

MITESH KUMAR RAMANBHAI PATEL & ORS.

A

v.

STATE OF GUJARAT & ORS.

(Civil Appeal Nos. 19501-19503 of 2017)

B

NOVEMBER 16, 2017

[ARUN MISHRA AND  
MOHAN M. SHANTANAGOUDAR, JJ.]

C

*Land Acquisition Act, 1894 – ss. 4, 6 and 18 – Signatures of appellants-landowners obtained on blank consent form in 1989 – Notification u/s.4 issued after 7 years in 1996 – Consent Awards passed in 1997 on the basis of consent forms – On reference u/s. 18, reference court determined compensation – High Court set aside the said judgment on the ground that no reference u/s. 18 was maintainable once acquisition was with consent – On appeal, held: Reference could not be said to be not maintainable as way back in 1995 the land owners had submitted the application that they were not satisfied with the validity and correctness of consent agreement and again immediately they filed applications seeking reference when consent award was passed – Thus, it could not be said that land owners consented in 1996/ 1997 for acquisition at the rate prevailing in 1989 – There was no consent award in the eye of law – Reference court was right in awarding the compensation on market price which prevailed in 1997 – Impugned judgment passed by High Court is set aside and that passed by the reference court is restored.*

D

E

F

*Ishwarlal Premchand Shah & Ors. v. State of Gujarat*  
[1996] 3 SCR 510 : AIR 1996 SC 1616 – referred to.

Case Law Reference

G

[1996] 3 SCR 510                      referred to                      Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 19501-19503 of 2017.

H

A From the final Judgment and Order dated 01.05.2014 of the High Court of Gujarat at Ahmedabad in First Appeal No.234 of 2012 and First Appeal No.2157 of 2010 and Cross Objection No.41 of 2013 in First Appeal No.234 of 2012 respectively

WITH

B Civil Appeal Nos.19504-19506 19522-19524, 19507-19509, 19513-19515, 19516-19518, 19510-19512, 19519-19521, 19538-19540 and 19525-19527 of 2017.

C Basava Prabhu Patil, Sr. Adv, Anirudh Sharma, A. Parikh, Advs for the Appellants.

Preetesh Kapoor, Ms. Hemantika Wahi, Mrs. Jesal Wahi, Ms.Puja Singh, Ms.Shodhika Sharma, Advs for the Respondents.

The following Order of the Court was delivered :

D

**ORDER**

1. Leave granted.

E 2. An unusual factual matrix exists in the instant cases. Though, the consent agreements were entered into in the year 1989 for handing over the land in the case of acquisition on a particular value prevailing at the relevant time was purportedly mentioned. However, for approximately seven years, the State Government did not choose to issue Notification under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act'). It was issued on 7.6.1996 and Consent Awards were passed on 12.6.1997 and 5.8.1997 on the basis of consent forms which were obtained in 1989. Possession had also been taken in 1989. It appears that 80 to 90% compensation had been disbursed to the incumbent at the time to taking possession in 1989. Thereafter it appears that rent was also paid in lieu of occupation. In 1995 reference was sought, application was kept pending, then notification under Section 4 was issued in 1996 and also declaration under Section 6 of the Act in 1997. Then consent awards were passed in 1997 reference was again sought that was ultimately made and reference court had determined compensation. The High Court had set aside the judgment of the reference court on the ground that no reference under section 18 was maintainable once acquisition was with consent.

H

3. The counsel for the appellant urged that fraud was played on the land owners and on blank consent forms signatures were obtained. It was not possible to fill dates of events in consent forms which took place in 1996 and 1997. The consent forms even if executed were rendered unenforceable. It would be unfair to permit State functionaries to use the consent forms after 8 years as such the judgment passed by the reference court be restored.

4. Learned counsel for the State contended that in view of consent awards no reference could have been sought. The possession was taken after payment of 80% to 90% of compensation agreed to in 1989, then for occupation of land rent was also paid to owners and ultimately after issuance of notification under Section 4 and other formalities the award was passed in the year 1997. In the facts of the case no interference was called for with impugned judgment passed in the High Court.

5. A perusal of the consent form reveals that in the consent forms most of the columns were kept blank as it was not possible to mention subsequent events, and thereafter, date of notification under Section 4 of the Act and the date of declaration under Section 6 of the Act had been mentioned afterwards that too immediately before Award was passed which could not have been done unilaterally.

6. The facts indicate that in the year 1995, a premature prayer was made by landowners to make a reference as they felt that the consent forms were kept blank and it was assured to them that they would be paid compensation at the rate of Rs.50 per Square Meter. However, said amount was not mentioned in the Agreement and figure of Rs.3.12 per square meter was mentioned in the blank forms. Be that as it may, even if 3.12 per square meter was agreed to, would not make much difference as to enforceability if such agreements. It appears that the reference court in the year 1995 directed the land owners to furnish the particulars of their holdings which was the subject matter of the consent Agreements. On failure to furnish particulars by the next date of hearing, the proceedings were closed *sine die*. Thus, the conduct of the land owners of filing application in 1995 clearly indicated that they were not willing to go by the consent agreement executed in the year 1989. Thus in all fairness the blank forms should not have been used for passing awards on consent basis.

A 7. It would be highly unfair in the facts of the instant case to ask  
the land owners to abide by the consent terms executed way back in the  
year 1989 and to hand over land to State Government at the rate, which  
prevailed in 1989. The State Government had not taken the steps for  
seven years for acquisition of the land by issuance of the Notification  
under Section 4 of the Act. It was a *sine qua non* to issue notification  
B under Section 4 of the Act to acquire land even with consent. After  
obtaining consent forms and possession, the State Government had waited  
for more than seven years and thereafter only in the year 1996 Notification  
under Section 4 of the Act was issued and consent awards were passed  
in the year 1997. Remaining 10% to 20% amount was not paid. Ultimately  
C as directed by the High Court the reference was made to the District  
Court. The reference court had rightly enhanced the compensation and  
then the matter travelled to the High Court in appeal filed by the State  
Government and cross objection by land owners for enhancement. At  
that time by way of interim order, direction was given to State to deposit  
the amount. The matter of interim order travelled to this Court and this  
D court directed that amount be paid to the land owners as per determination  
made by the reference court. Pursuant to the order passed in the year  
2011 amount had been disbursed to the land owners which was  
determined by the reference court at the rate of Rs.21.48 per square  
Meter that too after filing of Contempt Petition.

E 8. In the facts and circumstances of the case, the reference court  
was right in awarding the compensation on the market price which  
prevailed in the year 1997. In our opinion, though it was open to the  
State Government to enter into an agreement before issuance of the  
Notification under Section 4 of the Act, as held by this court in *Ishwarlal*  
F *Premchand Shah & Ors. v. State of Gujarat*, AIR 1996 SC 1616, in  
which the agreements were entered into three years before. However,  
in the peculiar facts of these cases, it is apparent that the State  
Government could not have waited for seven years after the consent  
forms were obtained in 1989 at particular rate prevailing at relevant time  
to make acquisition in the year 1996 and it would be totally unjust to pass  
G consent awards on the basis of almost blank consent forms obtained in  
the year 1989. The relevant date of determination of compensation is  
the date of issuance of notification under Section 4 of the Act. It was  
incumbent upon the State Government to obtain fresh consent forms in  
view of repudiation made in 1995 the way of filing application before  
H Land Acquisition Collector, whether the land owners were willing, due

to lapse of time, to hand over the land in 1997 at the rate which prevailed in the year 1989 but that was not so done in the instant cases. Thus we are of the considered opinion that reference was rightly made and reference could not be said to be not maintainable as the land owners way back in the year 1995 had submitted the application that they were not satisfied with the validity and correctness of the Agreement and again immediately they had filed applications seeking reference when consent award was passed. In the fact of the case it could not be said that land owners consented in 1996/ 1997 for acquisition at the rate of 1989. It could not have been termed to be a consent award in the eye of law.

9. In the circumstances, we are of the considered opinion that the Reference court was justified in making the determination of the compensation at the rate of Rs.21.48/- per square meter and that was appropriate compensation to be awarded to the land owners. Merely payment of the meagre rent to the land owners for the occupation, would not come to the rescue of the respondents not to pay the actual value of the land that prevailed in 1996. There was deprivation of possession and usufruct for 7/8 years that could not have been compensated in terms of meagre rent, in the peculiar facts and circumstances of the cases.

10. We set aside the impugned judgment passed by the High Court restore the judgment passed by the reference court. The appeals are allowed. The compensation has already been paid. In case any amount remains unpaid, the same shall be paid within a period of three months from today. The costs are quantified at Rs.10,000/- in each case that shall be paid by the respondents to each of the appellants within the aforesaid period.