

Gujarat High Court

4 Whether This Case Involves A ... vs Executive Engineer - Sardar ... on 6 October, 2015

C/SCA/5411/2014

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5411 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI  
and  
HONOURABLE MR.JUSTICE MOHINDER PAL

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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SAGAR JEMUBHAI DALUBHAI....Petitioner(s)  
Versus  
EXECUTIVE ENGINEER - SARDAR SAROVAR NARMADA NIGAM LTD. &  
2....Respondent(s)

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Appearance:

MR AB GATESHANIYA, ADVOCATE for the Petitioner(s) No. 1  
BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 1  
MR DHAWAN M.JAYSWAL, AGP, for the Respondent(s) No. 2  
MR RAJAN D SHAH, ADVOCATE for the Respondent(s) No. 3.1  
RULE SERVED for the Respondent(s) No. 3.2 - 3.6  
RULE SERVED BY DS for the Respondent(s) No. 3.7

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI  
and

HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 06/10/2015

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has challenged order dated 03.03.2014 passed by the Land Acquisition Officer rejecting the application of the petitioner for making reference for apportionment of compensation as provided under section 30 of the Land Acquisition Act, 1894 ("the Act" for short).

2. Brief facts of the case are as follows: According to the petitioner, he had purchased land bearing Survey No.473 admeasuring 4 acres and 26 gunthas of village Kherali, taluka Wadhwan under a registered sale deed on 15.06.1994 from its erstwhile owner Raiyabhai Khimabhai Rathod. The Collector issued notification under section 4 of the Act on 10.03.1997 declaring the intention to acquire such land along with neighbouring lands. Notification under section 6 was published on 01.12.1997. The land was acquired under award dated 30.11.1999 passed under section 11 of the Act. It is the case of the petitioner that the compensation awarded under such award of Rs.57,862/- was received by the petitioner. Neither the petitioner nor the erstwhile owner sought any reference. Other land owners, however, sought reference before the District Court. In such reference cases, as finally decided by the High HC-NIC Page 2 of 8 Created On Fri Oct 09 00:47:55 IST 2015 C/SCA/5411/2014 JUDGMENT Court in First Appeal, the land owners received additional compensation of Rs.90 per sq. mtr. for irrigated lands. The heirs of erstwhile owner thereupon moved an application before the Land acquisition Officer for enhancement of compensation in terms of section 28-A of the Act. The Land Acquisition Officer passed his award on 21.5.2013 under section 28-A of the Act and granted suitable enhancement in the compensation to different land owners, including in case of the heirs of deceased erstwhile owner of the land. The petitioner thereupon moved an application dated 14.03.2013 staking claim over such additional compensation and requesting the Collector to make a reference for apportionment. Yet another application came to be filed on 03.02.2014 for the same purpose. These applications came to be rejected by the Special Land Acquisition Officer by impugned order dated 03.03.2014. The main ground of such rejection was that provisions of section 30 of the Act would apply in relation to an award passed under section 11 of the Act, but not in relation to an order passed under section 28-A of the Act. He also examined the rival contentions and found that additional compensation is already paid over to the heirs of original land owner whose names were reflected in revenue records. This is the additional ground by which he had rejected the claim of the petitioner.

3. In our opinion, both the grounds were invalid. Taking the second ground first, it is the settled law that while deciding an application for apportionment, the Land Acquisition Officer cannot HC-NIC Page 3 of 8 Created On Fri Oct 09 00:47:55 IST 2015 C/SCA/5411/2014 JUDGMENT judge the merits or demerits of the claim of the applicant. It will not be open for him to examine the rival contentions and decide whether the request of the applicant for apportionment was justified or not. In case of Arulmighu Lakshminarasimhaswamy Temple Singirigudi v. Union of India and others reported in (1996) 6 SCC 408, the Supreme Court observed that, if the Land Acquisition Officer finds that there is any dispute as to the person entitled to receive the compensation, necessarily he has to deposit the amount under section 31 of the Act before the Court and on such dispute having arisen, he has to make a reference under section 30 of the Act. This view was reiterated by a Division Bench of this Court in Govindbhai Ambalal Patel and Anr. v. State of Gujarat and Ors. reported in 1995 (1) GLH 21.

4. The sole question that survives is whether the Land Acquisition Officer was correct in holding that section 30 procedure would not apply in connection with the procedure under section 28-A of the Act. As is well known, Special Land Acquisition Officer would pass award under section 11 of the Act after holding necessary enquiry. Such award would include details as to true area of the land acquired, compensation which in his opinion would be payable for the land in question and apportionment of compensation among the persons known or believed to be interested in the land. Section 30 of the Act pertains to dispute as to apportionment and provides that when the amount of compensation has been settled under section 11, if any dispute arises as to apportionment of the same or any part HC-NIC Page 4 of 8 Created On Fri Oct 09 00:47:55 IST 2015 C/SCA/5411/2014 JUDGMENT thereof, or as to the person to whom the sum or any part thereof is payable, the Collector may refer such dispute to the Court.

5. Section 28-A of the Act was introduced with effect from 24.9.1984 and reads as under:

"28A. Re-determination of the amount of compensation on the basis of the award of the Court. -

(1) where in an award under this part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re- determined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, required that the matter be referred by the Collector for the determination of the Court and HC-NIC Page 5 of 8 Created On Fri Oct 09 00:47:55 IST 2015 C/SCA/5411/2014 JUDGMENT the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18."

6. Sub-section (1) of section 28-A gives right to a person to seek parity in compensation with the award of the Reference Court on a reference sought by other persons interested in same acquisition of land covered under section 4 (1) of the Act, if he had received compensation awarded by the Land Acquisition Officer under protest. This would be irrespective of the fact that he had not sought any such reference before the Reference Court. As per sub-section (2) of section 28-A, the Collector shall, on receipt of such application, conduct an enquiry and, after giving reasonable opportunity of being heard to the persons interested, make an award determining the amount of compensation payable to the owners. Under sub-section (3) of section 28-A, any person who has not accepted the award under sub-section (2) may, by written application, require the Collector that the matter be referred for determination of the Court. Thereupon, provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18 of the Act.

7. Reading section 28-A of the Act would make it clear that this additional right was made available to a person interested in the land acquired under the Land Acquisition Act to seek parity in compensation at the same rate as was granted by the Reference Court in case of others whose lands were covered under the same HC-NIC Page 6 of 8 Created On Fri Oct 09 00:47:55 IST 2015 C/SCA/5411/2014 JUDGMENT notification under section 4 of the Act. This right is for redetermination of the compensation on the basis of the amount awarded by the Reference Court. Upon such an application being made, the Collector would proceed to make an award determining the amount of compensation payable to the owners. Thus, in essence, on an application made under section 28-A of the Act, the Collector would redetermine the amount of compensation payable on the basis of the compensation awarded by the Reference Court in other cases. Sub-section (2) also provides for making an award for determining the amount of compensation payable to the owners. Proceedings under section 28-A thus are nothing but for redetermination of the compensation payable under section 11 of the Act. It is in this context sub-section (3) of section 28-A provides that any person who has not accepted the award may require the Collector to make a reference and thereupon the provisions of sections 18 to 28 shall apply as they apply to a reference under section 18.

8. The Land Acquisition Officer, therefore, erred in holding that the provisions of section 30 of the Act would not apply when the amount of compensation was being redetermined under section 28-A of the Act. In essence, under section 28-A, the Collector would merely redetermine the compensation payable under section 11 of the Act. Even after such compensation is redetermined

and granted to the owner, he would have a right de novo to seek a reference. If at that stage any dispute arises as to apportionment of such compensation, HC-NIC Page 7 of 8 Created On Fri Oct 09 00:47:55 IST 2015 C/SCA/5411/2014 JUDGMENT on an application made by the person interested, it would be the duty of the Land Acquisition Officer to refer such dispute in terms of section 30 of the Act.

9. In the result, the impugned order dated 03.03.2014 is set aside. The Land Acquisition Officer shall refer the dispute raised by the petitioner regarding apportionment of additional compensation under his application dated 03.02.2014.

10. Petition is disposed of accordingly. Rule made absolute.

Sd/-

(AKIL KURESHI, J.) Sd/-

(MOHINDER PAL, J.) KMGThilake) HC-NIC Page 8 of 8 Created On Fri Oct 09 00:47:55 IST 2015