

G.M., O.N.G.C. Ltd vs Sendhabhai Vastram Patel & Ors on 8 August, 2005

Equivalent citations: AIRONLINE 2005 SC 1091

Author: S.B. Sinha

Bench: Ashok Bhan, S.B. Sinha

CASE NO.:

Appeal (civil) 173 of 2004

PETITIONER:

G.M., O.N.G.C. Ltd.

RESPONDENT:

Sendhabhai Vastram Patel & Ors.

DATE OF JUDGMENT: 08/08/2005

BENCH:

Ashok Bhan & S.B. Sinha

JUDGMENT:

J U D G M E N T with C.A. Nos. 174-181, 1986 - 2012, 2144-2146 of 2004 and 687-689 of 2005 S.B. SINHA, J :

These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

The representative fact of the matter, however, is being noticed from Civil Appeal No. 173 of 2004.

The lands situated inter alia in villages Santhal, Memadpur, Saduthla and Balol were acquired by the State of Gujarat for the purpose of use thereof by the Appellant.

A notification under Section 4 of the Land Acquisition Act (for short "the Act") was issued on 31.7.1986. In terms of Section 6 of the Act, the declaration was issued on 29.12.1987. Upon service of notice upon the claimants, the Land Acquisition Collector made an award in terms of Section 11 of the Act. In doing so, several deeds of sale executed between 1981 and 1982 in respect of lands adjoining some of the villages were taken into consideration and market value of the land was determined at the rate of Rs. 1.55 per sq. m. The claimants Respondents did not accept the said award and prayed for a reference to the Civil Court. Such a reference having been made the

Reference Court purported to be relying on or on the basis of judgments dated 30th October, 1996 and 10th November, 1996 passed by 4th Extra Assistant Judge and 2nd Extra Assistant Judge, Mahesana respectively in L.A. R. Case No. 1349/92 and 1314/92 passed an award computing the amount of compensation at the rate of Rs. 10/- per sq. m.

The Appellant herein was not impleaded as a party in the Reference Court. It had, thus, no opportunity also to adduce any evidence either before the Land Acquisition Collector or before the Reference Court. It preferred appeals before the High Court being aggrieved by and dissatisfied with the said judgment and award passed by the Reference Court.

A contention raised by the Appellant before the High Court *inter alia* was that the Reference Judge acted illegally and without jurisdiction in passing the said judgment solely on the basis of the deposition of one Sendhabhai Vastaram Patel who alleged that the agricultural lands which he and others had been cultivating were of high fertility and three crops in a year were grown therein. The witness further alleged that the village was well-developed. He further contended that the lands of one Govindhbhai Ambaram was acquired for the Appellant wherein compensation at the rate of Rs. 10/- per sq. m. was awarded. It was argued that the Reference Court was bound to consider the deeds of sale relied upon by the Land Acquisition Collector in his Award.

A Division Bench of the Gujarat High Court rejected the said contentions stating that the Reference Court had not committed any error of law in taking into consideration the evidence adduced by the said witness. It was held:

"It appears that after the evidence, another judgment was pointed to the Reference Court for which there is a reference in the impugned judgment in para 15. The lands covered under that reference cases were situated in the sim of village Santhal and Kasalpura and the Reference Court awarded Rs. 10/- per sq. mtrs. In the instant case, the lands are situated at village Santhal. In view of this evidence, we find no substance in the appeals and appeals are dismissed."

Aggrieved, the Appellants are before us.

Mr. Ashwani Kumar, learned senior counsel appearing on behalf of the Appellant *inter alia* would contend that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the Reference Court committed a mistake in relying on the sole testimony of a witness and ignoring the deeds of sale which were produced before the Land Acquisition Collector. It was pointed out that the appeals were filed against Award Nos. 2571 of 1993 and 2573 of 1993 and in that view of the matter, the Reference Court could not have acted only on the basis thereof.

The Appellant was a person aggrieved and the appeal under Section 54 of the Act was maintainable at its instance. In the said appeal, the High Court was bound to consider both factual and legal aspects involved therein and not only an error of law.

While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefor has to be ascertained. Although, there exist different modes for arriving at market value for the land acquired; the best method, however, as is well-known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by deeds of sale. In absence of any direct evidence on the said point, the court may take recourse to other methods; viz. judgments and awards passed in respect of acquisitions of lands made in the same village and / or neighbouring villages. Such a judgment and award in absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value.

The Reference Court, it is trite, has to apply the comparable sales method as also the situation of the land which is to be appreciated upon considering the question as to whether acquired land is similar to any land sold in the vicinity.

In *Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others* [(2001) 7 SCC 650], this court observed:

"3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down *inter alia* are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land ."

[See also P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, (1995) 2 SCC 305 and Panna Lal Ghosh and Others vs. Land Acquisition Collector and Others (2004) 1 SCC 467].

The Reference Court, in our opinion, committed a serious error in passing the judgment solely relying on or on the basis of the testimony of a witness ignoring the deeds of sale which were produced before the Land Acquisition Collector. If the Reference Court intended to differ with the opinion of the Land Acquisition Collector, it was bound to assign sufficient and cogent reasons therefor. From a bare perusal of the judgment and award passed by the Reference Judge, it is evident that he had relied upon the purported award made in L.A. R. Case No. 1349/92 and 1314/92. It is true that before the Reference Court, the learned Additional Public Prosecutor made a statement that the said judgments have attained finality and no appeal had been preferred thereagainst and as such the same could be taken as the good guidance for the purpose of determining the actual value of the acquired lands; but as has been noticed hereinbefore, the said statement had wrongly been made as appeals had been preferred thereagainst. The High Court, in our opinion, thus, did not pose unto itself a correct question so as to arrive at a correct conclusion on fact and, thus, misdirected itself in law. In determining the amount of compensation, the Reference Court as also the High Court was bound to take into consideration the well-settled principles of law and the factors enumerated in Section 23 of the Act.

Instances of sale in respect of the similar land situated in the same village and / or neighbouring villages should have been taken as guiding factors by the Reference Judge as also by the High Court. In absence of any better evidence, the Reference Judge as also the High Court could have made addition in the sale prices for the land as evidenced by the said deeds of sale.

In Viluben Jhalejar Contractor (Dead) By Lrs. vs. State of Gujarat [(2005) 4 SCC 789], this Court held :

"18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to

various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors Negative factors

(i) smallness of size (i) largeness of area

(ii) proximity to a road (ii) situation in the interior at a distance from the road

(iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth

(iv) nearness to developed area (iv) lower level requiring the depressed portion to be filled up

(v) regular shape (v) remoteness from developed locality

(vi) level vis-à-vis land under acquisition (vi) some special disadvantageous factors which would deter a purchaser

(vii) special value for an owner of an adjoining property to whom it may have some very special advantage

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price."

It was further observed :

"24. The purpose for which acquisition is made is also a relevant factor for determining the market value. In Basavva v. Spl. Land Acquisition Officer deduction to the extent of 65% was made towards development charges."

Furthermore, the High Court was not correct in dismissing the first appeal preferred by the Appellants herein in such a slip shod manner. We are, therefore, not in agreement with the reasonings of the High Court.

Despite our findings aforementioned, we are of the opinion that these are not fit cases calling for interference in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India.

The lands acquired in District Mehsana in different civil appeals is as under:

S.No. Civil Appeal No. Area in sq. mtr.

1.

2144-2146 of 2003 7895 in village Santhal

2. 173-175 of 2004 7874 in village Santhal

3. 176-180 of 2004 10404 in village Memadpur

4. 687-689 of 2005 8267 in village Saduthla

5. 1986-2012 of 2004 81281 in village Balol Most of the Appellants are not represented before us evidently because the amount of compensation granted in their favour is not sufficient for them to contest these cases before us. Only in one of the cases, Mr. Aniruddha P. Mayee, has appeared to represent the Respondents. Even in that case the enhanced amount of compensation is about Rs. 15000/-.

The financial implication of these matters involves only a few thousand rupees in each case. In these cases, the Appellants have already deposited 50% of the amount awarded by the High Court and presumably, the Respondents have already withdrawn that amount. Even if we had set aside the impugned judgment and remit the matter back to the High Court, the Appellants as also the Respondents would have to spend a huge amount on litigation.

Even otherwise, we might have directed that the amount withdrawn by the Respondents may not be refunded to the Appellants. Even from that angle, the amount involved in these proceedings is not such which would warrant this Court to exercise its discretionary jurisdiction.

It is now well-settled that the High Courts and the Supreme Court while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof may not exercise the same in appropriate cases. While exercising such jurisdiction, the superior courts in India even may not strike down a wrong order only because it would be lawful to do so. A discretionary relief may be refused to be extended to the Appellant in a given case although the Court may find the same to be justified in law. [See S.D.S. Shipping (P) Ltd. Vs. Jay Container Services Co. (P) Ltd. and Others, (2003) 9 SCC 439] A similar view has been taken by this Court in a large number of decisions including High Court of Judicature at Bombay through Registrar and Another Vs. Brij Mohan Gupta (Dead) through LRs. and Another [(2003) 2 SCC 390], N.K. Prasada Vs. Government of India and Others [(2004) 6 SCC 299, para 26], Inder Parkash Gupta Vs. State of J&K and Others [(2004) 6 SCC 786, para 42] and Board of Control For Cricket in India and Another Vs. Netaji Cricket Club and Others [(2005) 4 SCC 741, para 102].

Furthermore, this Court, with a view to do complete justice to the parties, would be entitled to pass any appropriate order in terms of Article 142 of the Constitution of India by referring to exercise its jurisdiction in a given case in equity or by implementing the doctrine of social justice.

For the reasons aforementioned, these appeals are dismissed with aforementioned observations. There shall, however, be no order as to costs.