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C.A.No. 8125-8129 OF 2001

ITEM No.109

Court No.8

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 Nos.8125-8129 of 2001

ASHOK KUMAR JAYANTILAL & ORS.

Appellant (s)

VERSUS

GUJARAT INDUSTRIAL DEV. CORPN. & ANR.

Respondent (s)

(With office report)

Date : 11/02/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)Mr. T.L.V. Iyer, Sr. Adv.
Mr. Vijay Kumar, Adv.
Mr. Atul Sharma, Adv.
Mr. Vishwajit Singh,Adv.

For Respondent (s)Mr. Anip Sachthey, Adv.
Mr. Shrinivas R. Khalap, Adv.
Mr. E. Venu Kumar, Adv.
Mr. Harshad V. Hameed, Adv.

Ms. Hemantika Wahi, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard parties for half an hour.

The Appeals stand disposed of in terms of the signed order. No order as to costs.

(K.K. Chawla)

Court Master

(S. Malkani)

Assistant Registrar

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8125-8129 OF 2001

ASHOK KUMAR JAYANTILAL & ORS.APPELLANT (s)

VERSUS

GUJARAT INDUSTRIAL DEV. CORPN. & ANR.

RESPONDENT (s)

O R D E R

These appeals are against the judgment of the High Court dated 10th May, 2000.

Briefly stated the facts are as follows:-

The Lands belonging to the Appellants were acquired pursuant to Section 4(i) Notification issued on 20th August, 1981. The Land Acquisition Officer awarded a sum of Rs.5.50/- to Rs.6.00/- per sq. meter. The Appellants claimed references under Section 18. The Reference Court increased compensation to Rs.31.25 per sq. meter. The Reference Court so fixed the market value on the basis that the Government had sold some kharaba (waste) lands to the Respondents at the rate of Rs.12.50 per sq. meter in the year 1979. The Reference Court noted that the witnesses of the Respondents themselves admitted that the value of agricultural lands would be 4 to 5 times more than the value of the waste lands. The Reference Court, however, without assigning any tangible reason increased that value two and a half times only and accordingly fixed Rs.31.25.

The Respondents filed an Appeal to the High Court. Cross objections were filed by the Appellants. The High Court concluded that the Reference Court was wrong in taking the value of kharaba land into account. The High Court held that it would be more appropriate to fix market value on the basis of an earlier acquisition which had taken place in the year 1972. That acquisition was at the rate of Rs.30/- per sq. meter. The High Court added 10% per year as appreciation and arrived at the rate of Rs.57/-. Then without assigning any reasons the High Court deducted 50% and fixed the compensation at Rs.29/- per sq. meter. In our view, both the Reference Court and the High Court were wrong in discarding evidence and making arbitrary deductions whilst fixing the market value. In a case like this market value had to be fixed on the basis of comparable lands. The High Court does not say so. However, one must presume that the High Court deducted 50% because it did not consider the acquired land as being similar to the land acquired in 1972. In that case the High Court could not have used the earlier acquisition for fixing market value of this land. If the earlier acquired land was similar then the High Court could not arbitrarily deduct 50%. In that case the market value would be Rs.30 per sq. meter i.e. the value fixed in 1972. Giving 10% increase for 9 years (as stated by the High Court), the value would come to Rs.57/- per sq. meter. Of course, this being a large area of land, there would have to be deductions for development costs. Normally on this count deduction of 33% is allowed on such basis after deducting development charges it would come to Rs.38.19. However, in our view, the Reference Court was right in taking the sale to the Respondents. That land is adjacent to the acquired land. The Respondents paid Rs.12.50 per sq. meter. That sale being of 1979, an increase by 10% for two years would have to be given. Thus the price would be Rs.15 per sq. meter. As per the evidence of the Respondents' own witnesses value of agricultural land is four times the price of kharaba land i.e. the price would be Rs.60/- per sq. meter. To this a deduction of 33% towards development costs has to be made. Thus, the market value would be Rs.40.20 p.

We, accordingly, set aside the impugned judgment and fix the value at Rs.4.20 p. per sq. meter.

The other point urged by the Appellants is that they are entitled to interest on solatium and the amount under Section 23 (1-A). This question is covered by a decision rendered by the Constitution Bench of this Court in *Sunder v. Union of India* reported in (2001) 7 SCC 201. In view thereof, it is held that the Appellants would be entitled to interest on solatium and the amount under Section 23(1-A).

The Appeals stand disposed of accordingly. No order as to costs.

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

.....J.
(H.K. Sema)
New Delhi;
February 11, 2004.