

G.M., Oil & Natural Gas Corporation Ltd vs Rameshbhai Jivanbhai Patel & Anr on 31 July, 2008

Bench: R.V. Raveendran, Lokeshwar Singh Panta

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Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5192 OF 2002

The General Manager,
Oil & Natural Gas Corporation Ltd. ... Appellant

Vs.

Rameshbhai Jivanbhai Patel & Anr. ... Respondents

(With CA Nos.5193,5194,5195,5196,5197 and 5198 of 2002)

ORDER

R. V. Raveendran J., These appeals by special leave are by the beneficiary of acquisition (ONGC), aggrieved by the quantum of compensation awarded to the respondents.

2. An extent of 13 Hectares 78 Are and 97 sq.m. in Ijapura Village, District Mehsana, Gujarat, was acquired for one of ONGC installations, namely "Influent pit-Santhal I", under preliminary notification dated 15.9.1992 issued under section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) followed by final notification dated 31.3.1993 under section 6 of the Act. The Special Land Acquisition Officer, ONGC, passed an Award dated 16.11.1994 determining the market price as Rs.2.10 per sq.m. The respondents - land owners, sought reference to civil court claiming Rs.30 per sq.m.

3. Before the Reference Court, the respondents did not place any evidence by way of contemporaneous sale transactions in the neighbourhood. But they placed reliance on some awards passed by the said Court in other acquisition cases, in particular, the following two awards:

(i) Ex. 15 - relating to acquisition of lands for ONGC, in the neighbouring Santhal village under preliminary notification dated 6.1.1987, wherein compensation at the

rate of Rs.10 per sq.m was awarded.

(ii) Ex. 16 - relating to acquisition of lands at Chalasana village at a distance of 4 Kms. from Ijapura village under preliminary notification dated 31.7.1986, wherein compensation at the rate of Rs.10 per sq.m was awarded.

The Land Acquisition Officer did not choose to adduce any evidence nor produce the sale deeds referred to in his award in support of the market value arrived at by him at Rs.2.10 per sq. m.

4. The Reference Court allowed the claim in part by Judgment and Award dated 7.10.1999. It determined the market value of the acquired lands at Rs.17.10 per sq.m based on the said two awards - Ex. 15 relating to the neighbouring Santhal village and Ex. 16 relating to Chalsana village. It found that under the said awards Rs.10 per sq. m. has been awarded for acquisitions in the year 1986 and 1987. As the acquisition in the cases on hand was on 15.9.1992, it increased the value cumulatively at the rate of 10% per annum and arrived at a value of Rs.19.10 per sq.m by treating the gap between the relied-on-acquisitions and the present acquisition as six and half years. Thereafter, it reduced Rs.2/- per sq. m. therefrom for the distance factor (distance between Ijapura and the other two villages) to arrive at the market value as Rs.17.10 per sq.m. The Reference Court also awarded additional compensation under section 23(1A) and solatium under section 23(2) of the Act. It awarded interest under section 28 of the Act at 9% PA for a period of one year from the date of taking possession and 15% per annum thereafter, on the actual compensation amount, and not on the additional amount under section 23(1A) or the solatium under section 23(2) of the Act.

5. The appellant challenged the said award of the Reference Court before the High Court. The High Court dismissed the appeals holding that the determination of the market value by the Reference Court did not call for interference.

6. The appellant urged the following two contentions in support of the appeals against the said judgment:

(i) Ex. 15 and Ex. 16 did not relate to the Ijapura village, but related to other villages, namely neighbouring Santhal and far away Chalsana (at a distance of 4 kms). The market value of lands in those villages cannot furnish the basis for determining the market value in regard to the acquired lands situated at Ijapura.

(ii) Even if Ex. 15 and 16 could validly be the basis for determining the market value of lands at Ijapura, the Reference Court and High Court committed three errors in calculating the increase: (a) in applying an annual increase at a high rate of 10% per annum; (b) in calculating the annual increase cumulatively instead of at a flat rate;

and (c) in calculating the increase for a period of six and half years instead of for five years.

The appellant submitted that even if Ex.15 was to be the basis, having regard to the date of relied-on acquisition under Ex.15 (6.1.1987) and date of present acquisition of the Ijapura lands (15.9.1992),

the increase ought to have been calculated for only five years; that the percentage of increase should not have been more than a flat rate of 5% per annum; that therefore, the increase ought to have been only Rs.2.50 for 5 years and the market value of Santhal lands in 1992 would have been Rs.12.50 per sq.m. and not Rs.19.10; and that if Rs.2/- was deducted for the distance factor, as was done by the Reference Court, the market price would be only Rs.10.50 per sq. m. and not Rs.17.10 per sq.m.

Whether reliance on Ex.15 and 16 erroneous?

7. The fact that Santhal village adjoins Ijapura is not disputed. The fact that Ex.15 related to the acquisition of lands in the neighbouring Santhal village, for the benefit of the appellant - ONGC is also not disputed. The Reference Court and the High Court have recorded a concurrent finding of fact that having regard to the proximity and similarity between the lands at Santhal covered by Ex. 15 and the acquired lands in Ijapura, the market value determined in regard to the Santhal lands afforded a reasonable basis for determining the market value of the acquired lands. We also find from the evidence of one of the claimants - Laljibhai examined as CW1, that the boundaries of Santhal, Kasalpura and Modipur villages are adjacent to the acquired lands; and that the lands of one Ramanbhai Keshavlal of Santhal Village acquired on 6.1.1987 (subject matter of Ex.15) and the acquired lands were in neighbouring areas divided only by three or four agricultural fields. We also find that the Ex. 15 was also the basis for determining the market value of lands which were the subject matter of another acquisition for ONGC in Santhal and other villages under notification dated 31.7.1986; and that this Court affirmed the award of compensation at the rate of Rs.10 per sq. m. in regard to such acquisition relying on Ex. 15 (vide in ONGC Ltd. v. Sendhabhai Vastram Patel & Ors., 2005 (6) SCC

454). We are therefore of the view that in the absence of any evidence relating to sale transactions or acquisitions relating to the village of Ijapura itself, and having regard to the evidence relating to proximity of Santhal lands, Ex.15 offered a reasonable basis for determining the market value of the acquired lands in Ijapura. In view of Ex.15 relating to neighbouring Santhal, Ex.16 relating to Chalsana loses relevance.

What should be the increase per annum?

8. The contention of appellant is that even if Ex. P15 should be the basis, in the absence of any specific evidence regarding increase in prices between 1987 and 1992, the annual increase could not be assumed to be 10% per year.

9. On the other hand, the learned counsel for the respondents/claimants submitted that the rate of escalation in market value at the relevant time was in the range of 10% to 15% per annum. He relied on the decisions of this Court in *Ranjit Singh v. Union Territory of Chandigarh* [1992 (4) SCC 659], and *Land Acquisition Officer and Revenue Divisional Officer v. Ramanjulu & Ors.* 2005 (9) SCC 594 wherein this Court had accepted an escalation of ten per cent per annum, and the decision in *Krishi Utpadan Mandi Samiti Sahaswom v. Bipin Kumar* 2004 (2) SCC 283 where this Court had accepted an escalation of 15% per annum. He, therefore, submitted that escalation at the rate of 10 per cent adopted by the Reference Court and approved by the High Court is a reasonable and correct

standard to be applied.

10. We have examined the facts of the three decisions relied on by the respondents. They all related to acquisitions of lands in urban or semi-urban areas. Ranjit Singh related to acquisition for development of Sector 41 of Chandigarh. Ramanjulu related to acquisition of the third phase of an existing and established industrial estate in an urban area. Bipin Kumar related to an acquisition of lands adjoining Badaun-Delhi Highway in an semi-urban area where building construction activity was going on all around the acquired lands.

11. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

12. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the 'rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

13. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land

acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/ amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.

14. In this case, the acquisition was in a rural area. There was no evidence of any out-of-ordinary developments or increases in prices in the area. We are of the view that providing an escalation of 7.5% per annum over the 1987 price under Ex.15, would be sufficient and appropriate to arrive at the market value of acquired lands. Whether the increase should be at a cumulative rate or a flat rate?

15. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs.10/- per sq.m):

Year	By flat rate increase method	By cumulative increase method
1987	10.00	10.00
(Base Year) 1988	10 + 1 = 11.00	10.00 + 1.00 = 11.00
1989	11 + 1 = 12.00	11.00 + 1.10 = 12.10
1990	12 + 1 = 13.00	12.10 + 1.21 = 13.31
1991	13 + 1 = 14.00	13.31 + 1.33 = 14.64
1992	14 + 1 = 15.00	14.64 + 1.46 = 16.10

16. We may also point out that application of a flat rate will lead to anomalous results. This may be demonstrated with further reference to the above illustration. In regard to the sale transaction in 1987, where the price was Rs.10 per sq.m, if the annual increase to be applied is a flat rate of 10%, the increase will be Rs.1 per annum during each of the five years 1988, 1989, 1990, 1991 and 1992. If the price increase is to be determined with reference to sale transaction of the year 1989 when the price was Rs.12 per sq.m, the flat rate increase will be Rs.1.20 per annum, for the years 1990, 1991 and 1992. If the price increase is determined with reference to a sale transaction of the year 1990 when the price was Rs.13 per sq.m, then the flat rate increase will be Rs.1.30 per annum for the years 1991 and 1992. It will thus be seen that even if the percentage of increase is constant, the application of a flat rate leads to different amounts being added depending upon the market value in the base year. On the other hand, the cumulative rate method will lead to consistency and more realistic results. Whether the base price is Rs.10/- or Rs.12/10 or Rs.13/31, the increase will lead to the same result. The logical, practical and appropriate method is therefore to apply the increase cumulatively and not at a flat rate.

For what period, the increase should be calculated?

17. The reference court has stated that the gap between 6.1.1987 (the date of transaction covered by Ex.P15) and 15.9.1992 (the date of acquisition under consideration) was six and half years. It therefore calculated the increase for six and half years. This is obviously erroneous. The actual gap is five years and eight months and not six and half years. However, for the purpose of calculation, we have to exclude the year of the relied-upon transaction, which is the base year. If the year of relied-upon transaction in 1987, the increase is applied not from 1987 itself but only from the next year which is 1988. If the rate was Rs.10 per sq.m. in 1987, and the cumulative rate of increase is 7.5% per year, the price will be Rs.10.75 in 1988, Rs.11.56 in 1989, Rs.12.42 in 1990, Rs.13.35 in 1991 and Rs.14.35 in 1992. Thus the calculation of increase is only for five years and not for six and half years.

What should be the market value of the acquired land?

18. By applying a cumulative rate of escalation of 7.5% over the market price of Rs.10 per sq.m in 1987, we find that the market value in the year 1992 was Rs.14.35. The Reference Court and High Court had deducted Rs.2/- towards distance factor. As the lands are similarly situated and are in adjoining villages, it will be sufficient to deduct Rs.1.35 per sq.m. instead of Rs.2/-. We accordingly determine the market value as Rs.13/- per sq. m.

Interest :

19. Subsequent to the decision of the High Court, a Constitution Bench of this Court in *Sunder v. Union of India* [2001 (7) SCC 211], held that the 'amount awarded' for the purpose of interest will include not only the market value but also the additional amount under section 23(1A) and solatium under section 23(2) of the Act. In *Patel Joitaram Kalidas & Ors. V. Special Land Acquisition Officer and Anr.* LAO 2007 (2) SCC 341, this Court held that the calculation of interest on the additional amount under section 23(1A) and 23(2) is automatic and consequential, even in the absence of any

specific appeal by the claimants in respect of non-grant of such interest. At all events, as we are reducing the compensation from Rs.17.10 to Rs.13 per sq. meter, the claimants are entitled to support and sustain the award for the higher amount as per the decision of reference court and High Court on other factors.

Conclusion :

20. We accordingly allow these appeals in part and make the following modification to the award made by the Reference Court confirmed by the High Court: The claimants/respondents will be entitled to compensation at the rate of Rs.13/- per sq. m. with additional amount under section 23(1A) and solatium under section 23(2) as awarded. The respondents-claimants will be entitled to interest at the rates awarded by the reference court (9% per annum for one year and 15 per cent per annum thereafter) on the total compensation amount including additional amount under section 23 (1A) and solatium under section 23(2). Parties to bear their respective costs.

.....J
(R. V. Raveendran)

New Delhi;J.

July 31, 2008. (Lokeshwar Singh Pant)