

Viluben Jhalejar Contractor (D) By Lrs vs State Of Gujarat on 13 April, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2214, 2005 (4) SCC 789, 2005 AIR SCW 2107, (2005) 2 CLR 102 (SC), (2005) 4 JT 282 (SC), (2005) 29 ALLINDCAS 36 (SC), (2005) 2 ALLMR 449 (SC), (2005) 4 CTC 71 (SC), 2005 (1) UJ (SC) 716, 2005 (29) ALLINDCAS 36, 2005 (2) CLR 102, 2005 UJ(SC) 1 716, 2005 (2) ALL MR 449, 2005 (4) CTC 71, 2005 (4) SCALE 97, 2005 (4) JT 282, 2005 (5) SRJ 382, 2005 (3) SLT 681, (2006) 1 MAD LW 189, (2005) 3 PAT LJR 48, (2005) 3 SCJ 440, (2005) 4 SUPREME 329, (2005) 3 KCCR 1844, (2005) 59 ALL LR 618, (2005) 3 GUJ LR 2074, (2005) 2 GUJ LH 779, (2005) 3 LANDLR 1, (2005) 4 SCALE 97, (2005) 3 ANDH LT 39, (2005) 3 CIVLJ 836, (2005) 1 LACC 567, (2005) 2 ALL WC 1355, (2005) 2 RECCIVR 492, (2005) 2 GCD 1284 (SC), (2005) 2 CURCC 277, (2005) 5 BOM CR 331

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Bench: B.P. Singh, S.B. Sinha

CASE NO.:

Appeal (civil) 2485 of 2001

PETITIONER:

Viluben Jhalejar Contractor (D) By LRs.

RESPONDENT:

State of Gujarat

DATE OF JUDGMENT: 13/04/2005

BENCH:

B.P. Singh & S.B. Sinha

JUDGMENT:

JUDGMENT W I T H CIVIL APPEAL NO. 2486-2487 OF 2001 S.B. SINHA, J :

The Government of Gujarat issued a notification under Section 4(1) of the Land Acquisition Act (the Act) for acquisition of lands situated in the town Santrampur which would have come under submergence of water released from Kadana Jalagar Yojna due to water logging at Kadana Dam. A declaration in terms of Section 6 was made on 13th October, 1980. In response to the notification issued to the claimants under Section 9 of the Act, compensation at the rate of Rs. 40/- per square feet for

the acquired lands was claimed. Compensation ranging from Rs. 35/- to Rs. 60/- per square meter was offered by the Land Acquisition Officer in terms of an award dated 16th March, 1982 under Section 11 of the Act. An application for reference was filed by the claimants under Section 18 of the Act requiring the Land Acquisition Officer to refer the matter relating to determination of the market value of the acquired lands to the Civil Court. Before the Reference Court, the claimants initially claimed compensation at the rate of Rs. 200 per square meter which was subsequently enhanced to Rs. 250/- per square meter. By a judgment and order dated 16th April, 1996, the learned District Judge allowed the reference application filed by the claimants determining the market value at the rate of Rs. 225/- per square meter. The State of Gujarat preferred an appeal thereagainst in the High Court of Gujarat which was marked as First Appeal No. 5041/96. A Division Bench of the High Court by a judgment and order dated 11th May, 1999 allowed the said appeal and remitted the matter to the Reference Court on the premise that the deed of sale whereupon the claimants relied upon had not been proved in accordance with law. Before the District Court, upon remand parties adduced evidence.

The Reference Court relying on or on the basis of a deed of sale dated 15th December, 1978 (Ex. 145), whereunder a piece of land measuring 46.30 square meters situated at Godhra Bhagal was sold and other evidences brought on records came to the conclusion that the lands under acquisition would have fetched at least Rs. 200/- per square meter. The Reference Court was further of the opinion that the claimants were furthermore to incur development charges which would have varied between 33% to 53% and on the basis thereof determined the market value at the rate of Rs. 134 per square meter.

Furthermore, the Reference Court extended the statutory benefits of solatium in terms of Section 23(2) of the Act as well as interest thereon in terms of Section 28 thereof. Both the parties preferred appeals thereagainst before the High Court of Gujarat.

A Division Bench of the High Court was of the view that the acquired lands were fully developed. The records of the case also indicated that after the acquired lands were submerged in the water of Kadana dam, the development of the area of Pratappura had shifted to the locality known as Godhra Bhagal. The basis for awarding compensation was the deed of sale dated 15th December, 1978 (Ex. 145), whereby approximately 46.30 square meters had been transferred at a consideration of Rs. 270/- per square meter, and upon making a deduction of 33% for the larger area and 25% for the smaller area, the claimants were held to be entitled to receive compensation at the rate of Rs. 180/- per square meter having large area and Rs. 200/- per square meter for the lands having small area.

The High Court, however, having regard to the decision of this Court in Prem Nath Kapur and Another Vs. National Fertilizers Corporation of India Limited and Others

[(1996) 2 SCC 71] was of the opinion that the claimants were not entitled to interest on the amount of solatium. Aggrieved thereby, both the parties are before us.

Ms. Hemantika Wahi, learned counsel appearing on behalf of the State of Gujarat would contend that the High Court committed a manifest error in passing the impugned judgment relying on or on the basis of the deed of sale of Survey No. 1177 which measured only 46.30 square meters and situated in a different locality whereas the area under acquisition was approximately 30,000 square meters belonging to one family.

The learned counsel would contend that the High Court ought to have deducted 50% from the value of the land in Survey No. 1177, not only keeping in view of the fact the acquired lands have large area but also on the ground of future developments which were required to be made. It was submitted that keeping in view the fact that the claimants would be getting the amount of compensation in lump sum, the High Court erred in passing the impugned judgment. In support of the said proposition, strong reliance has been placed on Bhagwathula Samanna and Others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam [(1991) 4 SCC 506], Land Acquisition Officer Revenue Divisional Officer, Chittor Vs. L. Kamalamma (Smt.) Dead by LRs and Others [(1998) 2 SCC 385] and Ravinder Narain and Another Vs. Union of India [(2003) 4 SCC 481].

Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the Claimants-Appellants, on the other hand, would contend that the High Court failed to take into consideration the fact that the lands situated in village Pratappura were fully developed whereas lands situated in Godhra Bhagal were not so developed and in that view of the matter it was not a case where the amount of compensation should have been determined upon deduction to the extent of 33% and 25% respectively for the large and small area. It was further contended that deduction both for the largeness of the area as well as the development is not permissible. Reliance in this connection has been placed The Registrar, University of Agricultural Sciences, Dharwad Vs. Balanagouda (Dead) By LRs. & Ors. [Civil Appeal Nos. 62-65 of 2000 disposed of on 10th December, 2003].

It was further contended that the High Court committed a manifest error in refusing to grant interest on solatium relying on or on the basis of the decision of this Court in Prem Nath Kapur (supra) which stands overruled by a Constitution Bench of this Court in Sunder Vs. Union of India [(2001) 7 SCC 211].

The land under acquisition consisted of 16 plots. Out of them two plots measured 18528 square meters and 10993 square meters respectively. The area of the small plots which are 14 in number are as under:

"S.No. C.T.S. No. Area acquired (in sq.m)

1. 833 130.00
2. 838 46.20
3. 839 35.28
4. 834 365.56
5. 857 234.00
6. 858 47.77
7. 859 47.97
8. 860 47.97
9. 861 46.60
10. 862 63.18
11. 840 54.60
12. 841 42.00
13. 842 26.40
14. 843 28.38 Total 1215.91"

The learned Land Acquisition Collector in his award noticed that the population of Santrampur town was 12000. The acquired lands were situated near an area known as Main market. It was held:

"Pucca residential houses, quarters of Government employees, rest house and open lands are there very near to the acquired lands. Acquired lands are of regular square shape having even level and is located in downwards about 4 feet from road level, surrounding lands are generally used for purpose other than agriculture purpose. These lands are more useful for residential purpose i.e. all lands are having N.A. potentialities. S.No. 25 is "Wada" land and this land is situated towards Godhra Lunawada road. Lunawada and on Northern side of road going towards Santrampur and near Chikhota river Santrampur is reserved for recreation place in implemented development map, whereas presently well and Bungalow of His Highness Maharaja Shri Krushnakumar Sinh is situated in the said land."

The High Court as regard the question as to whether the area is a developed one or not noticed the deposition of Barjorbhai Jalejar Contractor who alleged:

"The acquired lands were having facilities of electricity, water and roads. It is borne out from his evidence that the claimants' ancestors were carrying on business of distillery till 1949 and thereafter they had started business of pulse and rice mills on the acquired lands. It is an admitted fact that the acquired lands were converted into non-agricultural use since many years prior to the acquisition."

Before us, Ms. Wahi did not raise any contention that the sale instance relied upon by the Reference Court as also the High Court was improper. She, however, drew our attention to the following observations made by the Reference Court:

"However, the fact remain that the lands under acquisition are situated in the area called as Pratappura in Santrampura town, whereas the sale deed, ex. 145, pertains to a property situated in Godhra Bhagol area. The sale deed is not about the property situated in Pratappura area. Furthermore, though the amount of consideration of the entire land is Rs. 20,000/-, but there is no just and proper data about the valuation of the built up portion of the said plot. The L.A. Officer in his award dtd. 16.3.82 fixed the valuation of the built-up portion at Rs. 7,500/- but in the sale deed, ex. 145, nothing specific is mentioned about the separate valuation of the built-up portion in the land. The witness Giriraj Pandit, in his deposition, stated that when the property was purchased, at that time, construction work in the plot was only upto plinth level. However, in this connection, perusing the sale deed, ex. 145, it is, specifically, stated that in the land, a house was situated and even Santrampur Municipality issued a house no. 3484, to this house. Therefore, this part of the deposition of witness Giriraj Pandit, appears to be contrary to the averments made in the sale deed, ex. 145."

Pratappura appears to be a small town. There is nothing on record to show that the area was fully urbanized. However, in the area, a distillery, a Rice Mill, a Pulse Mill and even an Ice Factory had been running. Although, the Land Acquisition Collector referred to certain sale instances in his award, as indicated hereinbefore, we may assume that the sale deed dated 15th December, 1978 (Ex. 145) should be the basis for determination of compensation despite the fact that it relates to a very small piece of land. While determining the amount of compensation, certain factors must be taken into consideration. When the amount of compensation is determined on yardage basis, at least one-third of the land acquired should be deducted towards development purposes, viz., providing roads, electricity, drainage facility and other betterment developments. Such development charges may be in between 33% to 53%.

The Reference Court was of the view that although the area was developed, there is nothing on record to show that there had been facilities of internal roads drainage and other facilities. The learned Reference Court, however, arrived at a finding of fact that nothing was brought on record to show that on the date on which the possession had been taken, a distillery, rice mill, pulse mill and ice factory had been functioning.

The Reference Court, as noticed hereinbefore, was of the opinion that keeping in view of the fact that the area of the land covered by Ex. 145 was a small piece of land, the market price for the

acquired land should be determined at Rs. 200/- per square meters wherefrom 33% should be deducted towards development charges. The High Court, however, was of the opinion that 33% should be deducted from the total amount of consideration covered by Ex. 145 for the large area and 25% for the small area.

Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Sub-section (1) of Section 4.

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.

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.

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
- (v) 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.

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.

Certain peculiar features of this case may, at this juncture, be noticed. Due to construction of Kadana Dam and due to water logging causing submergence, the development of Pratappura even according to the Claimants had practically stopped. Development shifted to the area known as Godhra Bhagal. The finding of the Reference Court to the effect that the acquired lands had potentiality for more development is, thus, not correct.

A river known as Suki intervened between the Santrampur town and Godhra Bhagal. In a case of this nature, it is difficult to evolve a principle which would apply to all situations. Some amount of rational guess work, in our opinion, is inevitable.

The purpose for which acquisition is made is also a relevant factor for determining the market value. In *Basavva (Smt.) and Others Vs. Spl. Land Acquisition Officer and Others* [(1996) 9 SCC 640], deduction to the extent of 65% was made towards development charges.

In *Bhagwathula Samanna* (supra), it has been held:

"11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

In *L. Kamalamma* (supra), this Court held:

" Ext. B-30 is a sale deed dated 9-8-1976, the transaction having taken place prior to eight months from the issue of the preliminary notification for acquisition of land in the present case. Having found that the piece of land referred in Ext. B-30 is situated very close to the lands that are acquired under the notification in question the reference court and the High Court relied upon the said document and, in our view, rightly. Further when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed.

In Administrator General of West Bengal Vs. Collector, Varanasi [(1988) 2 SCC 150], deduction to the extent of 53% was allowed.

In K.S. Shivadevamma and Others Vs. Assistant Commissioner and Land Acquisition Officer and Another [(1996) 2 SCC 62], it was held:

"10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, as ordered by the High Court, was not illegal.

In Hasanali Khanbhai & Sons & Ors. Vs. State of Gujarat, (1995) 2 SCC 422 and L.A.O. Vs. Nookala Rajamallu, (2003) 10 SCALE 307, it has been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible.

We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some cases. [See Kasturi and Others Vs. State of Haryana, (2003) 1 SCC 354, Tejumaal Bhojwani (Dead) Through

LRS. And Others Vs. State of U.P., (2003) 10 SCC 525, V. Hanumantha Reddy (Dead) BY LRS. Vs. Land Acquisition Officer & Mandal R. Officer, (2003) 12 SCC 642, H.P. Housing Board Vs. Bharat S. Negi and Others, (2004) 2 SCC 184 and Kiran Tandon Vs. Allahabad Development Authority and Another, (2004) 10 SCC 745].

In The Registrar, University of Agricultural Sciences, Dharwad (supra), whereupon Mr. Ranjit Kumar placed strong reliance, the Court noticed that if the acquisition is made for agricultural purpose, question of development thereof would not arise; but if the sale instance was in respect of small piece of land whereas the acquisition is for a large piece of land, although development cost may not be deducted, there has to be deduction for largeness of the land and also for the fact that these are agricultural lands.

In that view of the matter, deduction at the rate of 33% made by the High Court was upheld. It may not, therefore, be correct to contend, as has been submitted by Mr. Ranjit Kumar, that there cannot be different deductions, one for the largeness of the land and another for development costs.

We have noticed hereinbefore that the purpose for which the land is acquired must also be taken into consideration. In the instant case, the lands were acquired because they were to be submerged under water. The land would not have any potential value. The development of area where the land was situated had stopped. On the other hand, the development began on the other side of the river Suki. The parties were aware of the consequences of the project undertaken by the Government of Gujarat. The sale instances, for comparison, having regard to the nature and area of the land carve out a distinction, inasmuch as the area sold under Ex. 145 is 46.30 square meters while two plots under acquisition measured 18528 square meters and 10993 square meters respectively. We, therefore, are of the opinion, having regard to the entire facts and circumstances of this case that interest of justice would be subserved if compensation is determined at the rate of Rs. 160/- per square meter for the large plots and Rs. 175/- per square meter for the small plots.

The claimants Appellants, however, would be entitled to interest on solatium as the said question is no longer res integra.

In Sunder (supra), this Court overruled Prem Nath Kapur (supra). The Constitution Bench held:

"24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of

his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.

These Appeals are disposed of with the aforementioned directions. There shall be no order as to costs.