

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1675 of 2022
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2018
In
R/FIRST APPEAL NO. 1675 of 2022

FOR APPROVAL AND SIGNATURE:**HONOURABLE MS. JUSTICE SONIA GOKANI****and****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

WESTERN DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA
 LTD
 Versus
 ORIGINAL CLAIMANTS & 3 other(s)

Appearance:

MS ARCHANA U AMIN(2462) for the Appellant(s) No. 1
 for the Defendant(s) No. 1.1.1,1.1.2,1.1.3,1.1.4
 DECEASED LITIGANT for the Defendant(s) No. 1.1
 MR RITURAJ M MEENA(3224) for the Defendant(s) No. 1.6
 MR SAURABH G AMIN(2168) for the Defendant(s) No. 1.3,1.4,1.5
 NIYATI D CHAUHAN(9082) for the Defendant(s) No. 1.6

CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK

Date : 05/07/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE HEMANT M. PRACHCHAK)

1. The present appeal is filed by the appellant seeking the following prayers.

(a) admit this appeal;

(b) allow this appeal by quashing and setting aside the interim award dated 16/5/2016 passed by the respondent no.4 herein above as well as order dated 18/3/2017 passed in Misc. Civil Application No.139 of 2016 and order dated 30/11/2017 passed in Civil Review Application No.17/2017 by the Id. 2nd Addl. District Judge, Anand;

(c) grant such other and further relief as may deem fit and proper in the interest of justice.

2. It is pertinent to note that the issue involved in the present appeal is no more res-integra as the same was decided by this Court (Coram: Hon'ble Mr.Justice Akil Kureshi and Hon'ble Mr.Justice B. N. Karia) vide order dated 02.07.2018 passed in First Appeal No.1977 of 2018 to First Appeal No.1989 of 2018, First Appeal No.1991 of 2018, First Appeal No.1993 of 2018 and First Appeal No.1996 of 2018 to First Appeal No.2000 of 2018.

3. The brief facts giving rise to the present case are as under:

3.1 The respondent no.1 i.e. owner/s of the land approached

respondent no.4 under Section 20F(6) of the Act for determination of the amount of compensation in the year 2012. The arbitration proceedings were conducted for a period of four years and on filing of an interim application, respondent no.4 passed an interim award on 16.05.2016 enhancing interim additional amount of compensation at Rs.325/- per square meter without determining the value of the land along with 60% of solatium and interest at 15% from the date of award till payment.

3.2 That the appellant had challenged the award dated 16.05.2016 before the District Court, Anand by way of filing application under Section 34 of the Arbitration and Conciliation Act, 1996 being Misc. Civil Application No.139 of 2016, whereby the learned 2nd Additional District Judge, Anand, without adjudicating upon the issue raised in the application on merits, directed respondent no.4 to pass final award as early as possible vide order dated 18.03.2017.

3.3 The appellant had filed review application being Misc. Civil Application No.17 of 2017 under Order 47 Rule 1 of the Civil Procedure Code seeking review of the order dated 18.03.2017

passed by the learned Additional District Judge, Anand. That learned 2nd Additional District Judge, Anand, without appreciating the errors pointed out in the review application, dismissed the same vide order dated 30.11.2017 observing that by filing review application, the appellant is seeking rehearing of the main matter. Being aggrieved by the said orders, the present is filed.

4. The present appeal is filed by the appellant - Corporation challenging the judgment and order dated 18.03.2017 passed by the learned 2nd Additional District Judge, Anand in Misc. Civil Application No.139 of 2016 and the order dated 30.11.2017 passed by the learned 2nd Additional District Judge, Anand in Civil Review Application No.17 of 2017.

5. The said Corporation is specifically constituted for execution of the work of Dedicated Freight Corridor of the Indian Railways. The Dedicated Freight Corridor would exclusively handle the freight traffic. Understandably to lay down the railway lines and construct the freight corridor, the railway administration would require vast areas of Government as well as public lands. Being a notified special railway project, the acquisition proceedings were undertaken in terms of Chapter IV-

A of the Railways Act, 1989 ("the Act" for short). Private lands of Village: Ashodar, Taluka: Anklav, District: Anand, were compulsorily acquired under the said chapter. Notification under Section 20A of the Act was published on 25.05.2009. Subsequent steps were taken by the competent authority. Award was passed on 02.05.2010. Compensation was awarded at the rate of Rs.17.13 per square meters. The aggrieved land owners approached the arbitrator for enhancement of the compensation. In such reference, since the final award would take considerable time, they requested the arbitrator to pass interim award. Their main contention was that several parcels of Government land of the nearby village have been acquired by the railway authorities for the same purpose, under the same notification under Section 20A. A specially constituted committee (hereinafter to be referred to as "the committee" for short) assessed the market value of the land for the purpose of transfer of the land from the State Government to the railways. The committee headed by the Collector and Chairman of the Valuation Committee gave a report on 20.10.2014, in which, the market value of the land was assessed at Rs.630/- per square meters. According to the claimants, the railway administration accepted such valuation,

paid the resultant compensation and has also acquired the State land for the purpose of the said project. The claimants therefore urged the arbitrator to pass an interim award granting compensation on the basis of this assessment of the market value of the land by way of interim measure.

6. The railway administration strongly opposed this prayer contending that the assessment of the market value by the committee constituted for entirely different purpose cannot be automatically adopted in the present case and in any case, there is no occasion to pass an interim award.

7. The arbitrator passed interim award dated 16.05.2016, in which, he awarded additional compensation of Rs.325/- per square meters by way of interim measure for the lands in question. Such amount would carry solatium at the rate of 60% and interest at the rate of 15% from the date of award passed by the competent authority till actual payment.

8. The appellant filed Misc. Civil Application before the District Court, requesting for setting aside such interim arbitral award. Such application came to be dismissed by the learned Additional District Judge by the impugned order dated 18.03.2017. The

appellant filed Review Petition which also came to be dismissed by the order dated 30.11.2017. These orders are, therefore, challenged in this appeal.

9. Ms.Archana Amin, learned counsel appearing for the appellant - Corporation vehemently contended that the arbitrator committed a serious error in passing the interim award and awarding compensation at an exorbitant rate of Rs.325/- per square meters. She criticized the award on following main grounds:

- I. That there was no basis for comparing the market value of the acquired land with the assessment of the value of the Government lands carried out by the committee. Firstly, because this assessment itself is not final. The railway administration has strongly opposed the contents thereof. Secondly, in any case, there is no basis for awarding compensation for private lands at the rate on which inter-government transactions take place.
- II. Awarding solatium at the rate of 60% was not permitted.
- III. Interest at the rate of 15% is not statutorily recognized.

10. On the other hand, Mr.Saurabh Amin, learned counsel appearing for the respondents - claimants contended that the committee had determined the market value of the Government land at Rs.630/- per square meters. The railway administration has accepted such valuation and has paid price at such rate for acquiring lands of the State Government. The railways now cannot offer lower compensation for private lands. The arbitrator has awarded additional compensation only at the rate of Rs.325/- per square meters which is barely about 40% of the market value assessed by the committee. Awarding solatium or interest is not impermissible.

11. Before discussing the factual material on record, we may refer to the statutory provisions. Chapter IV-A of the Act pertains to land acquisition for a special railway project. Whenever a railway project is recognized and notified as a special railway project, land for execution of such a project would be acquired under the provisions of the said chapter. The said chapter makes provisions for quicker and smoother acquisition of land for special projects as also for compensating land looser adequately for acquisition of their lands . We are not concerned with initial

stages of acquisition where publication of notification of intention of acquisition and other steps before the land is finally acquired. We may straightway refer to Section 20F pertaining to determination of amount payable as compensation. Relevant portion of this section reads as under:-

“Section 20F. Determination of amount payable at compensation -

“(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

...

...

(6) If the amount determined by the competent authority under sub-section (1) or as the case may be sub-section (3) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government in such manner as may be prescribed.

(7) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(8) The competent authority or the arbitrator while determining the amount of compensation under sub-section (1) or sub-section (6), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 20A;

(b) the damage, if any sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other

immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

(9) In addition to the market-value of the land as above provided, the competent authority or the arbitrator, as the case may be, shall in every case award a sum of sixty per centum on such market-value, in consideration of the compulsory nature of the acquisition."

12. Perusal of this section would show that for acquisition of the land, compensation would be paid as determined by the competent authority. If the amount so determined is not acceptable to the either parties which would mean the land looser or the railway administration, the issue would be referred for the arbitrator for his determination. Sub-section (8) of Section 20F provides broad legislative guidelines for determining the market value of the land either by the competent authority or by the arbitrator. Clause (a) whereof provides that while determining the compensation, the said authorities would take into consideration the market value of the land on the date of publication of the notification under Section 20A. Sub-Section (9) of Section 20F provides for awarding solatium at the rate of sixty percent of the market value looking to the compulsory nature of the acquisition.

13. Section 20G pertains to criterion for determination of market value of land. Sub-Section (1) thereof provides that the competent authority shall adopt the following criteria in assessing and determining the market value viz; (I) the minimum land value, if any, specified in the Indian Stamp Act for the registration of the sale deeds in the area, where the land is situated; or (ii) the average of the sale price for similar type of land situated in the village or vicinity, ascertained from not less than fifty per cent of the sale deeds registered during the preceding three years, where higher price has been paid. In plain terms thus, the minimum land value prescribed for the purpose of stamp duty collection for the registration of sale deed would be an important consideration.

14. Section 20H of the Act pertains to deposit and payment of amount. Sub-section (5) thereof provides that where the amount determined under Section 20F by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under Section 20-I till the date of actual deposit thereof.

15. We have to deal with interim award of arbitrator and the decisions of the Civil Court in not interfering with such interim award, in background of such statutory provisions. While doing so, we would also be conscious of the limited scope of the First Appeal against the order of the Civil Court refusing to set aside an arbitral award. The statutory provisions would show that the proceedings before the arbitrator would be governed by the provisions of the Arbitration and Conciliation Act, 1996, which recognizes the authority of an arbitrator to pass an interim award. In fact, the present interim award is not questioned before us on the ground of competence or the jurisdiction of the arbitrator to pass such an award. We have noticed that the land owners, the aggrieved persons had placed the report of the valuation committee dated 20.11.2014 assessing market value of the government land at Rs.630/- per square meters. This committee was specially constituted for assessing the market value of the State Government land which was required for the purpose of the Dedicated Freight Corridor. The notification under Section 20A was common for the Government as well as the private land under acquisition. The short question is therefore, was it open for the arbitrator to be influenced if not fully guided

by such assessment and whether he committed a serious error in awarding interim compensation on the basis of such assessment. We have perused the report of the committee. The report records that the market value of the land as on the date of the report was assessed by the Anand Town Planner at Rs.627/- per square meters. The committee took into account the jantri rates fixed by the Government and other relevant materials besides the said report of the Town Planner to arrive at a figure of Rs.630/- of market value of the land. The report is somewhat silent on, as on which date such market value of Rs.630/- per square meters was obtained viz. whether the date of report or the date of notification under section 20A of the Act. Be that as it may, under protest, the railway administration has paid to the State Government compensation for acquiring State land for the project in question. It may be, as argued by Ms.Amin for the appellant, that the request of the railways is to transfer the State Government land at a lower rate as is done in the State of Rajasthan or at no cost as is done by the State of Haryana. The private negotiations between the two government agencies for transfer of the land from one Government to another Government by itself cannot determine the true market value of

the land in question. Even if therefore, there is a proposal for reducing the market value of the State Government land transferred to the railway administration, that by itself, would not determine the compensation payable to the private land owners. The computation of the market value arrived by the specially constituted committee cannot be summarily brushed aside.

16. Having said that, it cannot be disputed that such computation requires a closer scrutiny. As noted, as against the market value of the land in the opinion of the town planner being Rs.627/- per square meters on the date of the report, the Committee has assessed the value of the land at Rs.630/- per square meters (presumably as on the date of notification under section 20A of the Act). This is a grey area which requires further examination. Further, any such assessment cannot in absence of a binding provisions on the railway administration be the sole consideration. The parameters laid down under the statute for ascertaining the market value would have to be applied in light of the evidences that may be brought on record. One of the considerations as noted which flows from sub-section (1) of section 20G is the minimum land value specified for calculation of stamp duty for registration of sale deed which is popularly

known as jantri rates. The report of the committee dated 20.10.2014 records that the Government published jantri rates ranged from Rs.61 per square meters to Rs.310/- per square meters depending on the category of land. This is very significant.

17. The arbitrator in his interim award has awarded additional compensation at the rate of Rs.325/- per square meters by taking the basis of the report of the committee dated 20.10.2014. It is not clear to us how this adjustment is made from the rate of Rs.630/- of the committee to additional Rs.325/- awarded by the arbitrator. Being interim award in nature and looking to the far reaching effect such award may have in the process of computation and awarding compensation to the claimants, we would like to trade somewhat cautiously. Eventually if the final award in any manner is lower than the interim compensation awarded by the arbitrator, serious question of recovery of the Government monies would arise. Some adjustment would therefore be necessary.

18. Before giving final directions, we would dispose of the two consequential contentions. Solatium at the rate of sixty per cent

is statutorily recognized and mandated. If the basic assessment of the excess compensation is correct, the awarding solatium at the prescribed rate cannot be faulted. Interest at the rate of 15% awarded by the arbitrator does not bear out any statutory support. AS noted, interest prescribed under sub-section (5) of section 20H is 9% per annum from the date of taking possession till actual payment. The arbitrator therefore committed an error in awarding higher interest, that too without any discussion.

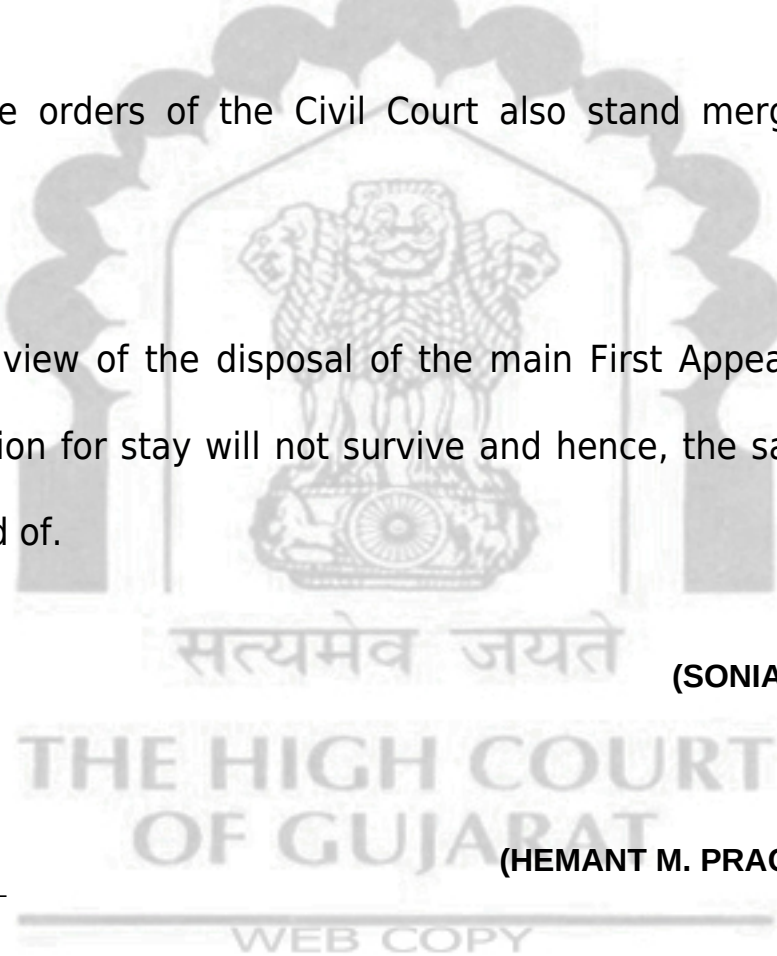
19. Under the circumstances, the present first appeal disposed of with the following directions:

- I. The appellant Corporation shall deposit the entire amount of additional compensation awarded by the arbitrator under interim awards with solatium as directed but simple interest at the rate of 9% per annum from the date of taking possession till actual deposit before the concerned District Courts, within a period of eight weeks from the date of receipt of this judgment and order.
- II. It would be open for the claimants to withdraw 50% thereof which withdrawal shall be subject to the final award that the arbitrator may pass.

III. Remaining 50% shall be invested in any nationalized bank in cumulative Fixed Deposit initially for a period of one year, to be renewed from time to time till passing of the final award by the arbitrator. Interim award of the arbitrator stands modified to this extent.

20. The orders of the Civil Court also stand merged in this order.

21. In view of the disposal of the main First Appeal, the Civil Application for stay will not survive and hence, the same is also disposed of.



(SONIA GOKANI, J)

(HEMANT M. PRACHCHHAK, J)

V.R. PANCHAL