

PETITIONER:
ISHWARLAL PREMCHAND SHAH & ORS. ETC. ETC.

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT: 15/03/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
NANAVATI G.T. (J)

CITATION:
1996 AIR 1616 1996 SCC (4) 174
JT 1996 (4) 208 1996 SCALE (3)495

ACT:

HEADNOTE:

JUDGMENT:

with
CIVIL APPEAL NOS. 6897-99 OF 1996.
(Arising out of SLP (C) Nos.19041/94, 19043/94, 19049/94).
O R D E R

Leave granted.

We have heard the counsel on both sides.

Notification under Section 4(1) of the Land Acquisition Act 1 of 1894 (for short, the 'Act') was published on August 2, 1984 acquiring the lands situated in village Sarigam, District Bulsar in Gujarat State for industrial purpose. Possession also was taken after dispensing with the enquiry under Section 5-A. It is not necessary to dilate on the proceedings taken earlier under Article 226 of the Constitution. Suffice it to state that there was an agreement between the parties that an award could be made under Section 11(2) of the Act pursuant to which the Land Acquisition Officer on June 4, 1991 made the award in terms of the agreement. The appellant challenged the correctness of the award by filing the writ petition which was dismissed by the High Court by the impugned order dated September 10, 1993. Thus these appeals by special leave.

This Court by order dated February 28, 1994 issued notice confined to the question whether the appellants are entitled to solatium, interest and additional amount under Sections 23(2), 28 and 23 [1-A] of the Act. The respondents have filed their counter-affidavit contending that in view of the agreements entered by the appellants on January 2, 1981 and subsequent agreement dated March 8, 1985, which have been filed as sample agreements before this Court, the appellants are not entitled to the payment of interest, solatium and additional amounts under the Act.

Shri R.F. Nariman, learned senior counsel appearing for the appellants, contended that the award passed by the Collector is not in conformity with Section 11(2) of the Act in as much as the agreements were not executed before the

Collector and they were not in the prescribed form. He drew our attention to Form No.14, prescribed by the Rules and submitted that as disclosed by the Form itself, such an agreement has to be executed by the owner of the land in presence of the Land Acquisition Officer and has to be signed by the Land Acquisition Officer. In the present case, the agreements executed in 1985 were between the owners of the land and GIDC for whose benefit the lands were acquired. They were not signed in presence of the Land Acquisition Officer nor did the Land Acquisition Officer put his signature thereon. Therefore, the award passed by the Collector cannot be said to be an award under Section 11 (2) of the Act and, therefore, the appellants are entitled to payment of solatium, interest and additional benefits payable under the Act. We do not find any substance in this connection.

In this case, the agreements were between the owners and the GIDC for whose benefit the lands were acquired. Even before the notification under Section 4 was issued, the owners and the GIDC had entered into an agreement whereby the owners had agreed to part with possession of their lands so as to enable GIDC to establish Udyog Nagar thereon. Under the said agreements, the GIDC was permitted to enjoy continuous possession of those lands till the process of acquisition under the Land Acquisition Act was to be completed. While entering into these agreements, the owners had agreed to accept compensation @ Rs.6,100/- per acre. Thereafter, Section 4, notification was published on August 2, 1984. While the proceedings were pending before the Land Acquisition Officer, the owners and GIDC again in the year 1985 entered into separate agreements, whereunder the Corporation agreed to pay and the owners agreed to accept compensation @ Rs.22,857/- per hectare inclusive of solatium and additional benefits payable under the Act. These agreements duly signed were presented before the Collector. On being satisfied about the voluntary nature of the said agreements, the Collector passed an award in terms of those agreements. Under these circumstances, it cannot be said that the essential requirements of sub-section 2 of Section 11, as applicable in the State of Gujarat, was not complied with. Moreover, Form No.14 as such would not be relevant in a case where the agreement is between the owners and interested persons on the one hand and the body for which the land is being acquired on the other hand. Form No.14 would apply to a case where the owners and the persons interested in the land appear before the Collector and express their willingness to accept an agreed amount as compensation. In such cases, the agreement is required to be executed in the prescribed Form No.14. Therefore, even though in the present case the agreements were not in the prescribed form, there being no prescribed form for a case like this, the award cannot be said to be illegal or void.

The owners have agreed in 1985 as under:

"This agreement is being done in pursuance of the consent agreement that has been arrived at on 27.12.1980 between Shri Hitendra @ Gautam Prem Shankar Oza of the first part and the Gujarat Industrial Development Corporation of the second part since the price of the land that has been given under the said agreement has been fixed at Rs.22,857/- (Rupees twenth

two thousand eight hundred and fifty seven only) per hectare inclusive of solatium and additional land compensation by way of its consent price. This agreement is thus being done for that limited purpose. The date of possession and other terms and conditions mentioned in the agreement done on 27.12.80 shall remain the same."

It is true that on determination of compensation under sub-section (i) for the land acquired, Section 23(2) enjoins to award, in addition to the market value, 30% solatium in consideration of compulsory nature of acquisition. Equally, the Parliament having taken notice of the inordinate delay in making the award by the Land Acquisition Officer from the date of notification published under Section 4(1) till passing the award under Section 11, to offset the price pegged during the interregnum, Section 23(1-A) was introduced to award an amount calculated @ 12% per annum on such market value, in addition to the market value of the land, for the period commencing on and from the date of the publication of Section 4(1) notification to the date of award of the Collector or date of taking possession of the land whichever is earlier. Under Section 28, interest was directed to be paid on the excess compensation at the rate specified therein from the date of taking possession of the land to the date of deposit into court of such excess compensation. These three components are in addition to the compensation determined under sub-section (1) of Section 23. They intended to operate in different perspectives. One for compulsory acquisition, the other for the delay on the part of the Land Acquisition Officer in making the award and the third one for deprivation of the enjoyment of the land from the date of taking possession till determination of the compensation. The 3 components are in addition to the determination of market value under sub-section (1) of Section 23. They are not integral to determination of compensation under sub-section (1) of Section 23 but in addition to, for the circumstances enumerated hereinbefore. In a private sale between a willing vendor and a willing vendee, parties would arrive at consensus to pay and receive consolidated consideration which would form the market value of the land conveyed to the vendee. For public purpose, compulsory acquisition under the Act gives absolute title under Section 16 free from all encumbrances. Determination of the compensation would be done under Section 23(1) on the basis of market value prevailing as on the date of the publication of the notification under Section 4(1). It would, therefore, be open to the parties to enter into a contract under Section 11(2), without the necessity to determine compensation under Section 23(1) and would receive market value at the rates incorporated in the contract signed under Section 11 (2) in which event the award need not be in Form 14.

This Court in *State of Gujarat & Ors. v. Daya Shamji Bhai & Ors.* [(1995) 5 SCC 746] had considered the similar contentions and held that once the parties have agreed under Section 11(2) of the Act, the Land Acquisition Officer has power under Section 11(2) to pass the award in terms thereof and that the award need not contain payment of interest, solatium and additional amount unless it is also part of the contract between the parties. The same ratio applies to the facts in this case. In view of the above clauses in the

agreements the appellants are not entitled to the payment of additional amounts by way of solatium, interest and additional amount under the provisions of the Act.

The appeals are accordingly dismissed, but in the circumstances, without costs.

JUDIS