

A

KASHIBEN BHIKABAI AND ORS.

v.

SPECIAL LAND ACQUISITION OFFICER AND ANR.

FEBRUARY 6, 2002

B

[V.N. KHARE AND ASHOK BHAN, JJ.]

Land Acquisition Act, 1894:

C

Section 23(1A) — Land acquisition — Additional amount—Entitlement to—Held: Claimants are not entitled to additional amount if the acquisition commenced and the award was made by Collector prior to 30-6-1982—Pendency of acquisition proceeding on 30-6-1982 before the Collector is essential for getting the benefit under s.23(1A). Section 23(2)—Land acquisition—Statutory Solatium (@) 30% —Entitlement to—Held, Claimants are entitled to statutory solatium (@) 30% if the Reference Court made the award after introduction of amendments by the amending Act of 1984.

D

E

The land belonging to the appellants -claimants was acquired under Section 4 of the Land Acquisition Act, 1894. The Land Acquisition Officer awarded a certain compensation. Being aggrieved by the award the appellants filed a reference before the court. The Reference Court enhanced the compensation, awarded solatium (a) 30% and additional amount under Sections 23(2) and 23(1A) of the Act respectively. But the High Court accepted the sale price of a certain land as the prevailing market price and reduced the compensation by the sum paid to the intermediary and disallowed the additional amount awarded under Section 23(1A) of the Act. Hence this appeal.

F

Allowing the appeals in part, the Court

G

HELD: 1.1. Once a sale price is accepted to be the price prevailing then it could not be reduced by the sum paid to the intermediary in whose favour the agreement to sell had been executed. The price of the land could not be reduced on the ground that the intermediary after having agreed to purchase the land at a certain price had later sold the land to the vendee at a higher price on making a profit.

H

1.2. Keeping in view of the fact that large areas of land do not fetch the same price as the small piece of land and a large amount is required to be

spent for developing the land, the price of land is fixed at Rs. 200 per sq. ft. instead of Rs. 1.88 per sq. ft. thus enhancing the compensation by Rs. 0.12 paise per sq. ft. The claimants would be entitled to statutory solatium @ 30% under Section 23(2) of the Land Acquisition Act, 1894 as the award of the reference court was made after coming into force of the amendments introduced by the amending Act of 1984.

Union of India v. Raghubir Singh, [1989] 2 SCC 754, followed.

2. Additional compensation under Section 23(1A) of the Act would not be available to claimant in a case in which the acquisition proceedings commenced and the award was made by the Collector prior to 30-6-1982. If the Collector made the award before 30-6-1982 then the additional amount under section 23(1A) cannot be awarded. The pendency of the acquisition proceedings on 30-6-1982 before the Collector was essential for attracting the benefit under Section 23(1A) of the Act.

Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama [1990] 1 SCC 277, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5354-89 of 1993.

From the Judgment and Order dated 1.4.91 of the Gujarat High Court in F.A. Nos. 36 to 66 of 1988.

S.K. Dholakia, Jitendra Sharma, E.R. Kumar, D.P. Mohanty, Ms. Yugandhara Jha, P.H. Parekh, S.C. Patel, Ms. H. Wahi, Kanubhai, V. Patel, P. Gaur, Ms. Minakshi Vij and P.N. Jha for the appearing parties.

The following Order of the Court was delivered by

BHAN, J. Aggrieved by the judgment of the High Court of Gujarat in reducing the compensation payable under the Land Acquisition Act, 1894 and claiming more, fair and equitable compensation for the acquired land the claimants have come up in these appeals.

On 15th May, 1974 State of Gujarat issued a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for acquisition of 78 hectares, 32 acres and 54 sq. meters of land in Village Gorva, which is situated within the limits of the Municipal Corporation of Baroda, Gujarat, for the Gujarat Housing Board. It was published in the official Gazette

A on 8th August, 1974. Notification under section 6 of the Act was issued on 12th July, 1977 and was published in the Gazette on 21st July, 1977.

There were 94 claimants whose land was notified for acquisition under the aforesaid notifications. They claimed compensation @ Rs. 4 per sq. ft. before the Land Acquisition Officer (for short 'the LAO').

B

The Land owners entered into an agreement with Arun Land Corporation (for short 'the ALC'), 36th appellant in the instant appeals. This agreement reads, *inter alia*, as under:

C

"(a) By virtue of these powers, the partners of Arun Land Corporation can give suitable replies, give/cause to give writings on behalf of us and to complete this matter of acquisition and we all agree to it with our consent.

(b) It is the responsibility of this Corporation to award us the price of this land at the rate of Rs. 1.35 per sq. ft.

D

(c) If Gujarat Housing Board awards any amount in excess of the above and if Arun Land Corporation receives such excess amount, we, the farmers do not have any kind of objection therein and we assign all such rights to this Corporation."

E

The Land Acquisition Officer declared the award on 10th October 1980. He divided the land into four categories, viz., A, B, C and D and determined the compensation as under:

	Category	Amount in Rupees
F	A	0.93 per sq. ft. (Rs. 1 lakh per hectare)
	B	1.21 per sq. ft. (Rs. 1.30 lakh per hectare)
	C	1.40 per sq. ft. (Rs. 1.50 lakh per hectare)
G	D	1.58 per sq. ft. (Rs. 1.70 lakh per hectare)

Out of the total number of 94 claimants, 42 claimants refused to abide by the agreement. ALC filed a suit being Suit No. 156 of 1980 against them in the Civil Court, Nadiad, which restrained the Land Acquisition Officer from disbursing to these 42 claimants the amounts payable under the Award. An H appeal was filed by the said 42 claimants to the High Court. The High Court

permitted them to withdraw only Rs. 1.35 per sq. ft. from the award amount and the amount awarded in excess of Rs. 1.35 per sq. ft. was directed not to be released till the disposal of the suit filed by the ALC. The said suit is still pending. Except for 7 claimants, the rest of the 42 claimants, who had challenged the agreement dated 16.12.1978 have settled the matter with the A.L.C. The pending suit is relateable to the 7 claimants only.

Each of the 35 claimants who are before us abided by the agreement dated 16.12.1978 and received payment @ Rs. 1.35 per sq. ft. between 10th October, 1980 to 30th November, 1980. As the claimants, including those before us, were aggrieved by the award, reference was made under Section 18 of the Act to the Court. In each reference the ALC was claimant No. 2. In the Land Reference applications, each of the claimants admitted that each of them had executed the agreement dated 16.12.1978 in favour of the ALC. Similarly, the each of the claimants deposed before the Reference Court that they executed the agreement dated 16.12.1978 with the ALC and abide by the same.

By a judgment and order dated 11th September, 1987 the Extra Assistant Judge (hereinafter referred to "the Reference Court") held that the Special Land Acquisition Officer had erroneously divided the lands into four categories as all the lands were contiguous and similarly situated and, therefore, compensation was required to be awarded at a uniform rate. On the basis of the sale instances, the Reference Court fixed the market value of the land at Rs. 4 lakhs per hectare and accordingly awarded compensation @ Rs. 4 lakhs per hectare, i.e., Rs. 3.71 per sq. ft. Relying upon the statement of each of the land owners in their reply as well as their deposition to the effect that compensation awarded in excess of Rs. 1.35 per sq. ft. should go to the ALC, the reference court held that both the claimants are jointly entitled to get enhanced compensation and further ordered that:

"The question of apportionment between the two claimants will not arise because the claimant No. 1 in each reference case has taken off hands from the enhanced amount of compensation by filing their reply and also by giving oral deposition. Therefore amount be paid to claimant No. 2."

The State Government filed 36 appeals through the Land Acquisition Officer before the High Court of Gujarat challenging the aforesaid order of the reference court dated 11.9.1987. 35 claimants, who are before us, executed a General Power of Attorney empowering Manibhai Mangalbai Patel, a partner

A of the ALC, to file cross objections in the First Appeal filed by the State, special leave petition in this Court or LPA, Review, Revision etc. either in this Court or in the High Court and to receive on their behalf the compensation, interest and costs receivable in future from the Special Land Acquisition Officer or from the Courts or from the Bank or Government Treasury either in cash or cheque or Demand Draft etc., The ALC filed cross objections to the said appeals.

The High Court of Gujarat by the impugned judgment and order reduced the price of the land in question to Rs. 1.88 per sq. ft. instead of Rs. 3.71 as fixed by the Reference Court. Order of the Reference Court awarding solatium @ 30% under section 23(2) of the Act was maintained but the additional amount under section 23(1A) of the Act was disallowed. Aggrieved against the aforesaid judgment and order of the High Court the present appeals have been filed.

D Out of the 35 claimants-appellants, 22 claimants-appellants filed an application for separating their petition for special leave. This application states *inter alia*, that the agreement dated 16.12.1978 is under challenge before the Civil Court of Nadiad as being bad in law, unjust, unfair and against public policy. That the applicants have specifically revoked the alleged power of Attorney given to the ALC vide lawyer notice dated 27.2.1992. That the notice of revocation was published in "Gujarat Samachar", a Gujarati daily published from Baroda on 3.3.1992. That the interests of the applicants were in conflict with that of ALC and in view of the same, it is essential in the interest of justice to separate their petitions for Special Leave to appeal of the applicants and they be permitted to be represented by another advocate of their choice. The ALC has contested the applications filed by the claimants on several grounds.

Two points arise for consideration in these appeals. The first point is for the determination of the fair compensation payable to the claimants/ALC for the land acquired. On this point, the interest of the ALC and other claimants including 22 claimants, who have filed the application for separating their special leave petition, is common. The second point is the *inter se* dispute between the 22 claimants-appellants who have filed the application for separating their special leave petition and the ALC in whose favour they have transferred their right to get compensation over and above Rs. 1.35 per sq. ft..

On the first point after going through the evidence it is seen that the claimants had relied upon three instances of sale. The first was the sale of Survey No. 8 of Village Gorwa in which the agreement to sell was executed on 25.6.1972. The land was agreed to be sold at the rate of Rs. 3.50 per sq.ft. to the housing society. The sale deed was to be executed within six months after obtaining the necessary permissions from the State Government. Because of the said condition the actual sale deed was executed in the year 1979. Next sale instance relied upon was in respect of Survey No. 9. The sale deeds are Exs. 71 to 75 dated 30.11.1973, 1.12.1973, 4.12.1973, 5.12.1972 and 6.12.1973 respectively. The land was sold at the rate of Rs. 2.38 per sq. ft. The third sale instance relied upon was for the land situated within the Abadi deh of Village Gorwa executed on 5th December 1973 which was sold at the rate of Rs. 7 per sq. ft. The High Court discarded the first sale instance on the ground that the land sold by the sale deed was better located than the land under acquisition. Moreover, the parties to the sale did not expect the sale to be completed within a short time and this factor must have been taken into consideration for fixing a price higher than the prevailing price. The third sale deed was excluded as the same was situated in the Abadi area.

The High Court accepted the second instance, where the land was sold for Rs. 2.38 per sq. ft. but reduced it by Rs. 0.50 paise per sq. ft. It was held that at the first instance the land had been agreed to be sold to Datta Land Corporation for Rs. 1.88 per sq. ft. which later on sold the same to the Jay Satyanarayan Co-operative Housing Society at Rs. 2.38 per sq. ft. The High Court reduced the price by Rs. 0.50 per sq.ft. because Datta Land Corporation did not need the land and transaction entered into by them was speculative in nature. The consideration paid to Datta Land Corporation was reduced from the sale price of Rs. 2.38 per sq. ft., thus fixing the market value of the land at Rs. 1.88 per sq. ft. We are unable to agree with the view taken by the High Court on the second instance of sale. There was no justification for reducing the payment which had been made to Datta Land Corporation. Once the sale price of Rs. 2.38 per sq. ft. is accepted to be the price prevailing in December 1973 then it could not be reduced by the sum paid to the intermediary in whose favour the first agreement to sell had been executed. The price of the land could not be reduced on the ground that intermediary after having agreed to purchase the land at Rs. 1.88 per sq. ft. had later sold the land to the vendee at Rs. 2.38 per sq. ft. on making a profit of Rs. 0.50 paise per sq. ft.

The price of Rs. 3.50 per sq. ft. which was the agreed sale price for

- A Survey No. 8 in the first sale instance cannot be accepted for the simple reason that the land in Survey No. 8 (first sale instance) and the land in the Survey No. 9 (second sale instance) are adjoining to each other. The sale in the second sale instance was in December, 1973 and the prevailing price at that time was Rs. 2.38 per sq. ft. Therefore, the price of the adjoining land on 25th June, 1972 in Survey No. 8 could not have been Rs. 3.50 sq. ft. The same seems to be highly exaggerated. As the parties did not expect the sale deed to be completed within a short time, they must have taken this factor into consideration while fixing the price at a higher rate than the prevailing price. The agreements to sell were of 1972 whereas the sale deeds were executed in the year 1979. The third sale instance which was of the Abadi land was rightly discarded by the High Court.

- From the map shown to us we find that the acquired land is not far away from survey Nos. 8 and 9. The total distance between the two may not be more than 60 to 70 yds from each other. Keeping in these factors in view, we are of the opinion that the prevailing market price in the first week of December, 1973 of the acquired land was Rs. 2.38 per sq. ft. In May 1974 when the notification under Section 4 was issued the price may have been little higher than Rs. 2.38 per sq. ft. as rapid development was taking place in and around the area where the land under reference was situated. Land comprising in Survey No. 8 which was sold measured 2800 sq. yds. Keeping in view the fact that large areas of land do not fetch the same price as the small piece of land and a large amount is required to be spent for developing the land, we fix the price of land at Rs. 2.00 per sq. ft. instead of Rs. 1.88 per sq. ft. thus enhancing the compensation by Rs. 0.12 paise per sq. ft. The claimants would be entitled to statutory solatium @ 30% as has been held by a Constitution Bench of this Court in *Union of India and Anr. v. Raghbir Singh (Dead) by Lrs. Etc.*, [1989] 2 SCC 754 as the award of the reference court was made after the coming into force of the amendments introduced by the amending Act of 1984.

- Counsel appearing for the claimants contended that the claimants would be entitled to an additional compensation @ 12% as provided under Section 23 (1A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama*, [1990] 1 SCC 277 which held that additional compensation under Section 23 (1A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and the award was made by the Collector prior to April 30, 1982. If the Collector made the award

before 30th April, 1982 then the additional amount under Section 23 (1A) cannot be awarded. The pendency of the acquisition proceedings on 30th April, 1982 before the Collector was essential for attracting the benefit under Section 23 (1A) of the Act. It was held:

“Entitlement of additional amount provided under Section 23 (1-A) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date. Section 30 sub-section 1(a) provides that additional amount provided under Section 23 (1-A) shall be applicable to acquisition proceedings pending before the Collector as on April 30, 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that Section 23 (1-A) shall be applicable to every acquisition proceedings commenced after April 30, 1982 irrespective of the fact whether the Collector has made an award or not before September 24, 1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2).”

No judgment taking a contrary view to the above-referred case was cited before us. Accordingly, it is held that the appellants would not be entitled to the additional compensation provided under Section 23 (1A) of the Act.

It would be seen that the reference court as well as the High Court have held that the claimants are bound by the agreement entered into by them with the ALC in view of the admissions made by them in their reference applications and the statements made in the Court. Claimants had accepted that they had entered into an agreement to transfer their interest in the compensation payable over and above Rs. 1.35 per sq. ft. in favour of the ALC. They had specifically stated that the amount of compensation over and above Rs. 1.35 per sq. ft. be paid to the ALC. We are not opining on this matter as this might prejudice the rights of the parties in suit No. 156 of 1980 between the ALC and the seven claimants in the Civil Court at Nadiad. The 22 claimants-appellants who have asked for separating their interest did not contest the right of the ALC to get the higher amount of compensation as per agreement either before the reference court or before the High Court. No material has been placed before us to record a finding to the contrary. Keeping these facts in view, we direct that the enhanced amount be paid to the ALC, reserving the rights that the claimants to recover the same from the ALC, if permissible

A in law, on taking recourse to an appropriate proceedings in a court of competent jurisdiction in accordance with law.

The appeals are partly allowed in the above terms. No order as to costs.

V.S.S.

Appeals Partly allowed.