

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 3665 of 1999**

DHARMABHAI BHAICHANDBHAI PATEL

Versus

STATE OF GUJARAT & ANR.

Appearance:

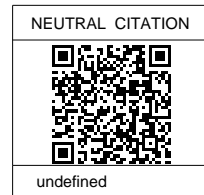
MR JV JAPEE(358) for the Appellant(s) No. 1

MR ADITYA D DAVDA, AGP for the Defendant(s) No. 1

MR AD OZA(515) for the Defendant(s) No. 2

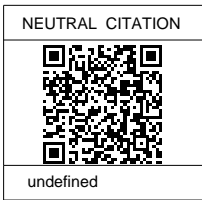
CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI**Date : 09/05/2024****ORAL ORDER**

1. Heard learned advocate for the respective parties.
2. The appellant has preferred First Appeal under Section 96 of the Code of Civil Procedure, 1908, (hereinafter referred to as 'the Code') read with Section 54 of the Land Acquisition Act (hereinafter referred to as 'the Act).
3. Being aggrieved and dissatisfied with the judgment and order passed by the learned Assistant Judge, Sabarkantha at Himatnagar in Land Reference Case No.942 of 1990.
4. The brief facts leading to filing this Appeal are as under:-
 - 4.1 The appellant is the owner of the land bearing Block



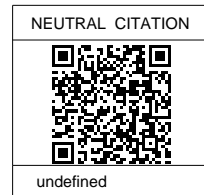
No.462 & 463 at village Agion, Taluka Himatnagar District Sabarkantha. The Deputy Collector and the Special Land Acquisition Officer, Himatnagar acquired the land under Section 18 of the Act. The questioned land was acquired for the project of Gujarat Electricity Board for the construction of Sub-Station of 220 KV, power Station and staff quarters. A notification under Section 4 of the Act was published on 03.07.1989 and the Land Acquisition Officer passed an award on 17.01.1989 fixing the price of the land under acquisition at the rate of Rs.215/- per acre for Block No.462 & 463 and Rs.1/- per acre for waste land.

4.2. The present appellant was not satisfied with the award and mainly on the ground that the amount of compensation is too low and the Land Acquisition Officer has not taken into account the potentiality of the land under acquisition of being conversion and use of non-agricultural purpose. The case of the appellant was that the Special Land Acquisition Officer has not taken into account the surrounding development, potentiality of the land



and other relevant factors such as the land in question was situated on the National Highway No.8 and was surrounded by the Office of Irrigation Department, School, Hotel, Panchayat Office etc. The appellants have also contended that the Special Land Acquisition Officer has not taken into account the quality and fertility of the land under acquisition for fixing the amount of compensation. The appellants claimed compensation for super structure of the Engine Room at the rate of Rs.25,000/- and for pipelines at the rate of Rs.10,000/- and for the price of different types of trees existing on the field and also for the standing crops on the date of taking possession on 17.10.1989.

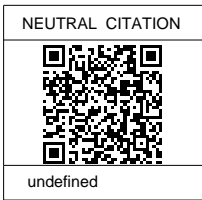
5. Learned advocate for the appellant has submitted that the learned Reference Court has erred in not awarding additional compensation as claimed by the appellants. It is further submitted that the learned Reference Court has not properly appreciated the fact that the land in question is situated on the Himmatnagar Shamlaji National Highway. The lands are situated in prime location. The land is a fertile land and having



substantial non-agricultural potentiality. The learned Reference Court has not properly appreciated the sale instances cited by the appellants vide Exhibits-44 and 114.

5.1. Learned advocate for the appellant has placed reliance upon the decision in the case of ***Deputy Collector, Land Acquisition, Gujarat and Another Vs. Madhubai Gobarbai and Another*** reported in ***(2009) 15 Supreme Court Cases 125***.

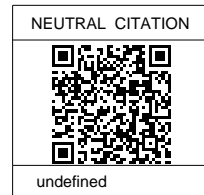
6. The learned advocate for respondent contended that the appellants failed to lead any evidence before the Special Land Acquisition Officer in proving their case and the contention was also raised to the effect that the land under acquisition was not surrounded by any industrial or commercial development and the village Agiol is situated at 10 kilometers' distance from the City Himatnagar and the population of that village was approximately 2430 persons only. It is also contended that the amount fixed by the Special Land Acquisition Officer is just and proper and the village was not fixed for the development.



7. The following common issues were framed by the learned Assistant Judge, Himatnagar vide Exhibit-6;

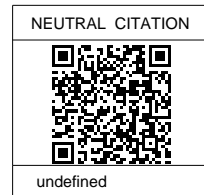
- “1. Whether the compensation awarded to the claimant is inadequate? If yes, what additional amount should be awarded?*
- 2. What order?”*

8. The submission of the original claimants before the the learned Assistant Judge, Himatnagar was that the agricultural land situated in village Agiol bearing Block No.461, 462 and 463 were acquired by the Special Land Acquisition Officer for construction of power Station of 220 KV and Staff Quarters of Gujarat Electricity Board. A notification under Section 4 of the Act was published in the official gazette on 17.01.1989 and the Special Land Acquisition Officer awarded an amount of compensation at the rate of Rs.220/- per Are for Block No.461, Rs.215/- per Are for Block No.462 and Block No.463 and Rs.1/- per Are for waste land against the lands of Rs.20 per Sq. Mts. It was also contended that the Special Land Acquisition Officer has awarded the compensation at a very low price and that too

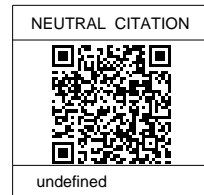


without considering the prevailing rate of market on the date of notification. The original claimants were examined vide Exhibit-85 and it was also submitted that the original claimants used to grow three crops in a year by growing maize, cotton, castor, wheat, millet, ground-nut, mug etc.

9. It was also submitted that the original claimants have also examined the witnesses in support of their contentions. The original claimants also claimed compensation of Pakka Well in their field and compensation for Engine Room with sub-mercible pump situated at their field. The original claimants also submitted the valuation assessed by the valuer regarding Engine Room by placing on record the valuation reports Exhibit-50 and 51 regarding Block No.461. The valuer Civil Engineer named Mahmadibrahm was also examined at Exhibit-49 and as per the valuation of the said valuer, the valuation of the Engine Room was assessed in Rs.24,600/- for the Engine Room and Rs.11,600/- for the pipelines, the super structure of the Engine

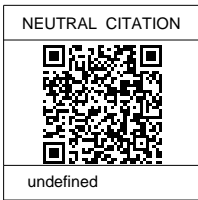


Room was assessed at Rs.23,950/- and Rs.1800/- for pipelines. It is further submitted that the sale instances of village Hadiyol was also produced by the original claimants and examined the witness Jivabhai Bhagabhai. As per the case of the original claimants, the Special Land Acquisition Officer by vide notification under Section 4 of the Act in official gazette on 22nd January 1988 acquired the land of Jivabhai Bhagabhai of village Hadiyol and a Land Reference Case No.4274 of 1989 arose out of the said acquisition proceedings, whereby the compensation was awarded at Rs.3000/- per Are and the judgment of District Court in the aforesaid Land Reference Case No.4274 of 1989 was produced at Exhibit-112. It was also pointed out that the distance between village Agiol and village Hadiyol is approximately 2 kilometers' from Himatnagar and the boundaries of the village are also touching to each other. The quality and the fertility of the agricultural land was similar. Thus, the contention of the original claimants by relying upon the said Exhibit-112 was to consider the amount of award as



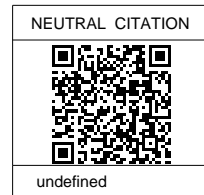
decided in the aforesaid Land Reference Case. The said instances were also produced in support of contentions of original claimants. The original claimants produced the copy of sale deed dated 03.02.1982 for a consideration of Rs.19,000/- and another sale deed Exhibit-114 was also produced on record by the original claimants under which the valuation of the land was assessed at Rs.575/- per acre. Another instances of law and purchase transaction was also produced by the original claimants of the same village, wherein the sale deed dated 29.03.1989 was for a sale consideration at Rs.15,000/- was placed on record which at Exhibit-44.

10. *Per contra*, learned Assistant Government Pleader has submitted that the findings arrived at by the learned Assistant Judge, Himatnagar in Land Reference Case No.942 of 1990 dated 20th December, 1988 does not require to be interfered with as the learned Assistant Judge has considered the evidence produced by the original claimants on record. It is further



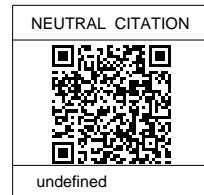
submitted that the original claimants failed to establish that they were raising three crops in one year and in absence of any documentary evidence to that effect, the fertility of the land under acquisition is rightly considered by the learned Assistant Judge. It is also pointed out that the valuation reports submitted relied upon by the original claimants vide Exhibits-50 and 51 are of no assistance against the valuation report prepared by the Officer of the Gujarat Electricity Board produced at Exhibits-66 and 69, which were prepared on the basis of SOR maintained by the Gujarat Electricity Board. It was also submitted that in absence of the evidence adduced by the original claimants, the amount of compensation is just and reasonable.

11. The learned Assistant Government Pleader has drawn the attention of this Court to the cross-examination of various witnesses who were examined in support of the claims of the original claimants. It was pointed out that the witness Jivabhai Bhagabhai Exhibit-111 has admitted in cross-examination that



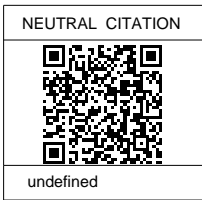
in case of village Hadiyol, the said village was near to Motipura village, which is part of the Himatnagar town and between Motipura and Himatnagar. The said witness has also admitted that there are no siramics factories there are seramic and other factories and the distance between village Hadiyol and Motipura is approximately 2 kilometers. The said witness also admitted that there are no seramic factories in village Agiol or surrounding to that village.

12. It was also pointed that the judgment in Land Reference Case No.4274 of 1989 is distinguishable on the ground that in said the decision, the notification under Section 4 of the Act was published on 21.01.1988, whereas in the present case, the notification under Section 4 of the Act was published on 22nd December 1988. The registered sale deed of village Agiol for land bearing No.1103 admeasuring about 33 Are i.e. 39 square mts. was purchased by the owner vide registered sale deed dated 03.02.1982 and the second sale instances of the land bearing



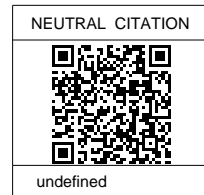
No.322 of 2002 admeasuring about 26 Gunthas being registered sale deed dated 29.03.1989, which is produced vide Exhibit-44. The learned Assistant Government Pleader has further submitted that the learned Assistant Judge has rightly considered the sale deed Exhibit-44 in awarding the compensation. In brief, the submission of the learned Assistant Government Pleader is that the learned Assistant Judge has properly appreciated the factual matrix and the evidence available on record.

13. Having considered the submissions and the impugned order, the original claimants being aggrieved and dissatisfied with the decision of the impugned judgment and award, the land being Block No.462 463 of village Agiol Taluka Himatnagar District Sabarkantha was acquired for the construction of 220 KV power Station and staff quarters for which the notification under Section 4 of the Act was published on 03.07.1989. The Special Land Acquisition Officer published the award on 17.01.1989 awarding the compensation at the rate of Rs.220/-



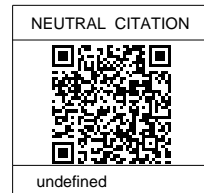
per Are and Rs.1/- per Are for waste land. The claim of the original claimants was for trees, Engine Room, pipelines etc. and the grievance was raised that the award of compensation is too low and therefore, the application was referred under Section 18 of the Act was filed by the original claimants. The appellants led oral evidence of himself and also examined the witnesses. The documentary evidences which were produced by the original claimants were in the form of two sale deeds and valuation reports of a private Engineer and a decision of Land Reference Case No.4274 of 1989 vide Exhibit-112.

14. So far as the reliance placed upon the land Reference Case No.4274 of 1989 is concerned, the same was pertaining to the village Hadiyol which was acquired by the Special Land Acquisition Officer and the Land Reference Court awarded compensation of Rs.3000/- per Are. The learned Court has taken into consideration the admission in the cross-examination of Jivabhai Bhagabhai that the village Hadiyol is at distance of



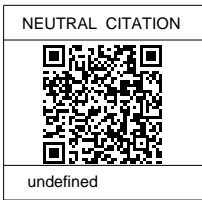
from Motipur which part of the Himatnagar town. The original claimants also admitted that there are seramic and other factories on the main road of village Hadiyol and the land acquired was heavy developed and having a thick industrial construction, such development is missing. So far as the land under acquisition, in the present case is concerned, there is nothing on record to point out that the land under acquisition was surrounded by or within the vicinity of a developed commercial activities.

15. So far as the sale instances which have been heavily relied upon by the original claimants are concerned, the Exhibit-114 which is a certified copy of a registered sale deed of a land bearing No.1103 admeasuring 33 Are of village Agiol. The said property was purchased on 03.02.1982 for a sale consideration of Rs.19000/- whereas, in the present case, the land under acquisition was acquired by a notification under Section 4 of the Act on 03.07.1989. Thus, the duration between the date of registration of the sale deed Exhibit-114 and the date of

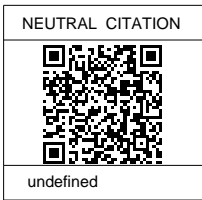


notification for the acquisition of land is approximately six years and the learned Assistant Judge has not rightly taken into consideration while dealing with the issue of the second sale deed which is produced at Exhibit-44 dated 19.03.1989. The duration between notifications under Section 4 of the present case and the date of sale deed is three months and therefore, the learned Court took into consideration Exhibit-44 in deciding the issue. The learned Court has also considered the measurements i.e. the area of land of the sale deed Exhibit-44 which is approximately 0-36 Are i.e. 31 sq. mts. The learned Assistant Judge has also considered the market rate of prevailing on the registered sale deed dated 29.03.1989 and has also considered the small area of the land involved in the registered sale deed Exhibit-44.

16. It can be culled out from the impugned judgment and award that during the course of hearing before the learned Assistant Judge, the original claimants did not press for the



compensation for Well, Pipelines and Trees and therefore, this Court is not entering into that arena of deciding the present First Appeal. While considering development charges, the learned Assistant Judge has rightly considered the aspect that the land under acquisition was acquired partly for residential and partly for construction of power station and thereafter, has calculated the amount of compensation. Since the calculation of compensation is purely on the basis of appreciation of oral as well as documentary evidence, I do not find any infirmity or perversity in the order impugned and order. The learned Assistant Judge has also considered the oral evidence of the opponents and has placed reliance upon the Exhibits-66 to 69, which are valuation reports prepared by the Officer of the Gujarat Electricity Board relying upon the SOR, which was being maintained by the semi-government Department of Gujarat Electricity Board. The valuation report Exhibit-50 and 51, which are of private Engineer relied upon by the original claimants has not mentioned the vital aspect of usage of the



construction of different constructed portion. The private engineer-witness who was examined Exhibit 49 by the original claimants has admitted that he has not assessed the valuation of different items used in the said construction. Even the said reports are silent with regard to the rates of each item.

17. In absence of positive evidence being led by the original claimants with regard to the market rate at the relevant point of time i.e. the date of notification, this Court is of the opinion that the original claimants-present appellants have failed to establish the lower amount of compensation being awarded by the Special Land Acquisition Officer, in my view of the matter and keeping in mind the factual background together with the evidence adduced by the parties, the First Appeal lacks merits and the same is dismissed.

RINKU MALI

(D. M. DESAI,J)