

r6

C.A.No. 8187 OF 2001

ITEM No.115

Court No.7

SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.8187/2001

VIRENDRAPAL SINGH & ANR.

Appellant (s)

VERSUS

EXE. ENG. EXPRESS HIGHWAY DIVN. NO.2 & ANR.

Respondent (s)

(WITH OFFICE REPORT)

Date : 07/10/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)Mr. R.P. Bhatt, Sr. Adv.  
Mr. Anip Sachthey, Adv.  
Mr. Shrinivas R. Khalap, Adv.  
Mr. E. Venu Kumar, Adv.

For Respondent (s)Ms. Hemantika Wahi, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard parties for one hour.

The appeal is dismissed in terms of the signed order. There will be no order as to costs.

(K.K. Chawla)

Court Master

(Jasbir Singh)

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8187 OF 2001

VIRENDRAPAL SINGH & ANR.

Appellant (s)

VERSUS

EXE. ENG. EXPRESS HIGHWAY DIVN. NO.2 & ANR.

Respondent (s)

O R D E R

This is an appeal against the judgment of the High Court dated 18th September, 1998. Briefly stated the facts are as follows:

By a Notification under Section 4(1) of the Land Acquisition Act, 1894 issued on 29th March, 1988, the appellants' lands were acquired. By the same notification a large number of other lands were also acquired. By an award dated 28th September, 1989 in respect of irrigated lands a sum of Rs.4.50 per sq. mt. was given and in respect of non-irrigated lands, a sum of Rs.4.10/- was given.

The appellants filed a reference under Section 18 for enhancement of the compensation. The Reference Court by its order dated 29th November, 1996 fixed market value at Rs.20,000/- per big ha. It may be mentioned that before the Reference Court reliance was placed on earlier awards one of which was under notification of dated 8th March, 1979. The other awards were under the same notification of 29th March, 1988. The Reference Court did not accept the award passed in respect of the acquisition under Notification dated 8th March, 1979 on the basis that that acquisition was of developed land for the Gujarat Housing Board whereas the present lands were undeveloped lands. The Reference Court also did not accept the other awards after giving a categorical finding that the lands were not similarly situated.

The appeal filed before the High Court has been dismissed by the impugned judgment. Before the High Court also reliance was sought to be placed on the earlier awards. The High Court did not accept those awards on the following basis:

"It is indisputable that other owners of the agricultural lands in the same area whose lands have been acquired under the same Notification for the same public purpose have been awarded compensation at the rate of Rs.32.20 PS. Per Sq. Mt. of irrigated a land. However, it should be noted that those agricultural lands were being used exclusively for agricultural purposes and three crops were raised on the said lands. The said land owners were also growing tobacco on their lands. The said land owners, therefore, had made a demand for compensation on the yield method and considering the annual yield, compensation was determined. In the present case, the appellants have not claimed compensation on the yield basis and even Mr. Amin was emphatically argued that the appellants had not claimed compensation on the yield basis. In the circumstances, the compensation determined on the basis of the yield method cannot be ipso facto awarded to the present appellants also. Since they had claimed compensation on the basis of the market value, the compensation was required to be determined accordingly. In our view, therefore, the Reference Court was right in not relying upon the judgments at Exs. 20 and 21, under which the compensation was determined on the yield basis. While considering the claim of the appellants on the basis of the Award made in respect of the lands acquired for the purpose of the Gujarat Housing Board, the Reference Court has observed that the lands acquired for the purpose of Gujarat Housing Board were situated on Nadiad - Baroda Highway near Nadiad town and the area is best developed locality. While the acquired lands are situated away from Nadiad town and that too on Nadiad - Dakor Road, which is an under-developed area. Considering these distinctive features, we are of the view that the Reference Court was right in not awarding the same price to the appellants as the one given to the owners of the lands acquired for the purpose of the Gujarat Housing Board. However, since the acquired lands are included in Nadiad Town Planning Scheme, considering the potential of the development of the said lands, the Reference Court has awarded Rs.20,000/- per vigha as against Rs.10,570/- per vigha offered by the Land Acquisition Officer. Mr. Amin has failed to show any evidence from the record which would even prima facie satisfy us that the market price of the acquired lands is higher than the one determined by the Reference Court."

It is submitted that since the lands covered by the other awards and those lands are similarly situated and thus the same rate as given in those award should also be granted to the appellants. We are unable to accept this submission. There is a categorical finding by the Reference Court that these lands are not similarly situated. The memo of appeal to the High Court is not before us. However, from the impugned judgment of the High Court, it is clear that it was not even argued that the finding of the Reference Court, that the lands were not similarly situated, is not correct. From the impugned judgment we find no submission made that the lands are similarly situated. Further, the High Court has itself given reasons why those awards cannot be accepted. In the Special Leave Petition there is no ground that that finding is not correct.

Once it is held that the lands are not similarly situated and there is no challenge to that finding, it is not open to orally submit that the lands are similarly situated. We are thus unable to accept the submission that compensation as per those awards should also be given to the appellants.

No other ground was urged before us. In this view of the matter, we dismiss this appeal. There will be no order as to costs.

.....J.  
(S.N. Variava)

.....J.  
(H.K. Sema)  
New Delhi;  
October 07, 2003.