

CASE NO.:
Appeal (civil) 5354-89 of 1993

PETITIONER:
KASHIBEN BHIKABAI & ORS.

Vs.

RESPONDENT:
SPECIAL LAND ACQUISITION OFFICER & ANR.

DATE OF JUDGMENT: 06/02/2002

BENCH:
V.N. Khare & Ashok Bhan

JUDGMENT:

Bhan, J.

Aggrieved by the judgment of the High Court of Gujarat in reducing the compensation payable under the Land Acquisition Act, 1894 and claiming more, fair and equitable compensation for the acquired land the claimants have come up in these appeals.

On 15th May, 1974 State of Gujarat issued a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for acquisition of 78 hectares, 32 acres and 54 sq. meters of land in Village Gorva, which is situated within the limits of the Municipal Corporation of Baroda, Gujarat, for the Gujarat Housing Board. It was published in the official Gazette on 8th August, 1974. Notification under section 6 of the Act was issued on 12th July, 1977 and was published in the Gazette on 21st July, 1977. Interests of the applicants were in conflict with that of ALC and in view of the same, it is essential in the interest of justice to separate their petitions for Special Leave to appeal of the applicants and they be permitted to be represented by another advocate of their choice. The ALC has contested the applications filed by the claimants on several grounds.

Two points arise for consideration in these appeals. The first point is for the determination of the fair compensation payable to the claimants/ALC for the land acquired. On this point, the interest of the ALC and other claimants including 22 claimants, who have filed the application for separating their special leave petition, is common. The second point is the inter se dispute between the 22 claimants-appellants who have filed the application for separating their special leave petition and the ALC in whose favour they have transferred their right to get compensation over and above Rs. 1.35 per sq. ft..

On the first point after going through the evidence it is seen that the claimants had relied upon three instances of sale. The first was the sale of Survey No. 8 of Village Gorva in which the agreement to sell was executed on 25.6.1972. The land was agreed to be sold at the rate of Rs. 3.50 per sq.ft. to the housing society. The sale deed was to be executed within six months after obtaining the necessary permissions from the State Government. Because of the said condition the actual sale deed was executed in the year 1979. Next sale instance relied upon was in respect of Survey No. 9. The sale deeds are Exs. 71 to 75 dated 30.11.1973, 1.12.1973, 4.12.1973, 5.12.1972 and 6.12.1973 respectively. The land was sold at the

rate of Rs. 2.38 per sq. ft. The third sale instance relied upon was for the land situated within the Abadi deh of Village Gorwa executed on 5th December 1973 which was sold at the rate of Rs. 7 per sq. ft. The High Court discarded the first sale instance on the ground that the land sold by the sale deed was better located than the land under acquisition. Moreover, the parties to the sale did not expect the sale to be completed within a short time and this factor must have been taken into consideration for fixing a price higher than the prevailing price. The third sale deed was excluded as the same was situated in the Abadi area.

The High Court accepted the second instance, where the land was sold for Rs. 2.38 per sq. ft. but reduced it by Rs. 0.50 paise per sq. ft. It was held that at the first instance the land had been agreed to be sold to Datta Land Corporation for Rs. 1.88 per sq. ft. which later on sold the same to the Jay Satyanarayan Co-operative Housing Society at Rs. 2.38 per sq. ft. The High Court reduced the price by Rs. 0.50 per sq. ft. because Datta Land Corporation did not need the land and transaction entered into by them was speculative in nature. The consideration paid to Datta Land Corporation was reduced from the sale price of Rs. 2.38 per sq. ft., thus fixing the market value of the land at Rs. 1.88 per sq. ft. We are unable to agree with the view taken by the High Court on the second instance of sale. There was no justification for reducing the payment which had been made to Datta Land Corporation. Once the sale price of Rs. 2.38 per sq. ft. is accepted to be the price prevailing in December 1973 then it could not be reduced by the sum paid to the intermediary in whose favour the first agreement to sell had been executed. The price of the land could not be reduced on the ground that intermediary after having agreed to purchase the land at Rs. 1.88 per sq. ft. had later sold the land to the vendee at Rs. 2.38 per sq. ft. on making a profit of Rs. 0.50 paise per sq. ft.

The price of Rs. 3.50 per sq. ft. which was the agreed sale price for Survey No. 8 in the first sale instance cannot be accepted for the simple reason that the land in Survey No. 8 (first sale instance) and the land in the Survey No. 9 (second sale instance) are adjoining to each other. The sale in the second sale instance was in December, 1973 and the prevailing price at that time was Rs. 2.38 per sq. ft. Therefore, the price of the adjoining land on 25th June, 1972 in Survey No. 8 could not have been Rs. 3.50 sq. ft. The same seems to be highly exaggerated. As the parties did not expect the sale deed to be completed within a short time, they must have taken this factor into consideration while fixing the price at a higher rate than the prevailing price. The agreements to sell were of 1972 whereas the sale deeds were executed in the year 1979. The third sale instance which was of the Abadi land was rightly discarded by the High Court.

From the map shown to us we find that the acquired land is not far away from survey Nos. 8 and 9. The total distance between the two may not be more than 60 to 70 yds from each other. Keeping in these factors in view, we are of the opinion that the prevailing market price in the first week of December, 1973 of the acquired land was Rs. 2.38 per sq. ft.. In May 1974 when the notification under Section 4 was issued the price may have been little higher than Rs. 2.38 per sq. ft. as rapid development was taking place in and around the area where the land under reference was situated. Land comprising in Survey No. 8 which was sold measured 2800 sq. yds. Keeping in view the fact that large areas of land do not fetch the same price as the small piece of land and a large amount is required to be spent for developing the land, we fix the price of land at Rs. 2.00 per sq. ft. instead of Rs. 1.88 per sq. ft. thus enhancing the compensation by Rs. 0.12 paise per sq. ft. The claimants would be entitled to statutory solatium @ 30% as has been held by a Constitution Bench of this Court in Union of India & Another vs. Raghubir Singh (Dead) by Lrs. Etc. [1989 (2) SCC 754] as the award of the reference court was made after the coming into force of the amendments introduced by the amending Act of 1984.

Counsel appearing for the claimants contended that the claimants would be entitled to an additional compensation @ 12% as provided under

Section 23 (1A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in Union of India & Ors. Vs. Filip Tiago De Gama of Vedem Vasco De Gama, 1990 (1) SCC 277 which held that additional compensation under Section 23 (1A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and the award was made by the Collector prior to April 30, 1982. If the Collector made the award before 30th April, 1982 then the additional amount under Section 23 (1A) cannot be awarded. The pendency of the acquisition proceedings on 30th April, 1982 before the Collector was essential for attracting the benefit under Section 23 (1A) of the Act. It was held:

"Entitlement of additional amount provided under Section 23 (1-A) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date. Section 30 sub-section 1(a) provides that additional amount provided under Section 23 (1-A) shall be applicable to acquisition proceedings pending before the Collector as on April 30, 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that Section 23 (1-A) shall be applicable to every acquisition proceedings commenced after April 30, 1982 irrespective of the fact whether the Collector has made an award or not before September 24, 1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2)."

No judgment taking a contrary view to the above-referred case was cited before us. Accordingly, it is held that the appellants would not be entitled to the additional compensation provided under Section 23 (1A) of the Act.

It would be seen that the reference court as well as the High Court have held that the claimants are bound by the agreement entered into by them with the ALC in view of the admissions made by them in their reference applications and the statements made in the Court. Claimants had accepted that they had entered into an agreement to transfer their interest in the compensation payable over and above Rs. 1.35 per sq. ft. in favour of the ALC. They had specifically stated that the amount of compensation over and above Rs. 1.35 per sq. ft. be paid to the ALC. We are not opining on this matter as this might prejudice the rights of the parties in suit No. 156 of 1980 between the ALC and the seven claimants in the Civil Court at Nadiad. The 22 claimants-appellants who have asked for separating their interest did not contest the right of the ALC to get the higher amount of compensation as per agreement either before the reference court or before the High Court. No material has been placed before us to record a finding to the contrary. Keeping these facts in view, we direct that the enhanced amount be paid to the ALC, reserving the rights that the claimants to recover the same from the ALC, if permissible in law, on taking recourse to an appropriate proceedings in a court of competent jurisdiction in accordance with law.

The appeals are partly allowed in the above terms. No order as to costs.

J.
(V. N. Khare)

.J.
(Ashok Bhan)

February 06, 2002

JUDIS