

PETITIONER:
STATE OF GUJARAT ETC.ETC.

Vs.

RESPONDENT:
DAYA SHAMJI BHAI ETC.ETC.

DATE OF JUDGMENT 25/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 133 1995 SCC (5) 746
JT 1995 (6) 475 1995 SCALE (5) 248

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned. Leave granted.

Though notice has been served on all the respondents, none appears either in person or through counsel in all the appeals.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published on December 18, 1980 acquiring large extent of lands for the purpose of irrigation dam No.2 Project. The land owners had given their consent in writing on March 11, 1983 agreeing to accept the compensation determined by the Land Acquisition Officer and 25 per cent more thereof and also agreed not to seek any reference under Section 18. The market value was determined by the Collector on March 25, 1983, and 25 per cent in addition thereto was awarded. Respondents were paid in terms of the consent agreements signed by the respondents and sanctioned by the Superintending Engineer, Rajkot. Subsequent thereto, the respondents sought for reference under Section 18 on April 26, 1986. The Assistant Judge, Rajkot by his award and decree dated June 29, 1991 enhanced compensation to the rate of Rs.200/- per are for Bagayat land and Rs.140/- per are for Jirayat land. Feeling aggrieved, when the appellants filed appeals, the Gujarat High confirmed the same by the impugned judgment and decree dated July 3, 1992. Thus these appeals by special leave.

The only question is whether the claimants of the land are entitled to seek reference under Section 18 and the civil court can determine higher compensation. Section 11 (2) of the Act empowers the parties to enter into an agreement and an award in terms thereof is permissible. In the agreement they had specifically accepted that owners would receive compensation and 25 per cent of the compensation in addition and had agreed to forgo their right to seek reference under Section 18 of the Act. The owners and the Special Land Acquisition Officer had agreed under

Section 11(2) of the Act that the Land Acquisition Officer would make the award in terms of the contract. Clause 14 of the agreement reads thus:

"The land owners will not go to any Court under Section 18 of the Act."

In the award, it is seen that the Land Acquisition Officer while awarding the compensation, had also worked out the addition of 25% and awarded total compensation to the land owners. It is not in dispute that they had been paid accordingly. In the award, the Land Acquisition Officer has specifically stated that :

"As discussed in para 9-A and as mentioned in para 9-B, I fix the value of the lands, under acquisition in this case, for Bagayat Lands at Rs.110/- per are, for Jirayat Lands at Rs.80/- and for waste lands at Rs.10/- per are and further order to pay as such. Moreover, in this case, the persons interested has demanded for 25% consent more. The consent rate is sanctioned by the Superintending Engineer, Rajkot Irrigation Circle, Rajkot vide his letter No.PB/4/General/LAO/1519, dated 25.3.1983 and accordingly I also order to pay the amount of 25% consequent rate."

In view of the above agreement and in view of the discussion made by the Land Acquisition Officer in the award and working details given in the annexures made therein, it is clear that the parties having contracted to receive compensation the question emerges whether they are entitled to seek a reference. On making an award under Section 11 and issuance of the notice under Section 12 of the Act, the Collector is enjoined under Section 31 (1) to tender payment of the compensation awarded by him to the interested persons entitled thereto to receive the compensation according to the terms of the award. Under the second proviso to sub-section (2) of Section 31 "no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18". The entitlement to make reference to civil court under Section 18 (1) and within the period prescribed under sub-section (2) is conditioned upon non-acceptance of the award. Sub-section (1) of Section 18 makes the matter clear thus: "Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court regarding his objection, be it to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested." The right and entitlement to seek reference would, therefore, arise when the amount of compensation was received under protest in writing which would manifest the intention of the owner of non-acceptance of the award. Section 11 (2) opens with a non-obstante clause "notwithstanding anything contained in sub-section (1)" and provides that "if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. By virtue of sub-section (4), "notwithstanding anything contained in the

Registration Act, 1908, no agreement made under sub-section (2) shall be liable to registration under that Act". The award made under Section 11 (2) in terms of the agreement is, therefore, an award with consent obviating the necessity of reference under Section 18.

The Reference Court negatived the contention of the State and its reliance on agreement of the parties on the ground that since the said agreements were not registered under Registration Act, they cannot contract out from statute. Therefore the Reference Court has the power to award higher compensation. It is seen that in the contract they had agreed to receive compensation and 25 per cent more in addition thereto. They had also agreed not to seek any reference under Section 18. In the light of the above, no option is left to the parties under Section 18 to seek reference. Sub-section (2) of Section 11 gives right to the parties to enter into an agreement to receive award compensation awarded under Section 11 in terms of the contract. In fact, it would be more expeditious to have the dispute sorted out so as to avoid delay in determination of proper compensation. The contract between the owners and the Collector in writing of the terms to be included in the award of the Collector is conclusive and binds the parties. They would not be entitled to seek any reference for enhancement of the compensation required to be adjudicated under Section 23(1) of the Act. It would be seen that when compensation was received under protest, Section 18 gets attracted.

The question of awarding interest and statutory benefits arises when the civil court finds that the amount of compensation awarded to the land owners by the Collector is not adequate and the prevailing market value is higher than the market value determined by the Land Acquisition Officer under Section 23(1). For entitlement to solatium under Section 23(2), "in addition to" market value the court shall award solatium. Under Section 28, if the court gets power to award interest, when court opines that the Collector "ought to have awarded compensation in excess of the sum which the collector did award the compensation". In other words, valid reference under Section 18 confers jurisdiction on the civil court to consider whether the compensation awarded by the Collector is just and fair. Thereafter, when it finds that the Collector ought to have awarded higher compensation, the civil court gets jurisdiction to award statutory benefits on higher compensation from the date of taking possession only. In view of the specific contract made by the respondents in terms of Section 11(2), they are not entitled to seek a reference. Consequently, the civil court is devoid of jurisdiction to go into the adequacy of compensation awarded by the Collector or prevailing market value as on the date of notification under Section 4(1) to determine the compensation under Section 23(1) and to grant statutory benefits.

By operation of Section 11(4), the need for registration of the agreement is obviated. As seen in the contract, the respondents have forgone their right of seeking reference in lieu of 25% more than the compensation determined by the Collector under Section 11(2) of the Act. In fact, 25 per cent in addition to the market value determined by the Collector in his award under Section 11(1) had been paid as the consideration to forgo reference. Even otherwise, once an agreement was entered by the parties, the question of objection to receive compensation under protest does not arise. So, they have no right to seek a reference

to the civil court under Section 18 of the Act.

The appeals are accordingly allowed. The orders of the reference court as confirmed by the High Court are set aside but, in the circumstances, without costs.

JUDIS