisition Officer is highly inadequate and unjust, he has erred in arriving at just and appropriate market value of the acquired lands, and therefore, I answer the Issue No.1 and 2 as Affirmative, and as discussed above, I do opine that the present claimant is entitled to additional compensation at the rate of Rs. 300/- per Sq. Mtr. for his land acquired along with solatium and interest thereupon as per sec 23(1-A), 23(2) and 28(2) of the said Act.

17. Issue no.3 :-

Now, looking to the record, the award no. 14/2004 was passed on 25/02/2005 and the present references were filed before the Land Acquisition Officer on 24/03/2005.

As per the Sec.18 of the Act;

(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;

Taking in to consideration this aspect, the claimants have filed their respective references within limitation. Therefore, these references are not barred by the time and all these reference cases filed within limitation provided U/s. 18 of the Act. Therefore, my answer to the issue no.3 is in the affirmative.

18. Issue no.4 :-

Hence, I pass the following final order in the interest of larger justice.

:: ORDER ::

1. The present Land Acquisition Reference Case is here by partly allowed.
2. The claimants are entitled to get Rs. 304/- per Sq. Mtr. as additional compensation.
3. The claimants are also entitled for an additional compensation at the rate of 12% p.a. u/s. 23 (1-A) of

the Act and 30% solatium u/s. 23 (2) of the Act with interest at the rate of 9% p.a. from the date of taking over the possession till one year and thereafter, at the rate of 15% p.a. till its realization of the amount payable under Sect. 28 (2) of the Act.

4. The Opponents have to bear their own costs as well as that of the claimant.
5. Award to be drawn accordingly.

Pronounced in the open Court, today, on this 18th day of September, 2017.

Date : 18-09-2017

Place : Lunawada.

(Sandeep Manharkunar Christy)

Principal Senior Civil Judge,

Dist. Mahisagar, Lunawada.

(Code : GJ 00929)