

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9061-9110 OF 2011

ARVINDBHAI BHAGABHAI PATEL & ANR. ETC. ... Appellants

VERSUS

THE STATE OF GUJARAT & ANR. ETC. ... Respondents

WITH

CIVIL APPEAL NOS. 5726-5728 OF 2012

CIVIL APPEAL NOS. 5724-5725 OF 2012

CIVIL APPEAL NOS. 9116-9135 OF 2011

CIVIL APPEAL NOS. 9111-9115 OF 2011

CIVIL APPEAL NOS. 3173-3188 OF 2012

CIVIL APPEAL NOS. 3190-3198 OF 2012

SPECIAL LEAVE PETITION (CIVIL) NOS. 3191-3236 OF 2015

SPECIAL LEAVE PETITION (CIVIL) NOS. 22286-22293 OF 2015

SPECIAL LEAVE PETITION (CIVIL) NO. 20162 OF 2015

SPECIAL LEAVE PETITION (CIVIL) NOS. 26238-26255 OF 2016

O R D E R

CIVIL APPEAL NOS. 9061-9110 OF 2011

We have heard learned counsel for the parties.

Land acquisition proceedings were initiated by issuance of notification under Section 4 of the Land Acquisition Act, 1984 (hereinafter referred to as 'Act') on 26.08.2004,

followed by declaration dated 12.01.2005 under Section 6 of the Act. The Land Acquisition Officer passed Award under Section 11 of the Act, determining the compensation at the rate of Rs.25 per square meter. The land owners sought reference under Section 18 of the Act. They claimed compensation at the rate of Rs.800 per square meter. They relied upon the report of the District Valuation Committee, Gandhinagar, for the Village Mansa fixing the rate at Rs.815 per square meter. They also relied upon the Award in the case of land acquisition for which notification under Section 4 had been issued on 14.10.1999; compensation was determined at the rate of Rs.431 per square meter, for the land acquired for the purpose of a drill site to be set up by Oil and Natural Gas Corporation (ONGC), at a distance of 2 km in the same village. Reliance was also placed by the land owners on the valuation report by the Government Registered Valuer determining the rate at Rs.700 per square meter for the land, and at Rs.800 per square meter for the land with fruit bearing trees. Land owners, as well as other parties, adduced the evidence before the Reference Court.

The Reference Court, relying upon the Award passed in the case of land acquisition for the purpose of ONGC, awarded compensation giving 10 per cent increase, w.e.f. 1999, till the date of notification issued in this case on 26.08.2004, and worked out the compensation at the rate of Rs.646.50. However, it reduced the same to Rs.585. As

Rs.25 had been awarded by Land Acquisition Collector, that amount too was reduced. The final amount payable, over and above the determination made by the Land Acquisition Collector, was fixed at Rs.560 per square meter. Aggrieved thereby, the State Government preferred appeals in the High Court. The appeals have been allowed in part. The High Court has relied upon the Award with respect to village Sargasan in which, the land had been acquired by issuance of notification under Section 4 in the year 1993. The value was determined in the Award at the rate of Rs.231 per square meter. The High Court has granted a 10 per cent flat increase for 11 years to determine the compensation in the instant case, and worked out the figure at Rs.485. Applying 30 per cent cut, the High Court determined the compensation at Rs.339. 10 per cent addition has been made to work out the figure at Rs.373. From the amount of land at Rs.373, Rs. 25 has been deducted; as such, the figure has been worked out at Rs.348 per square meter. Hence, the land owners are in appeal.

Learned senior counsel appearing on behalf of the appellants urged that no application had been filed, either by the State Government or the Land Acquisition Officer, to take on record the Award passed with respect to Village Sargasan in relation to notification issued in the year 1993. The Award that was passed in the year 1999, in the close proximity of time, with respect to the land in the same village in question, had been rightly relied upon by

the Reference Court; it could not have been ignored. Thus, the compensation determined by the Reference Court was appropriate. No case for its deduction had been made out.

Learned counsel appearing for the State submitted that land acquisition made in the year 1999, for the purpose of ONGC, was for a small piece of land of approximately 2000 square meters, and it was for a drill site. The land could not be said to be comparable as such. The compensation determined at the rate of Rs.431 in October, 1999, for the said site, could not have, thus, formed the basis. Passing of the Award in the case of Village Sargasan was not disputed, and the same has been rightly taken into consideration by the High Court for reducing the compensation, and that no case for its enhancement is made out.

In our opinion, in the absence of comparative sale exemplar evidence, the best evidence, in this case, was the Award in the case of ONGC of the same village. That Award too was based upon the acquisitions that had been made in the same village. The price determined by the High Court on the basis of Award passed in the year 1993 was not in close proximity of time. The village was at distance from Mansa. The distance from Gandinagar was not of much consequence in the instant case. As to what was the development in the particular village, in the particular area, was required to have been taken into consideration, and also, as to what price prevailed as per the evidence of Award/judgment that

had been placed on record. Obviously, some cut was required to have been applied, as the prior acquisition had been of small piece of land, i.e., 2000 square meters, made in the year 1999, for the purposes of drill site established by ONGC.

In our opinion, in the absence of an application having been filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908, it was not permissible for the High Court to take into consideration the Award that had been passed with respect to village Sargasan, as held by this Court in '*The Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah & Ors.*' [1976 (4) SCC 9]. This Court had observed, that previous judgment was not inter-parties, and that the opposite party had not been given an opportunity by the High Court to show that land was different. The decision was held to be against the provisions of the Evidence Act, which regulate admissibility of all evidence, including judgments. Such judgments are in *personam*. This Court had observed:

"26. It is apparent that Section 43 enacts that judgments other than those falling under Sections 40 to 42 are irrelevant unless they fall under some other provision of the Evidence Act; and, even if they do fall under any such other provision, all that is relevant, under Section 43 of the Evidence Act, is "the existence" of such judgment, order, or decree provided it "is a fact in issue, or is relevant under some other provision of this Act". An obvious instance of such other provision is a judgment falling under Section 13 of the Evidence Act. The illustration to Section 13 of the Evidence Act indicates the kind of facts on which the existence of judgments may be relevant.

27. In *Special Land Acquisition Officer, Bombay v. Lakhamsi Ghelabhai* AIR 1960 Bom 78, Shelat, J. held that judgments not inter partes, relating to land acquired are not admissible merely because the land dealt with in the judgment was situated near the land of which the value is to be determined. It was held there that such judgments would fall neither under Section 11 nor under Section 13 of the Evidence Act. Questions relating to value of particular pieces of land depend upon the evidence in the particular case in which those facts are proved. They embody findings or opinions relating to facts in issue and investigated in different cases. *The existence of a judgment would not prove the value of some piece of land not dealt with at all in the judgment admitted in evidence. Even slight differences in situation can, sometimes, cause considerable differences in value. We do not think it necessary to take so restrictive a view of the provisions of Sections 11 and 13 of the Evidence Act as to exclude such judgments altogether from evidence even when good grounds are made out for their admission.* In *Khaja Fizuddin v. State of Andhra Pradesh* (C.A. No. 176 of 1962, decided on April 10, 1963), a Bench of three Judges of this Court held such judgments to be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date in a case.

28. The Karnataka High Court had, however, not complied with provisions of Order 41 Rule 27 of the CPC which require that an appellate court should be satisfied that the additional evidence is required to enable it either to pronounce judgment or for any other substantial cause. It had recorded no reasons to show that it had considered the requirements of Rule 27 Order 41 of the CPC. We are of opinion that the High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence.

29. The result is that we allow these appeals and set aside the judgment and order of the Karnataka High Court and direct it to decide the cases afresh on evidence on record, so as to determine the market value of the land acquired on the date of the notification under Section 16 of the Bangalore Act. It will also decide the question, after affording parties opportunities to lead necessary evidence, whether the judgment, sought to be offered as

additional evidence, could be admitted.

(Emphasis supplied)

This Court has laid down that judgment/ Award can be received in evidence only after affording an opportunity of rebuttal to the opposite party by way of adducing evidence. At the stage of appeal, if Award/judgment has to be read in evidence, an application has to be filed under Order XLI Rule 27 of the Act to take additional evidence on record, and if allowed, opportunity to lead evidence in rebuttal has to be afforded. Thus, in the present case, the Award that had been passed with respect to the 1993 acquisition, could not have been taken into consideration by the High Court.

In *Karan Singh & Ors. v. Union of India* [1997 (8) SCC 186], this Court has held, that evidence has to be adduced, to show similarity of the land in question to the one covered by previous judgment/Award, before the same is relied upon. This Court has laid down in *Karan Singh's* case (supra) as follows:

"8. Learned counsel for the appellants then urged that the High Court erroneously discarded Ext. A-11 which was an award in respect of a land at Village Jhilmil Tahirpur on the ground that it was not a previous judgment of the Court. The land comprised in the award was acquired under notification issued under Section 4 of the Act on 27-7-1981. By the said award, the Court awarded compensation @ Rs 625 per sq. yd. It has earlier been seen that in the present case the notification issued under Section 4 of the Act was earlier in point of time than the notification issued for acquisition of land comprised in Ext. A-11. There is no quarrel with the proposition that *judgments of courts in land acquisition cases or awards given by the Land Acquisition Officers can be relied upon as a good piece of evidence for determining the market*

value of the land acquired under certain circumstances. One of the circumstances being that such an award or judgment of the court of law must be a previous judgment. In the case of *Pal Singh v. Union Territory of Chandigarh* (1992) 4 SCC 400, it was observed thus: (SCC pp. 402-03, para 5)

"But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land."

Following this decision, we hold that it is only the previous judgment of a court or an award which can be made the basis for assessment of the market value of the acquired land subject to party relying on such judgment to adduce evidence for showing that due regard being given to all attendant facts it could form the basis for fixing the market value of acquired land." (emphasis supplied)

This Court has also reiterated in the *Special Land Acquisition Officer, Mysore Urban Development Authority v. Sakamma* [2010 (14) SCC 503], that in the absence of evidence as to comparable land, Award/judgment in another case cannot be accepted.

That being the position of law, in our opinion, the High Court has wrongly taken into consideration the Award passed in the case of the village Sargasan. Even if it were to be taken into consideration, the same could not have been formed the basis by the High Court for determining the compensation, as the Award, with respect to the same village, in closer proximity of time, was available in the

instant case. It was not safe to rely upon the Award with respect to a different village, that too in which, acquisition had been made 11 years before. Even if this Award is taken into consideration, reliance on the same could not be said to be permissible and in accordance with law as other better evidence was on record.

Coming to the question of determination of compensation made by the Reference Court, by relying on the Award, passed in the case of ONGC, in which, acquisition had been made in October, 1999, for a small area, and compensation had been determined at the rate of Rs.431 per square meter. In the absence of any other evidence, we take the same into consideration for determining the compensation. However, we propose to make certain deductions. The valuation worked out by the Reference Court, by adding 10 per cent per annum, comes to the figure of Rs.646.50 per square meter. We have to deduct approximately 24-25 per cent of the compensation towards development and smallness. The area that had been acquired for the purposes of ONGC was small; but, considering the potentiality of land, we make this slightly lesser deduction; as deduction even up to 60 per cent is permissible. This deduction is made in the peculiar facts of the case, and considering the development that has taken place around that place. Thus, the compensation had been worked out at Rs.646.50 per square meter, deducting 24/25 per cent from the same, the value comes at rate of Rs.491 per square meter. We award compensation at the rate of

Rs.491 per square meter along with statutory benefits, the compensation that remains undisbursed be paid within a period of three months from today.

The appeals are allowed to the aforesaid extent.

CIVIL APPEAL NOS. 9116-9135 OF 2011

CIVIL APPEAL NOS. 9111-9115 OF 2011

CIVIL APPEAL NOS. 3173-3188 OF 2012

CIVIL APPEAL NOS. 3190-3198 OF 2012

In the instant matters, notification was issued in August, 2004, under the Land Acquisition Act, 1894.

The decision in the case of Mansa, relied upon by the High Court in the instant appeals, is set aside by the aforesaid judgment in Civil Appeal Nos. 9061-9110 of 2011.

We find that in the instant cases, the determination by the Reference Court, at the rate of Rs.300/- per square meter, to be appropriate.

We set aside the High Court's judgment, and restore the determination of compensation made by the Reference Court.

The appeals are, accordingly, allowed.

CIVIL APPEAL NO. 18521-18566 OF 2017

(@SLP(C) NOS. 3191-3236 OF 2015)

CIVIL APPEAL NO. 18567-18574 OF 2017

(@SLP(C) NOS. 22286-22293 OF 2015)

Leave granted.

We have set aside the decision of Mansa relied upon by

the High Court in the instant case, in Civil Appeal Nos. 9061-9110 of 2011 by a separate judgment delivered today.

In this case, the land acquisition was in the village Gojaria for which, Notification under Section 4 of the Land Acquisition Act, 1894, had been issued on 03.07.2004.

In the instant case, 40 per cent deduction has been made by the Reference Court.

We find that the determination made by the High Court could not be said to be appropriate. The determination made by the Reference Court appears to be reasonable.

We set aside the judgment of the High Court, and restore that of the Reference Court in the instant cases.

The appeals stand allowed.

CIVIL APPEAL NO. 18575 OF 2017
(@SLP(C) NOS. 20162 OF 2015)

Leaved granted.

In the present appeal, notification under Section 4 was issued on 23.07.2009. Award was passed by the Land Acquisition Collector, determining the compensation at the rate of Rs.17 per square meter. In reference, the Reference Court granted enhanced compensation at the rate of Rs.765 per square meter, relying upon the previous judgment, making deduction of 40 per cent. The High Court has relied upon the decision which was based on the Award for a different village passed in 1993 in the case of Mansa. The determination of compensation as the basis of award for

Village Sargasan was held to be impermissible for the reasons mentioned in the judgment rendered in Civil Appeal Nos. 9061-9110 of 2011.

Thus, in the facts and circumstances of the case, the decision by the High Court cannot be allowed to sustain. The judgment rendered by the Reference Court is hereby restored.

The appeal stands allowed to that extent.

CIVIL APPEAL NO. 18576-18593 OF 2017
(SLP(C) NOS. 26238-26255 OF 2016)

Leave granted.

We have set aside the judgment relied upon by the High Court in the case of Village Mansa in Civil Appeal No. 9061-9110 of 2011.

In the facts and circumstances of the case, we condone the delay, however, we make it clear that for the period of delay for more than 600 days, the appellants would not be entitled to any interest etc., on the amount, if enhanced by the High Court.

The order passed by the High Court is set aside and the case is remitted to the High Court for decision afresh in accordance with law.

The appeals stand disposed of.

CIVIL APPEAL NOS. 5726-5728 OF 2012
CIVIL APPEAL NOS. 5724-5725 OF 2012

As the case has been remanded by the High Court, in

peculiar circumstances, we are not inclined to interfere.

The civil appeals are dismissed.

....., J.
[ARUN MISHRA]

....., J.
[MOHAN M. SHANTANAGOUDAR]

New Delhi;
November 01, 2017.

ITEM NO.7

COURT NO.10

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos. 9061-9110/2011

ARVINDBHAI BHAGABHAI PATEL & ORS.

Appellant(s)

VERSUS

THE STATE OF GUJARAT THROUGH DY. COLLECTOR LAND ACQUISITION AND
REHABILITATION & ANR.Respondent(s)

WITH

C.A. No. 3173-3188/2012 (III)

C.A. No. 3190-3198/2012 (III)

SLP(C) No. 22286-22293/2015 (III)

SLP(C) No. 26238-26255/2016 (III)

SLP(C) No. 20162/2015 (III)

C.A. No. 5726-5728/2012 (III)

C.A. No. 5724-5725/2012 (III)

C.A. No. 9116-9135/2011 (III)

C.A. No. 9111-9115/2011 (III)

SLP(C) No. 3191-3236/2015 (III)

Date : 01-11-2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Mr. Sunil Gupta, Sr. Adv.
Mr. Jatin Zaveri, AOR
Mr. Hitesh B. Patel, Adv.
Mr. Neel Kamal Mishra, Adv.

Mr. Gaurav Agrawal, AOR
Mr. Abhay Anil Anturkar, Adv.
Mr. Abhikalp Pratap Singh, Adv.

For Respondent(s) Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Puja Singh, Adv.
Ms. Shodhika Sharma, Adv.

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

Civil Appeal Nos. 9061-9110/2011 are allowed, Civil
Appeal Nos. 9116-9135/2011, 9111-9115/2011, 3173-3188/2012
and 3190-3198/2012 are allowed and Civil Appeal Nos.
5726-5728/2012 and 5724-5725/2012 are dismissed in terms of

the signed order.

SLP(C) No. 22286-22293/2015

SLP(C) No. 3191-3236/2015

SLP(C) No. 20162/2015

Leave granted.

The appeals are allowed in terms of the signed order.

SLP(C) No. 26238-26255/2016

Leave granted.

The appeals stand disposed of in terms of the signed order.

(NIDHI AHUJA)
COURT MASTER

(JAGDISH CHANDER)
COURT MASTER

[Signed order is placed on the file.]