

**HIGH COURT OF GUJARAT (D.B.)**

**STATE OF GUJARAT**

**Versus**

**THAKARANI SAHEBSHREE HINATKUNVARBA PRAVINSINHJI**

**Date of Decision:** 08 February 2012

**Citation:** 2012 LawSuit(Guj) 1561

**Hon'ble Judges:** [Akil Kureshi](#), [C L Soni](#)

**Eq. Citations:** 2013 7 RCR(Civ) 281, **2012 2 GCD 1045**

**Case Type:** First Appeal

**Case No:** 6817 of 1998

**Subject:** Civil, Property

**Acts Referred:**

[Land Acquisition Act, 1894 Sec 4\(1\)](#), [Sec 23\(1A\)](#)

**Advocates:** [Moxa Thakkar](#), [R C Jani](#)

**Cases Referred in (+): 2**

**Akil Kureshi, J.**

**[1]** This appeal filed by the State through the Land Acquisition Officer challenges an award dated 16.7.1998 passed by the Reference Court i.e. Assistant Judge, Sabarkantha, Himmatnagar in Land Reference Case No. 372/ 1992.

**[2]** Briefly stated facts are as follows :

2.1 Respondent is the original land owner. His land bearing survey No. 68 paiki admeasuring 12 hectares, 14 Are and 6 sq mtrs came to be acquired by the Land Acquisition Officer for the purpose of Dharoi Vatrak Jalagar Yojna. Notification under Section 4( 1) of Land Acquisition Act (the Act for short) came to be issued on 10.11.1988. After following further procedure, Land Acquisition Officer passed an award on 20.4.1990 fixing the value of land at the rate of Rs. 1330/- per Are i.e. Rs. 3.30 per sq. mtr.

2.2 Respondents being aggrieved by the award sought reference before the District Court. Reference Court disposed of the reference by impugned judgement and award dated 16.7.1998. Learned Judge granted additional compensation at the rate of Rs. 3.00 per sq. mtr. He also granted further benefits such as 12% under section 23 (1 A) of the Act on such compensation from the date of notification under Section 4(1) till passing of the award and 30% solatium on the market value of the land. He also held that land owners should receive interest at the rate of 9% per annum for the first year from taking possession and thereafter, at the rate of 15%. Operative portion of the award reads as under :

"The Reference is partly allowed.

The opponents are hereby ordered to pay the additional amount of compensation at the rate of Rs. 3.00 pe square meter with the additional amount of 12% of the market value of the land for the period from the date of notification u/s 4 i.e. 19/11/88 to the date of award i.e. 30/8/90. The opponents are also ordered to pay 30% soletium on the market value of the land under the acquisition.

The opponents are also ordered to pay interest at the rate of 9% p.a. from the first year from then date of taking over the possession and thereafter 15% till realisation of the additional amount of the compensation awarded in this case.

The opponents shall also pay the proportionate costs of this proceeding to the applicant of this Reference.

A detailed calculation of compensation payable to the applicant is appended to this order; which shall form a part of this order and award. Award be drawn accordingly."

2.3 Before the Reference Court, on behalf of the claimants one Parakramsinh Natvarsinh was examined at Exh. 19. He stated that in survey No. 68 there was a well. Besides well there was a house. Village Magodi was a principal village during the time of erstwhile rulers and was highly developed. Had a library, transport facilities and pakka roads. Survey No. 68 was situated adjacent to village site. Land in question was old tenure land. Before the acquisition, people had offered to pay Rs. 250/- per sq. mtr. He further stated that there were other villages in the same area namely, Fasarel, Mokampura, Patani, Bhutiya etc. He stated that Fasarel and Satarda village share a common boundary. He produced at Exh.24 judgement in a Land Reference in case of acquisition of land of village Satarda. He further stated that 15 acres of land out of survey No. 68 was sold at Rs. 40,000/- per acre. He however, did not produce any documents in this respect.

2.4 Claimants also produced at Exh. 29 judgement of Land Reference case of village Satarda.

2.5 The Reference Court took into account the evidence produced on behalf of the claimants. The assertion of sale of land for Rs. 40,000/- per acre was not believed on the ground that no sale deed was produced. With respect to decision in Land Reference case at Exh. 24, it was noted that same pertained to non agricultural land and Section 4(1) notification therein was issued on 16.7.1981. On these counts, learned Judge was of the opinion that judgement cannot be relied on.

2.6 Learned Judge however, placed heavy reliance on award in case of Land Reference Case No. 370/1992, judgement of which was produced at Exh. 29. Same pertained to acquisition of agricultural land of village Satarda. In that case also, notification under Section 4(1) was issued on 10.11.1988. Reference Court had granted compensation at the rate of Rs. 7.50 per sq. mtr. Learned Judge noticing that such award was passed in case of non irrigated lands, was persuaded to compute the market value of the land in case on hand by adding 25% thereon. He therefore, came to a figure of Rs. 9.37 per sq. mtr. Thereafter, learned Judge accepted the argument of Government Pleader that from the above figure of 9.37, 1/3rd should be deducted since such land would have to be developed by plotting, providing for drainage facilities etc. since the land was being acquired for rehabilitation of oustees. By deducting 1/3rd from the figure of Rs. 9.37 sq. mtr., learned Judge arrived at the final figure of Rs. 6.25 per sq. mtr. as the market value of the land in question as on the date of section 4 notification. Since the Land Acquisition Officer had already awarded compensation at the rate of Rs. 3.30/- per sq. mtr., learned Judge was of the opinion that claimants should get additional compensation at the rate of Rs. 2.95 sq. mtr., rounding off such figure to Rs. 3.00 per sq. mtr or Rs. 300 per Are. It is this judgement and award of the Reference Court, the State has challenged in this appeal. Claimants have also filed cross objections seeking further enhancement.

**[3]** Having heard learned AGP for the State and learned Counsel Shri. Jani for the respondent claimant, from the record, we notice that only comparable instance available on record was in case of the acquisition of agricultural land of village Satarda. Learned Judge rightly discarded any reference to alleged private sale transaction before the acquisition since no evidence in this respect was produced by the claimants. Equally the learned Judge was justified in not basing any reliance on acquisition of Satarda land for which judgement of Reference court was produced at Exh. 24. Such reference pertained to acquisition of non agricultural land and further that section 4 notification therein was published as far back as in 1981. In that view of the matter the sole available instance of comparable case on record was acquisition of agricultural

land of village Satarda by notification issued on the very same day as in the present case.

**[4]** Fact that village Satarda is situated in near vicinity of Magodi has come on record. Witness Parakramsinh Exh. 19, as already noted, stated that village Fasarel is situated close to village Magodi and village Satarda shares a common boundary with said village Fasarel. It is not even the case of the State Government that lands of village Satarda under acquisition were situated at afar distance or had some special advantages and that therefore, such lands were not comparable in the present case. Further the date of section 4 notification in both cases was same. Learned Judge therefore, rightly based reliance on the judgement of the Reference Court in case of land acquisition in case of village Satarda.

**[5]** It is not in dispute that land under acquisition was irrigated land and old tenure land. In that view of the matter, learned Judge was justified in granting reasonable increase in the market value over and above Satarda land value which was fixed for non irrigated land.

**[6]** Learned Counsel Shri Jani for the claimants at this stage submitted that the market value of land should have been fixed at the rate of Rs. 7.50/- per sq. mtr. and the learned Judge of the Reference Court committed a grave error in reducing the same even below what was fixed in case of Satarda land which were not irrigated lands.

**[7]** We are of the opinion that such contention is required to be accepted. Learned Judge having granted a reasonable increase over Satarda land value, on account of the fact that land in question was irrigated land vis-a-vis Satarda land which was not, thereafter, reduced the figure by 1/3rd on the premise that Government would have to spend considerable amount of money for developing the land since the same was being acquired for the purpose of rehabilitation.

**[8]** We are of the opinion that the learned Judge committed an error here. Deduction as high as 1/3rd for development was in facts of the case not justified. If the claimants had presented before the Reference Court, sale instances of fully developed land and on that basis claimed compensation for their undeveloped agricultural land, question of such high reduction for developmental expenditure would have been justified. In the present case, we do not find that learned Judge was justified in drastically reducing the value of the land on such basis. In our opinion, the Reference Court erred in appreciating the ratio of the decision of Apex Court cited before it. In case of [Spl. Tehsildar Land Acqn. Vishakapatnam vs. Smt. A. Mangala Gowri](#), 1991 3 JT 444, the Apex Court relying on various decisions observed that it may be noted that in building

Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc, are condition precedent to approve lay out for building colonies and therefore, based on the situation of the land and need for development the deduction should be made.

In case of' Hansali Khanbhai & Sons and ors. vs. State of Gujarat, the claimants had challenged the decision of the High Court in which High Court had by the impugned judgement while holding that the land under acquisition were capable of fetching market value at the rate of Rs. 10 per sq. yard, determined the compensation at the rate of Rs. 4 per sq. yard after slashing down 60% of the value. This was on the basis that land was situated far away from municipal limits. High Court also took into account the possibility of restriction that may be imposed by the State under Section 74 of the Highways Act. Further it was noticed that vast extent of lands were acquired whereas available sale instances produced by the claimants represented sale of small plots. It was in this background, the Apex Court upheld the decision of High Court making following observations :

"5. It is seen that when a large track of land of 7 acres and 28 gunthas was purchased by the claimant owners in 1956 at Rs. 251 per acre, in 1960 when the notification was issued what would be the reasonable and probable price which a reasonable prudent purchaser would offer when a large track of land is offered for sale in open market. In this case, neighboring land was sold at the rate of Rs. 960 per acre in 1960 as against the price which is paid in 1956 at the rate of Rs. 251 per acre. In 1956, he himself valued and assessed the land that it has potentiality at the rate of Rs. 251 per acre. It is settled law that instead of proceeding on the feats of imagination the Court has to sit in the armchair of a prudent purchaser and then consider whether a prudent purchaser would be willing to purchase such a large extent of land if so at what price. In this case, having considered the situation of the land being far away from the outer Municipal limits though situated near about the railway line that itself would be a factor to be taken into consideration in determining the market value. Added to that, there is a possibility to impose statutory restriction to develop the lands for building purposes. No prudent purchaser would hazard to purchase such large extent of land at the rates when small extents of lands are sold in plots. True that the purchasers hazarded to purchase lands in the neighboring survey numbers and have taken grave risk. But it would not be safe guide to adopt the same price offered by them. Considered from this perspective and from the totality of facts on record, we are of the view that the High Court was well justified in deducting 60% of the value and giving Rs. 4 per sq. yard. Accordingly, we do not find any justification warranting interference. The appeal is dismissed but in the circumstance, with no costs."

**[9]** Approving the deduction applied by the Reference Court would lead to strange results. We have noticed that the land under consideration had similar situational advantages as enjoyed by Satarda lands. Both were acquired under notification under Section 4( 1) issued on the same date. Satarda lands were valued at Rs. 7.50 per sq. mtr. Satarda lands were non-irrigated lands. Reference Court in the impugned judgement fixed the market value of land of the claimants at Rs. 6.30 per.sq. mtrs., which land was irrigated land. Thus for two parcels of lands, both acquired on the same day, having similar situation, irrigated land is valued at price lower than non-irrigated land.

**[10]** In case of [Thakur Kuldeep Singh \(D\) Thr. L.R. & Ors. vs. Union of India and Ors.](#), 2010 AIR(SC) 1272, it was observed as under :

"(6) Sections 23 and 24 of the Act speak about the matters to be considered and to be neglected in determining compensation. Let us consider whether the appellants are entitled to higher compensation than that of the one fixed by the High Court or Union of India is justified in seeking reduction of the market value/compensation for the acquired land. While fixing compensation, it is the duty of the Land Acquisition Collector as well as the Court to take into consideration the nature of the land, its suitability, nature of the use to which the lands are sought to be acquired on the date of notification, income derived or derivable from or any other special distinctive feature which the land is possessed of, the sale transactions in respect of land covered by the same notification are all relevant factors to be taken into consideration in determining the market value. It is equally to consider the suitability of neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special characteristics available. The Land Acquisition Collector as well as the Court should always keep in their mind that the object of assessment is to arrive at a reasonable and adequate market value of the land. While doing! so, imagination should be eschewed and mechanical assessment of evidence should be avoided. More attention should be on the bona fide and genuine sale transactions as guiding star in evaluating the evidence.: The relevant factor would be that of the hypothetical willing vendor would offer for the land and what a willing purchaser of normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of notification under Section 4( 1) of the Act. In other words, the Judge who sits in the armchair of the willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The market value so determined should be just, adequate and reasonable."

10. Considering the totality of facts and circumstances of the case, we are of the opinion that contention of Counsel Shri Jani should be accepted and cross appeal of the claimants should be allowed in part. Accepting the contention of the Counsel for the claimants, we fix the market value of the land in question as on the date of section 4 notification at Rs. 7.50 per sq. mtr. or Rs. 750/- per are which would bring the value at least on par with what was granted for non-irrigated lands of village Satarada under notification issued on the same date. Since under the award of the Land Acquisition Officer as enhanced by the Reference Court claimants have already been awarded compensation at the rate of Rs. 6.30 per sq. mtr, they shall receive additional compensation at the rate of Rs. 1.20 per sq. mtr. On such additional compensation, claimants shall receive additional 12% under Section 23(1A) of the Act from the date of section 4 notification till taking of the possession of the land in question. Claimants shall also receive 30% solatium on such additional compensation. Such additional compensation shall carry interest at the rate of 9% for the first year of the date from taking possession and at the rate of 15% thereafter, till actual payment.

**[11]** In the result, in view of above order, First Appeal No. 6817/1998 of the State stands dismissed. Cross Appeal No. 313/2011 of the claimant is allowed in part. Claimants shall be entitled to proportionate costs.

R & P may be transmitted to the trial Court.