

## **Thakarsibhai Devjibhai And Ors. vs Executive Engineer, Gujarat And Anr. on 11 January, 2001**

**Equivalent citations: AIR2001SC2424, JT2001(3)SC90, (2001)9SCC584, (2001)1UPLBEC851, AIR 2001 SUPREME COURT 2424, 2001 (9) SCC 584, 2001 AIR SCW 2417, 2001 (1) UPLBEC 851, (2001) 3 JT 90 (SC), 2001 (7) SRJ 460, 2001 (3) JT 90, (2001) 2 ICC 35, (2001) 2 LANDLR 584, (2001) 43 ALL LR 17, (2001) 3 CURCC 19, (2001) 2 GUJ LH 583, (2001) 1 LACC 355, (2001) 1 UPLBEC 851, (2001) 4 SUPREME 457, (2001) 2 ALL WC 924, (2001) 1 ANDHWR 153**

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**Bench: D.P. Mohapatra**

### **JUDGMENT**

1. Leave granted.

2. We find two sets of appeals, one Civil Appeals Nos. 506-514 of 2001 filed by the claimants and the other Civil Appeals Nos. 515-523 of 2001 filed by the State, challenging the quantum of compensation. These appeals are directed against the judgment and order of the High Court dated 5th November, 1999, partly allowing the State appeal by further reducing the compensation by Rs. 10/- per sq.mtr. from the rate of compensation determined at Rs. 58/- by the referring Court, by its judgment and Award dated 14th October, 1998. The question raised in these appeals filed by the claimants is :

"Whether the High Court was justified in further reducing the market value of the land in question by Rs. 10/- on the facts and circumstances of this case?"

3. The question raised in the State appeals is to the following effect :

"Whether High Court was right in relying upon Ex. 16 instead of placing reliance on Ex. 46, if it erred, has it not committing an error in not further reducing the rate of compensation to be one fixed by it."

4. As both two sets of appeals raise the questions which are inter-linked, hence are being dispose of by means of this common order.

5. Two main reasons on which the High Court has reduced the rate of compensation, one that the distance between the land covered by Ex. 16 and the land in the present case is five kilometers. Secondly, the area of land under Ex. 16 is small viz. about 2 hectares while the area covered in the

instant case is large, viz, 20 hectares approximately.

6. In the present case, notification under Section 4 of the Land Acquisition Act was issued on the 1st August, 1991 with nine claimants which is near the Viramgam town. The Land Acquisition Officer fixed the market value of the land at Rs. 4.50 p. per sq. mtr. against the claim for Rs. 60/- per sq. mtr. It is not in dispute, and is also recorded by the Land Acquisition Officer that neighbouring villages in that area are directly connected with Viramgam town for business, education, industries, etc. and there are ginning pressing factories, nationalised banks, godowns of Food Corporation, offices of Indian Oil Corporation, etc. He further records that the area has potentiality for further development.

7. Claimants aggrieved by the said fixation filed reference under Section 18 of the Act. The submission made therein is also the submission before us. The submission is, the lands sought to be acquired situate within 2 kms. from the town of Viramgam which adjoin the line in the North. Further both, the land under acquisition and the land under Ex. 16 are situated at an equal distance from the said Viramgam town. The acquisition of land under Ex. 16 is under Section 4 through notification dated 3rd January, 1991 while acquisition in the present case is later, through notification dated 1st August, 1991. The rate of land under Ex.16, which became final is Rs. 64/- per sq. mtr. The Reference Court, after considering Ex. 16 and taking it into considerations fixed the rate of compensation at Rs. 58/- per sq.mtr. Aggrieved by this the State filed appeals before the High Court. The High Court, as aforesaid, reduced the rate of compensation by Rs. 10/- per sq. mtr. thus fixed the compensation at the rate of Rs. 48/- per sq. mtr. Aggrieved by this the claimants preferred the present aforesaid appeals, while the State preferred the appeals for the further reduction.

8. Heard learned counsel for the parties, as against reduction, Learned counsel for the claimants strongly relied on Ex. 16 as the land covered under it is of the same village, similarly situated and the acquisition of which was prior than the present acquisition, hence there is no justification for the High Court to reduce the quantum of compensation from Rs. 58/- per sq. mtr. to Resection 48/-per sq. mtr. The submission is, this reduction by 25% is also not sustainable as High Court reduced it by treating the present acquisition being for a large chunk of land in contrast to the land which is covered under Ex. 16. The submission is, it is not large qua each land holder, it becomes large only if all the land of all the land holders are clubbed together, hence the reduction on this count is not justified.

9. On the other hand, learned counsel appearing for the State relies on the map filed before the High Court which is Annexure P-3 to the State appeal. The submission with reference to the map is, Ex. 16 is at a distance of 5 kms. from the present acquired land and Exh. 16 is for a small piece of land, i.e., 2 hectares (approx) while the present acquisition is for 20 hectares (approx). The reliance is also placed on Ex.46 which is also an acquisition in the same village through notification under Section 4 issued in July, 1987, wherein the amount of compensation fixed was Rs. 16/- per sq. mtr. The submission is, if increment of 10% per year is computed the approximate rate of compensation would come to Rs. 23/- per sq. mtr. It is not necessary to dwell on this, as we find the reliance on Exh. 46, has been rejected both the Referring Court and also by the High Court based on good reasoning. The submission on behalf of State was also for fixation of market value based on yield

method which was rejected by both the said Courts. The High Court for this relied on Special Land Acquisition Officer v. P. Veerabhadra, , to hold yield method can be referred only when there is no other evidence in the form of sale transaction or opinion of experts available. In the present case, the claimants had adduced sufficient evidence describing nature and situation of the acquired lands to be similar to other acquired land of the same village, with special reference to Ex. 16.

10. Next, in the present case, we find the High Court rightly relied on Exh. 16 which is the foundation of the submission on behalf of the claimants. The High Court, with reference to this records:

"As observed earlier, it was neither brought to the notice of the Reference Court nor it is brought to the notice of this Court that the previous award Exh. 16 of the Reference Court was in any manner modified by the appellate Court. Therefore, in our opinion, award Exh. 16 had become final between the parties. The respondents had led sufficient evidence to show that the acquired lands of award Exh. 16 and the acquired lands in the present case were in all respects similar lands. It was never brought to the notice of the Court that the lands acquired in the present case have certain disadvantages in comparison to the agricultural lands of award Exh. 16 which were previously acquired.

Under the circumstances, we are of the opinion that the Reference Court was justified in placing reliance on the previous award Exh. 16 of the Reference Court."

11. After accepting this award Ex. 16 as the foundation, while fixing the compensation, it fell into error when it reduced the compensation by 25%. The reason for this doing so by the High Court is reproduced below :

"Therefore, if award Exh. 16 is to be taken as basis for the purpose of determination of the market value of the acquired lands in the present case, some deduction will have to be made. At the same time, because of distance between the village site and the acquired lands, which was more than the distance between the village site and acquired lands of award Exh. 16, some deduction shall also have to be made. In our opinion, if the deduction of large area and small area coupled with further deduction for distance is made in the present case, then it would be reasonable to deduct 25% from the market price arrived at in respect of the acquired lands of award Exh. 16."

12. As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex. 16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, It could not be said that the acquisition is of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landowners holdings are of small area. Even otherwise visioning in the line with submission for the State we find Ex. 16 is about two hectares of land which cannot be said to be of small piece of

land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex. 16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under Ex. 16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Exh. 16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs. 10/- per sq. mtr. cannot be sustained.

13. For the aforesaid reason, we find, so far the appeals by the claimants has merit. The judgment and order of the High Court to the extent it reduced the compensation rate by Rs. 10/- per sq. mtr. is set aside and the findings recorded by the Referring Court is upheld. On the other hand, in view of the findings recorded hereinbefore for the same reasons the appeal filed by the State has no merit and are hereby dismissed, cost on the parties.

14. The interim order is hereby discharged. The state will now proceed to pay the compensation to the claimants expeditiously in terms of this order.