

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 4829 of 2018****With****R/CROSS OBJECTION NO. 329 of 2023****In****R/FIRST APPEAL NO. 4829 of 2018**=====  
**LAND ACQUISITION AND REHABILITATION OFFICER & ANR.****Versus****RABARI NAGJI KALA**  
=====

Appearance:

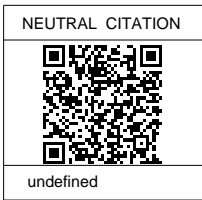
MR AAKASH CHHAYA, ASST GOVERNMENT PLEADER for the  
Appellant(s) No. 1,2MR MAHESH P PATEL(3381) for the Defendant(s) No. 1  
=====**CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV**

and

**HONOURABLE MS. JUSTICE NISHA M. THAKORE****Date : 18/06/2024****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

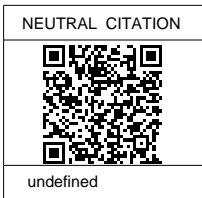
1. This appeal as well as connected cross objection have been filed challenging the judgement and award passed by the Additional Senior Civil Judge, Deesa in the respective land reference cases.

2. Learned advocate appearing for the claimants states that appeals and connected cross objections, involving



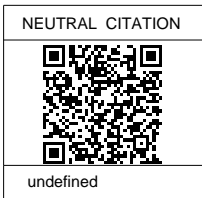
lands of same village for purpose of same acquisition, have been decided by this court vide judgement dated 15.02.2024 rendered in First Appeals No. 671 of 2019 and cognate matters. The order dated 15.02.2024 reads as under:

1. All these First Appeals arise out of respective land reference cases which were decided by the Additional Senior Civil Judge at Deesa.
2. Facts in brief would indicate that the lands of the original claimants were acquired for a public purpose of spreading canal of Sujalam Sufalam by issuing notifications under Section 4 and Section 6 of the Act. The Land Acquisition Officer by the award determined the market value of the land acquired at Rs.8.50 per square meters. On the claimants filing applications for enhancing, the Reference Court partly allowed the references and determined the market value of the land under acquisition at Rs.333.50 per square meters. These appeals have been preferred by the State of Gujarat for quashing the judgement and award of the Reference Court, whereas, the original claimants have filed cross-objections for enhancement of the claim.
3. It is not disputed by the learned counsel for the respective parties that for the same village and the acquisition process, this Court decided a group of appeals and cross objections viz. First Appeal No.669 of 2019 and allied matters. After considering the evidence on record which is the same as the one in the present cases and after setting out in detail various decisions of the Supreme Court, a Division Bench of this Court by



its CAV judgement dated 18.12.2023 held as under:

*“14. We have considered the ratio laid down and the principle enunciated in the aforesaid decisions. It is found out that the principles governing determination of market value of lands acquired are well-settled and at the time of determination of the compensation, the Hon’ble Supreme Court issued certain directions as regard the the methods of valuation to be considered i.e. (1) opinion of experts, (2) the prices paid within a reasonable time in bonafide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Therefore valuation made by the Valuation Committee can be a valid basis for the Reference Court in deciding the valuation of the land for the purpose of awarding compensation, subject to any change in the nature of the land, character etc. If the impugned judgment and order of the Reference Court is examined in light of the aforesaid observations and discussions, it appears to us that there is no error committed by the Reference Court in relying upon the price fixed for allotment of the land for the public purpose of Spreading Canal of Sujalam Safalam, but the Reference Court has committed error in not considering the aspect that the valuation as was made of the land in question on 20.05.2004 and the said valuation is to be considered, keeping in view the principles, as observed herein above and the Reference Court has also totally lost sight of in not considering the*



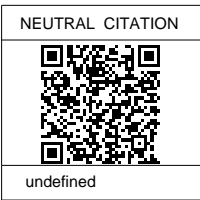
*deduction to be made in the nature of the land allotted for non-agricultural purpose and the acquisition of agricultural land in the present case.*

*15. From the facts of the case, as stated above, it is found out that it is the case of the original claimants that the Valuation Committee has fixed the valuation of the Government land on 20.05.2004, whereas the Notification under Section 4 of the Act was published on 30.06.2004 i.e. after the fixation of the valuation of the land by the Valuation Committee and, hence, they are entitled for additional compensation, for which, reliance is put upon the decision of this Court in case of Patel Haribhai Manilal (supra) as well as in case of Amaji Mohanji Thakore (supra) and though the aforesaid facts have been pointed out before the Reference Court, it has not been considered and 40% deduction was made instead of 20%, which the original claimants are entitled for. We have gone through the record and proceeding and found out that the Reference Court has considered the report dated 20.05.2004 of the Valuation Committee. It is found out that the Reference Court has correctly evaluated the the report of the Valuation Committee but at the time of considering the amount, 40% amount is deducted from the said amount mentioned in the report solely on the count that in identical matter in case of Sardar Sarovar Narmada Nigam Ltd. delivered in First Appeal Nos.2832 to 2843 of 2006, the Division Bench of this Court has deducted 40% amount from the price fixed by the competent authority. It is found out from the record that in the said matter, the acquired land was situated in outskirts*



*of the city area, whereas the present land, which is acquired by the acquiring body, is situated within the center of the city and as per the evidence led by the original claimants, surrounding and vicinity area of the acquired land is well developed area and in future, the Government need not have to spend any amount for the development of the said area, therefore, basic price value of the said land is on higher side, therefore, the deduction is required to be made 20% instead of 40%. We have gone through the record and proceedings and found out that the land, which was acquired by the acquiring body, is small plot and situated within the center of the city, therefore, we are of the opinion that the original claimants are entitled for 20% deduction instead of 40% deduction.*

*16. We have considered the report of the District Valuation Committee, village : Lakhani dated 20.05.2004 produced on record at Exhs.40 & 41 i.e. as well as the Map of village produced on record. It is found out from the aforesaid documents that the price of the land of land bearing Survey No.152 pk. has been evaluated and fixed at Rs.570/- per sq.mtr. and Sujalam Safalam Canal passes through land bearing Survey Nos.153 & 211 pk. and the said lands are situated adjacent to the land owned by the original claimants. It is also found out from the record that the lands owned by the original claimants are situated within well developed area, which would reduce the expenditure behind the development and, therefore after acquiring the said land, the Government need not have to spend money for its development. Thus considering the above facts of the*

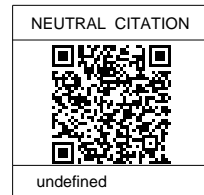


*case on hand, the original claimants are entitled for deduction of 20% instead of 40%, which has been done in the present case.*

*17. At this stage, it is pertinent to note that we have also gone through the impugned judgment and award passed by the learned Reference Court including the finding given and conclusion arrived at by the learned Reference Court and found that except deduction of 40% instead of 20%, there is no error committed by the learned Reference Court, which would require interference from this Court. Hence, rest of the impugned judgment and award remain unaltered.*

*18. Therefore in view of the aforesaid observations made, First Appeals filed by the State of Gujarat are hereby dismissed. Whereas Cross Objections filed by the original claimants are allowed as prayed for. Therefore, the impugned judgment and award dated 22.09.2017 passed by the learned Additional Senior Civil Judge, Deesa in Land Acquisition Reference Nos.26 to 31 of 2005 is hereby modified to the extent that instead of compensation at Rs.333.50, which is already awarded by the Reference Court, the original claimants are entitled to get additional compensation at Rs.114/- per Sq.Mtr i.e. total compensation at Rs.456/-. Rest of the observation and direction would remain unaltered. Decree to be drawn accordingly. Record & Proceedings are sent back forthwith.*

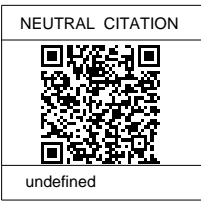
*19. Connected application, if any, stands disposed of."*



4. For the aforesaid reasons, which have been set out herein above in the aforesaid First Appeal, the First Appeals filed by the State are dismissed. Cross-objections filed by the original claimants are allowed. The respective impugned judgments and awards passed in the respective land reference cases are hereby modified to the extent that instead of compensation at Rs.333.50, which is already awarded by the Reference Court, the original claimants are hereby held entitled to get additional compensation of Rs.114/- per square meter i.e. total compensation of Rs.456/- per square meter for their respective acquired land along with all statutory benefits and interest after adjustment of the amount already received by the claimants. Such statutory benefit accrued shall be as per the rate prescribed under Section 28 of the Act. It is further directed that the enhanced compensation shall be deposited with the Nazir of concerned Court within period of eight weeks from the date of receipt of this order and on deposit of such amount, the same is directed to be disburse and paid to respective claimants on due verification of their identity by account payee cheque.

5. Order accordingly.

3. In view of the fact that the claim involved in the present appeal and cross objection is identical to the ones decided vide judgement and order dated 15.02.2024, this appeal as well as cross objection shall also be governed by the above order. Appeal is accordingly dismissed in



terms of the judgement and order dated 15.02.2024 passed in First Appeal No. 671 of 2019 and cognate matters. Cross objection too is allowed in terms of order dated 15.02.2024. Order accordingly.

**(BIREN VAISHNAV, J)**

**(NISHA M. THAKORE, J)**

DIVYA