

MANUBHAI SENDHABHAI BHARWAD & ANR.

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v.

OIL AND NATURAL GAS CORPORATION LTD. & ORS.

(Civil Appeal No. 472 of 2023)

JANUARY 20, 2023

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[M. R. SHAH AND M. M. SUNDRESH, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Land Acquisition Act, 1894 – Constitution of India – Art. 300A – The subject land was under temporary acquisition by ONGC since 1996 – Appellant (owner) purchased the subject land vide sale deed dated 15.03.2005 – Appellants were paid Rs 24/sq. metre per annum as rent – Appellants approached the High Court seeking to quash the temporary acquisition proceedings or to release the land from acquisition – The High Court rejected the prayer for quashing temporary acquisition proceedings and ordered for permanent acquisition within 12 months – The Court further directed that the Corporation would consider the claim of the appellants for paying rent at Rs. 1,000/- per square meter per month till acquisition of the land on permanent basis – On appeal, held: Temporary acquisition cannot continue for approximately 20 to 25 years and same can be said to be arbitrary and infringing right to use the property under Art. 300A of Constitution of India – If the permanent acquisition is not done within a stipulated time as per the order of the High Court necessary consequence shall follow – As far rent is concerned, as per s.34 of the 1894 Act if the appellant is aggrieved by the compensation/annual rent, it is open for the appellant to approach the Collector.

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Disposing of the appeal, the Court

HELD : 1. Approximately 26 years have passed and still the land in question is under temporary acquisition by the ONGC. If the land is continued to be under temporary acquisition for number of years, meaning and purpose of temporary acquisition would lose its significance. Temporary acquisition cannot be continued for approximately 20 to 25 years. It cannot be disputed that once the land is under temporary acquisition and the same is

- A **being used by the ONGC for oil exploration, it may not be possible for the landowners to use the land; to cultivate the same and/or to deal with the same in any manner. To continue with the temporary acquisition for number of years would be arbitrary and can be said to be infringing the right to use the property guaranteed under Article 300A of the Constitution of India. Even to continue with the temporary acquisition for a longer period can be said to be unreasonable, infringing the rights of the landowners to deal with and/or use the land. As such, in the impugned judgment and order, the High Court has granted time to the ONGC and the State to acquire the land in question permanently within twelve months from the date of the impugned order, i.e., within twelve months from 26.04.2022, i.e., on or before 26.04.2023. Therefore, if the land in question is not acquired as per the writ issued by the High Court within a stipulated time, necessary consequence shall follow. [Para 7][1027-F-H; 1028-A-B, C-E;]**
- B **2. Now so far as the grievance with respect to the quantum of annual rent paid is concerned, the High Court has already issued directions in terms of para 7(iii) of the impugned judgment and order. Even otherwise, as per section 34 of the 1894 Act, if the appellants are aggrieved by the amount of compensation/annual rent, it will always be open to the appellants/landowners to approach the Collector and the Collector shall refer such reference to the decision of the Court. [Para 8][1028-F-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.472 of 2023.

F From the Judgment and Order dated 26.04.2022 of the High Court of Gujarat at Ahmedabad in R/Special Civil Application No.9258 of 2021.

Gopal Sankaranarayanan, Sr. Adv., Jatin Zaveri, Neel Kamal Mishra, Ms. Aditi Gupta, Advs. for the Appellants.

G Vikramjit Banerjee, ASG, Deepak Jain, Pradeep K.B., Ms. Jaspreet Aulagh, Tanpreet Gulati, Vaibhav Manu Srivastava, Ms. Deepanwita Priyanka, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Advs. for the Respondents.

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The Judgment of the Court was delivered by A

M. R. SHAH, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 26.04.2022 passed by the High Court of Gujarat at Ahmedabad in SCA No. 9258/2021, by which the High Court has dismissed the said writ petition preferred by the appellants – original writ petitioners for quashing temporary acquisition proceedings, the original writ petitioners – landowners have preferred the present appeal. B

3. That the land bearing survey No. 837/1 situated at Village Vastral, Taluka Vatva, District Ahmedabad admeasuring 10034 square meters is under temporary acquisition by Oil and Natural Gas Corporation Ltd. (ONGC) since the year 1996 for the purposes of oil exploration, which land was undisputedly purchased by appellant No.1 under a registered sale deed dated 15.03.2005. It is required to be noted that as such now the land in question falls in the city of Ahmedabad and it cannot be disputed that the prices of the land have increased manyfold and even the surrounding lands are already developed. At present, the appellants are being paid the rent at the rate of Rs. 24/- per square meter per annum for temporary acquisition. C

3.1 That the appellants herein approached the High Court in the year 2016 by way of SCA No. 3992/2016 seeking a direction to the respondents to either acquire the land on permanent basis or release the land from acquisition. The said writ petition came to be disposed of *vide* order dated 23.02.2017 on the stand taken by the respondents that they will initiate the process for acquiring the land permanently. However thereafter no concrete steps were taken to acquire the land permanently. On the contrary, ONGC approached the Special Land Acquisition Officer/Collector. The Land Acquisition Officer addressed a communication to the Deputy Collector that there shall be huge cost involvement in acquiring the land on permanent basis under the new Land Acquisition Act, 2013. However thereafter the acquisition proceedings were kept on hold and the appellants continued to be paid the rent @ Rs. 24/- per square meter per annum for temporary acquisition. That after the disposal of the writ petition in 2017 and though it was assured that the process for permanently acquiring the land would be initiated, nothing was done thereafter and therefore the appellants again F

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- A approached the High Court for quashing of the acquisition proceedings and to direct the respondents to release the said land from temporary acquisition and to handover vacant and peaceful possession of the land in question to the appellants.

- 3.2 It was the case on behalf of the appellants that to continue the temporary acquisition for nearly 25 years would be absolutely unreasonable and arbitrary and that too by paying abysmally low rent. It was pointed out that in the neighbouring area, Ahmedabad Metro Rail Corporation is paying Rs. 1000/- per square meter per month as rent whereas now the rate of rent fixed for the subject land is Rs. 30/- per square meter per annum.

- C 3.3 In response to the notice issued by the High Court, the respondents appeared before the High Court. It was again submitted that the competent authority has accorded approval for acquisition of the subject land on permanent basis and the same is under process. A statement was made on behalf of the ONGC before the High Court that D the acquisition proceedings would be concluded within 12 months. An undertaking on behalf of the ONGC was also placed on record. Relying upon the said undertaking, the High Court, by the impugned judgment and order, has rejected the prayer for quashing temporary acquisition proceedings. However, taking note of the fact that the Corporation made E a show of having paid enhanced rent from Rs. 24/- per square meter per annum to Rs. 30/- per square meter per annum, which can be said to be abysmally on the lower side and not commensurate with the prevalent market rent and the statutory authorities of the State under similar circumstances having paid Rs. 1,000/- per square meter per month, the High Court has directed that the Corporation would consider the claim F of the appellants for paying rent at Rs. 1,000/- per square meter per month till acquisition of the land on permanent basis from the date of purchase of the land by the appellants i.e., from 15.3.2005.

- G 3.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court refusing to quash the temporary acquisition proceedings and as such not passing any order to increase the rent per month for temporary acquisition, the landowners have preferred the present appeal.

- H 4. Shri Gopal Sankaranarayanan, learned Senior Advocate appearing on behalf of the appellants – landowners has vehemently submitted that to continue the temporary acquisition for number of years,

namely, in the present case, twenty five years and that too on payment of a meagre rent per annum is nothing but arbitrary, unreasonable and violative of right to hold property guaranteed under Article 300A of the Constitution of India.

4.1 It is submitted that even in the year 2016, an assurance was given to the High Court that to acquire the land permanently, proceedings shall be initiated and on that assurance the High Court disposed of the earlier writ petition. It is submitted that thereafter also, after a period of six years, no further concrete steps are taken to acquire the land permanently and the appellants are being paid meagre rent at present at the rate of Rs. 30/- per square meter per annum.

4.2 It is further submitted that the area in question in which the land under temporary acquisition is situated is now forming part of the city area and is a fully developed area and the prices have gone very high. It is submitted that therefore to offer/pay rent at the rate of Rs. 30/- per square meter per annum and that too for the entire area of the land in the developed area is absolutely unreasonable, arbitrary and violative of Article 300A of the Constitution of India. It is submitted that because of the temporary acquisition for 25 years, the appellants are not in a position to use the land in question. They are not in a position to fetch the market price. They are also not getting the adequate compensation/rent. It is submitted that if the land would have been acquired permanently earlier, the appellants would have got sufficient compensation and the appellants would have utilised that money for purchase of other land, which the appellants could not because of non-payment of compensation due to non-acquisition of the land permanently.

5. Shri Vikramjit Banerjee, learned Additional Solicitor General of India has submitted that the land in question has been acquired by the ONGC for its oil exploration and production activities on temporary basis. It is submitted that for the aforesaid the landowners are being paid the annual rent revised from time to time by the Committee comprising Collector, Town Planning Officer, Deputy Collector, Assistant Collector, Special Land Acquisition Officer and the representative of the ONGC with respect to the land situated in Gujarat. It is submitted that the appellants are accepting the periodically revised upward rent voluntarily.

5.1 It is further submitted that after the High Court passed an order in Special Civil Application No.3992/2016, which was disposed of on the statement made by the respondents that they would initiate the

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- A process of permanent acquisition, on 23.5.2018, Revenue Department, Government of Gujarat published a notification stating that the land in question is required by the ONGC for public purpose declaring its intention to acquire the land for development of its infrastructure. It is submitted that after the notification dated 23.5.2018, again on 22.07.2019, Revenue Department of Government of Gujarat published a notification relating to land in question required by the ONGC for public purpose, the same was issued under Right to Fair Compensation and Transparency in Land Acquisition , Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the '2013 Act'). It is submitted that however thereafter on 21.10.2019 through internal communication, GM(HR) I/c LAQ Section, ONGC, Ahmedabad was informed that the permanent acquisition of the land in question is put on hold and the proposal detailing number of acquisition to be made at Ahmedabad Asset, including its financial implications have been sent for appraisal to the Executive Committee/ ONGC Board. It is submitted that therefore the respondent-ONGC has full intention to proceed with the permanent acquisition, but due to the reasons so stated in the letter dated 21.10.2019, the process for permanent acquisition was put on hold. It is therefore submitted that the respondent-ONGC needs more time to make the acquisition process in conformity with 2013 Act, to acquire the land permanently.

- 5.2 Now so far as the grievance on behalf of the appellants that they are being paid meagre annual rent is concerned, it is submitted that as such In-house Executive Committee of the ONGC revises the rate after every three years. It is submitted that the rate of rent is revised recently as well with effect from 1.2.2021 from Rs. 24/- per square meter to Rs. 30/- per square meter for the lands acquired directly by ONGC on temporary basis. It is submitted that periodical upward rent is accepted voluntarily by the appellants. It is submitted that the appellants again claiming the annual rent/revision of annual rent considering the market value/market price of the land in question.

6. We have heard learned counsel for the respective parties at length.

- G At the outset, it is required to be noted that the land in question owned by the appellants has been under temporary acquisition by the respondent-ONGC since the year 1996 for the purposes of its oil exploration. The land in question has been purchased by the first appellant under a registered sale deed dated 15.3.2005. Therefore, as such, at the time when appellant No.1 purchased the land in question, the land in question was under temporary acquisition by the ONGC. Be that as it

may, on and from 15.3.2005, appellant No. 1 is the owner of the land in question and therefore can question the temporary acquisition if the temporary acquisition has been continued for a long period. It is to be noted that the land in question now falls in the city of Ahmedabad and the prices of the land have increased manyfold. The appellants are being paid the annual rent @ Rs. 30/- per square meter per annum as revised.

As observed hereinabove, the land in question is under temporary acquisition by the ONGC since the year 1996 for its oil exploration. The same is under temporary acquisition under Section 35 of the Land Acquisition Act, 1894 (for short, '1894 Act'). Section 35 of the 1894 Act reads as under:

"35. Temporary occupation of waste or arable land, procedure when difference as to compensation exists – (1) Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof, for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court."

7. Approximately 26 years have passed and still the land in question is under temporary acquisition by the ONGC. If the land is continued to be under temporary acquisition for number of years, meaning and purpose of temporary acquisition would lose its significance. Temporary acquisition cannot be continued for approximately 20 to 25 years. It cannot be disputed that once the land is under temporary acquisition and the same is being used by the ONGC for oil exploration, it may not be possible for the landowners to use the land; to cultivate the same and/or to deal with the same in any manner. To continue with the temporary acquisition for

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- A number of years would be arbitrary and can be said to be infringing the right to use the property guaranteed under Article 300A of the Constitution of India. Even to continue with the temporary acquisition for a longer period can be said to be unreasonable, infringing the rights of the landowners to deal with and/or use the land.
- B However, from the material on record, it appears that in the year 2018 and after the High Court disposed of the earlier writ petition on the submission made on behalf of the ONGC that the land in question shall be acquired permanently, efforts were made in the year 2018 to acquire the land under the provisions of the 2013 Act. However, thereafter the same is put on hold by the Land Acquisition Officer/State Government and the reason seems to be the higher value of the land to be paid towards compensation. Even before this Court also, learned counsel appearing on behalf of the ONGC has prayed for some further time to acquire the land in question permanently. As such, in the impugned judgment and order, the High Court has granted time to the ONGC and the State to acquire the land in question permanently within twelve months from the date of the impugned order, i.e., within twelve months from 26.04.2022, i.e., on or before 26.04.2023. Therefore, as such, a writ of mandamus is already issued by the High Court directing the Corporation ONGC to complete the acquisition proceedings on or before 26.04.2023. Therefore, if the land in question is not acquired as per the writ issued by the High Court within a stipulated time, necessary consequence shall follow. The respondent-ONGC is directed to act as per the impugned judgment and order passed by the High Court, more particularly para 7(ii), failing which necessary consequence shall follow.
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- F 8. Now so far as the grievance with respect to the quantum of annual rent paid is concerned, the High Court has already issued directions in terms of para 7(iii) of the impugned judgment and order. Even otherwise, as per section 34 of the 1894 Act, if the appellants are aggrieved by the amount of compensation/annual rent, it will always be open to the appellants/landowners to approach the Collector and the Collector shall refer such reference to the decision of the Court.
- G 9. With the aforesaid observations and directions, the present appeal stands disposed of in terms of the above.

Ankit Gyan

Appeal disposed of.

(Assisted by : Abhishek Pratap Singh and Aarsh Choudhary, LCRAAs)