

Hiralal Motilal Parikh (Deceased Through Lrs)

v.

Spl. LAQ Officer & Anr.

(Civil Appeal No. 1438 of 2016)

27 March 2025

[J.K. Maheshwari* and Aravind Kumar, JJ.]

Issue for Consideration

Whether the compensation awarded by the Reference Court, marginally enhanced by the High Court along with other statutory benefits is fair and reasonable.

Headnotes[†]

Land Acquisition Act, 1894 – Compensation – Enhancement of – Document proximate to the date of notification, if can be considered as exemplar for determination of compensation:

Held: Bona fide transaction of sale, if proximate to the land acquired and the date, in absence of any evidence that acquisition has not motivated the purchaser to pay a higher price on account of resultant improvement in development prospects, can be relied upon while determining the compensation – Exhibit 53 (the sale deed of an adjoining land, executed within a month from the date of notification of s.4 LAA, indicating the value at Rs.152.37/- per square metre) is accepted as exemplar – Purchaser of the land was not motivated to pay the higher price for execution of the said sale deed – Furthermore, even prior to the notification, the land was allotted at the rate of Rs.65/- per square metre [Exhibit 44, an allotment letter] – Said exemplar is also relevant to determine the fair and reasonable amount of compensation – Compensation as determined by the High Court at the rate of Rs.53/- per square metre is on the lower side – Mean of the exemplars Exhibits 44 and Exhibit 53 [i.e., $(65 + 152.37) / 2$] comes to Rs.108.68/- per square metre – Thus, compensation of the land be determined at the rate of Rs.107/- per square metre. [Paras 9, 11, 15, 16]

Case Law Cited

Union of India v. Raj Kumar Baghal Singh (Dead) Through Legal Representatives and Others [2014] 7 SCR 709 : (2014) 10 SCC 422;

* Author

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Mehta Ravindrarai Ajitrai (Deceased) Through His Heirs and LRs. and Others v. State of Gujarat [1989] 3 SCR 743 : (1989) 4 SCC 250; *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Anr.* [1988] Supp. 1 SCR 531 : (1988) 3 SCC 751 – relied on.

List of Acts

Land Acquisition Act, 1894.

List of Keywords

Land acquisition; Fair and reasonable amount of compensation; Enhancement of compensation; Compensation enhanced; Exemplars; Exemplars Exhibits; Documents proximate to the date of notification and the land acquired; Exemplar for determination of compensation; Bona fide transaction of sale; Proximate to the land acquired and the date of notification; Purchaser of the land not motivated to pay the higher price; Reference Court; Compensation on the lower side; Mean of the exemplars.

Case Arising From

CIVILAPPELLATE JURISDICTION: Civil Appeal No. 1438 of 2016

From the Judgment and Order dated 20.07.2015 of the High Court of Judicature at Gujarat at Ahmedabad in FA No. 1036 of 2002

Appearances for Parties

Advs. for the Appellant:

Harin P. Raval, Sr. Adv., Ms. Anushree Prashit Kapadia, Ms. Urmi H Raval, Ms. Shreya Bansal, Ms. Shrestha Narayan, Siddhartha H Raval, Ms. Shivangi Chawla.

Advs. for the Respondents:

Ms. Deepanwita Priyanka, Deepak Singh.

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari, J.

1. Arising out of the order dated 20.07.2015 passed by the High Court of Gujarat in the First Appeal No. 1036 of 2002 preferred by the legal

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representatives of the original claimant, assailing the award dated 05.11.2001¹ passed by the Reference Court; which was against the award passed on 30.07.1988² by Special Land Acquisition Officer (in short '**LAO**'), the present appeal has been preferred. In this appeal, the adequacy of compensation granted by the LAO, the Reference Court and also the High Court has been questioned.

2. For the sake of convenience, it is noted that the subject land is non-agricultural bearing Survey No. 25, admeasuring about 33387 sq. mtrs., situated at village/taluka 'Mehmedabad', District – Kheda, Gujarat, which was acquired by Gujarat Housing Board for residential/housing/construction purpose. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**LAA**' for brevity) was published on 30.07.1985, followed by notification under Section 6 dated 31.07.1986. After inviting objections, compensation at the rate of Rs. 4.50/- per square metre was determined by LAO, which was enhanced to Rs. 45/- per square metre by the Reference Court along with 30% solatium on the market value, 10% severance charges, plus 12% per annum interest from the date of publication of notification under Section 4 till the date of Award/date of taking possession of the land whichever is earlier, plus 9% interest for one year from the date of taking of possession and 15% per annum till realization. In appeal, the High Court further enhanced the compensation to Rs 53/- per square metre, including other statutory benefits as granted by the Reference Court.
3. Mr. Harish Raval, learned senior counsel, appearing on behalf of the appellants has placed reliance on the letter of allotment – Exhibit 44, made in January, 1985 by the Collector of the district to one Harishchandra Hiralal Dalwadi of Survey No. 864, at the rate of Rs. 65/- per square metre. The said land was adjacent to the subject land. He further relied upon Exhibit 53, i.e., the sale deed dated 29.08.1985 of an adjoining land, executed within a month from the date of notification of Section 4 LAA, indicating the value at Rs. 152.37/- per square metre. In reference to these exemplars, learned Senior Counsel submitted that compensation as allowed by the Reference Court and High Court is inadequate.

1 Land Acquisition Case No. 394 of 1989.

2 LAQ Case No. 2397.

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4. It is also urged, potentiality of the land acquired is a relevant factor; the land belonging to appellants is a piece of Survey No. 25, and is one kilometre away from the railway station and bus stand, as admitted by the departmental witness in his statement. Therefore, adequacy of compensation awarded by the Reference Court, marginally enhanced by the High Court, is not proportionate to the value of the land. In support of the said submissions, reliance has been placed on the judgment of '*Union of India v. Raj Kumar Baghal Singh (Dead) Through Legal Representatives and Others*, (2014) 10 SCC 422' and also in '*Mehta Ravindrarai Ajitrai (Deceased) Through His Heirs and LRs. and Others v. State of Gujarat*, (1989) 4 SCC 250' and enhancement of fair and reasonable amount of compensation has been prayed for.
5. *Per contra*, learned counsel representing the State has strenuously urged that exemplar Exhibit 44 is merely an allotment order made by the Collector and Exhibit 53, i.e., a sale deed of a small piece of land of Society where roads were laid with other amenities, cannot be used as reference to determine the compensation. It is said in the facts and on the material placed, the Reference Court and the High Court has rightly determined the compensation to which interference in this appeal is not warranted.
6. In the facts and submissions made above, the short question that falls for consideration is, whether the compensation awarded by the Reference Court, marginally enhanced by the High Court along with other statutory benefits is fair and reasonable?
7. After having heard and given our anxious consideration to the material placed, in particular the exemplar of January 1985 – Exhibit 44, relied upon by the appellants, i.e., allotment of land bearing Survey No. 864 made by Collector at the rate of Rs. 65/- per square metre, which is prior to the date of acquisition of subject land and other documents Exhibits 52 and 53, i.e., testimony of purchaser Kantibhai Veljibhai and sale deed dated 29.08.1985 executed immediately within one month respectively, vis-à-vis the date of acquisition and proximity of subject land, in our view, no plausible reason is on record for not accepting these documents or not to rely upon them to determine compensation.
8. In the present case, Exhibit 53, i.e., sale deed dated 29.08.1985 was executed within a month from the date of notification under Section 4 of the LAA. The proximity of sale deed and the date of

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notification is not in dispute. In this regard, an important question is needed to be answered, i.e., whether a document proximate to the date of notification can be considered as exemplar for determination of compensation? The said issue has been considered by this Court in the case of '*Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Anr.*, (1988) 3 SCC 751'. This Court summed up the principles as follows: -

“10. It is well settled in determining compensation for the acquired land, price paid in a bona fide transaction of sale by a willing seller to a willing buyer is adopted subject to such transaction being for land adjacent to acquired land, proximate to the date of acquisition and possessing similar advantages. Of course, there are other well-known methods of valuation like opinion of experts and yield method. In absence of any evidence of a similar transaction, it is permissible to take into account transaction of nearest land around the date of notification under Section 4 of the Act by making a suitable allowance. There can be no fixed criteria as to what would be the suitable addition or subtraction from the value of the relied upon transaction. In Chimanlal Hargovinddas v. Land Acquisition Officer [(1988) 3 SCC 751] this Court summed up the principle as follows: (SCC pp. 753-56, para 4)

“4. The following factors must be etched on the mental screen:

*(1)-(4)****

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

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(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine, and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.

(12) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would

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do. We may illustrate some such illustrative (not exhaustive) factors:

<i>Plus factors</i>	<i>Minus factors</i>
1. smallness of size	1. largeness of area
2. proximity to a road	2. situation in the interior at a distance from the road
3. frontage on a road	3. narrow strip of land with very small frontage compared to depth
4. nearness to developed area	4. lower level requiring the depressed portion to be filled up
5. regular shape	5. remoteness from developed locality
6. level vis-à-vis land under acquisition	6. some special disadvantageous factor which would deter a purchaser
7. special value for an owner of an adjoining property to whom it may have some very special advantage	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard-and-fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq yd cannot be compared with a large tract or block of land of say 10,000 sq yd or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a layout, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20% to 50% to account for land required to be set apart for carving out lands

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and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense."

xx xx xx xx

9. On perusal of the above, it is clear that bona fide transaction of sale, if proximate to the land acquired and the date, in absence of any evidence that acquisition has not motivated the purchaser to pay a higher price on account of resultant improvement in development prospects, can be relied upon while determining the compensation. The said judgment has been followed by this Court in the case of *Raj Kumar Baghal Singh (Dead)* (supra).
10. Similarly, in the judgment of *Mehta Ravindrarai Ajitrai* (supra), this Court has clearly spelt out that post notification instances may be taken into consideration while computing the compensation. The relevant paragraphs are reproduced as thus: -

"4. We do not feel called upon to enter into a detailed scrutiny of the evidence led by the parties before the learned Civil Judge. The main instance relied upon by the claimants was by way of an agreement to sell dated January 21, 1957 and a sale deed dated April 2, 1957 in respect of the sale of 42552 square yards of land out of survey No. 333/2 which is adjoining the land with which we are concerned which forms part of survey No. 33 1. The land sold under this instance was known as "Kesarbagh" and was sold to Mahalaxmi Mills Limited by Prince Nirmalkumarsinghji. The rate at which it was sold works out to Rs. 3 per sq. yard. On the basis of this instance, the claimants had made their claim at Rs.3 per

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square yard before the Land Acquisition Officer. The High Court inter alia rejected this instance on the basis that the contents of the sale deed were not properly proved. However, after an order for remand made by this Court on August 25, 1981 evidence has been led regarding this sale and the sale deed has been duly proved by the evidence of one Dharamdas, a director of Mahalaxmi Mills Limited, the purchaser, and the vendor Prince Nirmalkumarsinghji. It was marked originally as Exhibit 87 and after the evidence on remand as Exhibit 152. The evidence shows that this land was just adjacent to the land of the purchaser, Mahalaxmi Mills Limited. The agreement of sale is dated January 21, 1957 and the conveyance or sale-deed is dated April 2, 1957 as aforestated. The price has been fixed under the agreement of sale. This agreement of sale was entered into about five months after the publication of section 4 notification in the case before us The High Court rejected the said instance on the ground that the contents of the sale-deed were not proved although the execution was thereof duly proved. In view of the evidence led after remand, it cannot be disputed that this agreement of sale as well as the sale deed have been duly proved and they have been duly marked as exhibits. The High Court further took the view that in any event, no reliance could be placed on this instance of sale because the acquisition of the land in question before us was for the construction of an industrial estate at Bhavnagar and such construction was bound to have pushed up the price of land in the surrounding area. There is, however, nothing in the evidence to show that there was any sharp or speculative rise in the price of the land after the acquisition and this has been noticed by the High Court. It appears that under these circumstances, the High Court was not justified in not taking this instance into account at all as it has done on the ground that it was a post-acquisition sale and could not be regarded as a comparable instance at all. The market value of a piece of property for purposes of section 23 of the Land Acquisition Act is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar

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advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best, evidences of market value. (See: Administrator General of West Bengal v. Collector, Varanasi, [1988] 2 SCC 150 at para 8.)

5. Keeping these factors in mind, we feel that although the instance reflected in the sale deed (Exhibit 152) and the agreement for sale in connection with that land, pertains to a sale after the acquisition, it can be fairly regarded as reasonably proximate to the acquisition and, in the absence of any evidence to show that there was any speculative or sharp rise in the prices after the acquisition the agreement to sell dated January 21, 1957 must be regarded as furnishing some light on the market value of the land on the date of publication of section 4 notification. However, certain factors have to be taken into account and appropriate deductions made from the rate disclosed in the said agreement to sell in estimating the market value of the land with which we are concerned at the date of the acquisition. One of these factors is that there seems to have been some rise in the price of land on account of the acquisition of the land in question before us for purposes of constructing an industrial estate. Another factor is that the land proposed to be purchased under the said agreement to sell was adjoining the land of the purchaser and the purchaser might have paid some extra amount for the convenience of getting the neighbouring land.

11. Indeed, it is true that every case must be dealt with on its own facts bearing in mind that all factors are relevant to be understood by a prudent purchaser of land and the judge while determining the compensation must keep those factors in mind. In the said context, Exhibit 53 sale deed was executed in favour of Danjibhai Samji Patel, Kantibhai Veljibhai Patel and Manibhai Veljibhai Patel for plot no. 33 of Survey No. 954 admeasuring 59.29 square metre situated in Navjivan Cooperative Housing Society. The purchaser Kantibhai was brought in witness box and his statement is Exhibit – 52, wherein he has categorically deposed that, he and his brothers purchased the plot from the Society. In rebuttal, a bald statement to say sale deed is not genuine, was not enough to not accept the same for a

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reason that the purchaser of the land was not motivated to pay the higher price for execution of the said sale deed because it was in colony developed by Society. The land of sale deed is proximate to the land acquired. In this view, relying upon the principles enunciated in *Chimanlal Hargovinddas* (supra) and *Mehtra Ravindrarai* (supra), we are constrained to accept the document Exhibit – 53 as exemplar. At the same time, we cannot lose sight of the fact that Collector of the District himself allotted the land of Survey No. 864 in the name of Harishchandra Hiralal Dalwadi at the rate of Rs. 65/- per square metre prior to acquisition, meaning thereby, the government wanted to fetch higher amount by allotting land to an individual. In such scenario, computation of compensation by Reference Court and High Court at a lower rate for the land acquired cannot be accepted. As such, said exemplar is also relevant to determine the fair and reasonable amount of compensation.

12. So far as contention of potentiality of the land qua compensation is concerned, the statement of Shripat Dattatreya (departmental witness) is relevant, whereby it is admitted by him that railway station and the bus station are one kilometer away from the place of acquisition, therefore, potentiality of the land cannot be doubted.
13. We have perused the reasonings given by Reference Court on Issue No. 1, wherein the details of Exhibit 53 have been specifically mentioned in paragraph 8 to 10 indicating that the said land is adjoining to the subject land acquired by the respondent. It is true that the Court has not given findings in this regard, but without disputing the contentions as advanced by the counsel for the appellant, compensation has been determined at the rate of Rs. 45/- per square metre. During hearing before us, it has not been objected by the respondent that the subject land and the land indicated in exemplar Exhibit 53 are not adjoining, therefore, we accept the fact that the land acquired, and the land of exemplar Exhibit 53 are adjoining.
14. Proceeding further, since the land acquired is a non-agricultural land and its acquisition is for use and occupation by Housing Board for residential/housing/construction purpose, therefore, it is imperative for the Housing Board to have development of the land. Thus, for the purpose of development, some part of the subject land is required to be left. As we are accepting the exemplar of a piece of land situated in a colony developed by Navjivan Cooperative Society, therefore, at least 30% of the acquired land is required to be left by the Housing

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Board for the development out of the subject land. In the said event, if we accept the value of Exhibit 53 – sale deed, which is a piece of plot, after leaving the land for development, in the said contingency, on deduction of 30% as the development cost, the compensation would come at the rate of Rs. 107/- per square metre, as rightly discussed by the Reference Court in paragraph 14.

15. As already noted above, even prior to the notification, the land was allotted by the Collector at the rate of Rs. 65/- per square metre [Exhibit 44]. Thus, even if we take mean of the documents Exhibit 44 and Exhibit 53 [i.e., $(65 + 152.37) / 2$] which comes to Rs. 108.68/- per square metre. The said value is also nearer to the value as determined in the above paragraphs i.e., Rs. 107 per square metre.
16. In view of the discussions made hereinabove and considering the entirety of facts, the compensation as determined by the High Court at the rate of Rs. 53/- per square metre is on the lower side. In lieu of acceptance of exemplar Exhibit 53 at the rate of Rs. 53/- and mean of exemplars Exhibits 44 and 55 comes to Rs. 108.68/- per square metre. Therefore, we direct that the compensation of the land be determined accepting value at the rate of Rs. 107/- per square metre and the question as posed is answered. Accordingly, the present appeal is allowed in part.
17. The other benefits regarding solatium, severance charges, per annum interest from the date of publication of the notification, till the date of award/date of taking possession along with interest as specified in the order passed by the Reference Court shall also commensurately be allowed.
18. The respondents are directed to calculate the compensation and paid to appellants within a period of three months from the date of communication of this order. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal partly allowed.