

Kantaben Manibhai Amin and Another

Vs

Special Land Acquisition Officer, Baroda

Civil Appeal No. 1448 of 1972

(L. M. Sharam, Dr. T. K. Thommen JJ)

27.09.1989

JUDGMENT

THOMMEN, J. –

1. This appeal by certificate is against the judgment and decree of the High Court of Gujarat in First Appeal No. 651 of 1965 modifying the judgment and decree of the Civil Judge (Senior Division), Baroda in Land Reference Application No. 284 of 1963.

2. Land having a total extent of 10 acres 34 gunthas belonging to the appellants/claimants had been acquired pursuant to notification dated October 21, 1961 issued under Section 4 of the Land Acquisition Act and published in the Gujarat Government Gazette dated November 9, 1961. Aggrieved by the low value awarded by the Land Acquisition Officer in the sum of Rs. 35,705.12 for the land, the claimants sought a reference under Section 18 to the civil court. The Civil Judge valued the land by treating it in two categories. An extent of 5 acres 34 gunthas was treated as a banana plantation, and resorting to capitalisation of income with the multiple of 3, the learned Judge awarded Rs. 1,46,223 for the said cultivated area. In doing so, the Judge relied on the testimony of Shri C. J. Patel who is a graduate in agriculture. In the absence of any evidence regarding income from cultivation of the property in the earlier years, the Judge computed the yield and income solely with reference to the evidence of Patel. As regards the remaining area of 5 acres, which was uncultivated, the Judge held, with reference to contemporaneous sale transactions of jirayat land in the neighbourhood (Exs. 78, 99, 135 and 136) that the market value of jirayat land at the material time was no less than Rs. 7500 per acre, and on that basis the acquired land, being bagayat and therefore superior in quality, had to be valued at no less than twice the price of jirayat land. Accordingly, the market value of the uncultivated area was found to be Rs. 15,000 per acre. A sum of Rs. 75,000 was therefore awarded for the 5 acres of uncultivated bagayat land. The Judge thus awarded Rs. 1,46,223 + Rs. 75,000 = Rs. 2,21,223 in respect of 10 acres 34 gunthas in addition to certain other amounts. The State appealed to the High Court contending that the valuation adopted by the learned Civil Judge was excessive.

3. The High Court modified the decree passed by the learned Civil Judge by reducing the compensation. The High Court found that there was no acceptable evidence whatsoever as regards the yield of the property or the income therefrom during the two years or more immediately preceding the date of the notification, i.e. November 9, 1961. The opinion of a graduate in agriculture was not evidence on the basis of which the Judge could have validly computed income for the purpose of capitalisation. Capitalisation was, therefore, not a proper method to be adopted. In the circumstances of the case, the High Court stated, the value of the property had to be determined with reference to its market value as evidenced by contemporaneous sale transactions of

comparable property in the neighborhood. The Civil Judge having determined on correct principle the market value of the uncultivated portion of the acquired land, the High Court held, he ought to have, in the absence of acceptable evidence of income, adopted a like method for the cultivated area as well.

4. The High Court valued the land at Rs. 8500 per acre. This value is, in our view, correctly determined. It is not disputed that the land in question is bagayat and, therefore, superior in quality to jirayat. But to what extent it is superior to jirayat has not been established by the claimants. The land being bagayat, the Land Acquisition Officer awarded 25 per cent excess compensation over and above the market value of jirayat land. Adopting that margin, and also accepting the finding of the learned Civil Judge that the average price indicated by Exs. 78, 99, 135 and 136, which were contemporaneous documents of sale of jirayat land, comes to Rs. 6800 per acre, we are of the view that Rs. 8500 per acre would be the correct value of the acquired land. In view of the finding that certain improvements have been made by way of cultivation and erection of permanent structures, etc., we are further of the view that a sum of Rs. 1700 per acre should be added as value of improvements. So computed, we hold that the claimants are entitled to compensation at the rate of Rs. 10,200 per acre for the entire land. In addition to this, the claimants are of course entitled to solatium and interest payable under the Land Acquisition Act.

5. It is stated at the bar that the claimants have received an excess amount from the respondent-State if the compensation is determined in terms of what we have stated above. Accordingly we hold that any amount which the claimants may have received in excess of what is due and payable to them as aforesaid shall be refundable by them to the State together with interest calculated at 4 1/2 per cent per annum from the date of receipt of such excess amount by the claimants till the date of repayment in full.

6. The appeal by the claimants is accordingly allowed to the extent indicated above. In the circumstances of this case, we make no order as to costs.

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