

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 19501-19503 OF 2017
(Arising out of SLP(C) Nos. 21067-21069 of 2014)

MITESH KUMAR RAMANBHAI PATEL & ORS. APPELLANT(S)

VERSUS

STATE OF GUJARAT & ORS. RESPONDENT(S)

WITH

CIVIL APPEAL No(s). 19504-19506 OF 2017
(Arising out of SLP(C) Nos. 25806-25808 of 2015)

CIVIL APPEAL No(s). 19522-19524 OF 2017
(Arising out of SLP(C) Nos. 15676-15678 of 2015)

CIVIL APPEAL No(s). 19507-19509 OF 2017
(Arising out of SLP(C) Nos. 528-530 of 2015)

CIVIL APPEAL No(s). 19513-19515 OF 2017
(Arising out of SLP(C) Nos. 2302-2304 of 2015)

CIVIL APPEAL No(s). 19516-19518 OF 2017
(Arising out of SLP(C) Nos. 12813-12815 of 2015)

CIVIL APPEAL No(s). 19510-19512 OF 2017
(Arising out of SLP(C) Nos. 552-554 of 2015)

CIVIL APPEAL No(s).19519-19521 OF 2017
(Arising out of SLP(C) Nos. 12819-12821 of 2015)

CIVIL APPEAL No(s). 19538-19540 OF 2017
(Arising out of SLP(C) Nos. 555-557 of 2015)

CIVIL APPEAL No(s). 19525-19527 OF 2017
(Arising out of SLP(C) Nos. 36249-36251 of 2014)

O R D E R

1. Leave granted.
2. An unusual factual matrix exists in the instant cases. Though, the consent agreements were entered into in the year 1989 for handing over the land in the case of acquisition on a particular value prevailing at the relevant time was purportedly mentioned. However, for approximately seven years, the State Government did not choose to issue Notification under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act'). It was issued on 7.6.1996 and Consent Awards were passed on 12.6.1997 and 5.8.1997 on the basis of consent forms which were obtained in 1989. Possession had also

been taken in 1989. It appears that 80 to 90% compensation had been disbursed to the incumbent at the time to taking possession in 1989. Thereafter it appears that rent was also paid in lieu of occupation. In 1995 reference was sought, application was kept pending, then notification under Section 4 was issued in 1946 and also declaration under Section 6 of the Act in 1997. Then consent awards were passed in 1997 reference was again sought that was ultimately made and reference court had determined compensation. The High Court had set aside the judgment of the reference court on the ground that no reference under section 18 was maintainable once acquisition was with consent.

3. The counsel for the appellant urged that fraud was played on the land owners and on blank consent forms signatures were obtained. It was not possible to fill dates of events in consent forms which took place in 1996 and 1997. The consent forms even if executed were rendered unenforceable. It would be unfair to permit State functionaries to use the consent forms after 8 years as such the judgment passed by the reference court be restored.

4. Learned counsel for the State contended that in view of consent awards no reference could have been sought. The possession was taken after payment of 80% to 90% of compensation agreed to in 1989, then for occupation of land rent was also paid to owners and ultimately after issuance of notification under Section 4 and other formalities the award was passed in the year 1997. In the facts of the case no interference was called for with impugned judgment passed in the High Court.

5. A perusal of the consent form reveals that in the consent forms most of the columns were kept blank as it was not possible to mention subsequent events, and thereafter, date of notification under Section 4 of the Act and the date of declaration under Section 6 of the Act had been mentioned afterwards that too immediately before Award was passed which could not have been done unilaterally.

6. The facts indicate that in the year 1995, a premature prayer was made by landowners to make a reference as they felt that the consent forms were kept blank and it was assured to them that they would be paid compensation at the rate of Rs.50 per

Square Meter. However, said amount was not mentioned in the Agreement and figure of Rs.3.12 per square meter was mentioned in the blank forms. Be that as it may, even if 3.12 per square meter was agreed to, would not make much difference as to enforceability if such agreements. It appears that the reference court in the year 1995 directed the land owners to furnish the particulars of their holdings which was the subject matter of the consent Agreements. On failure to furnish particulars by the next date of hearing, the proceedings were closed *sine die*. Thus, the conduct of the land owners of filing application in 1995 clearly indicated that they were not willing to go by the consent agreement executed in the year 1989. Thus in all fairness the blank forms should not have been used for passing awards on consent basis.

7. It would be highly unfair in the facts of the instant case to ask the land owners to abide by the consent terms executed way back in the year 1989 and to hand over land to State Government at the rate, which prevailed in 1989. The State Government had not taken the steps for seven years for acquisition

of the land by issuance of the Notification under Section 4 of the Act. It was a *sine qua non* to issue notification under Section 4 of the Act to acquire land even with consent. After obtaining consent forms and possession, the State Government had waited for more than seven years and thereafter only in the year 1996 Notification under Section 4 of the Act was issued and consent awards were passed in the year 1997. Remaining 10% to 20% amount was not paid. Ultimately as directed by the High Court the reference was made to the District Court. The reference court had rightly enhanced the compensation and then the matter travelled to the High Court in appeal filed by the State Government and cross objection by land owners for enhancement. At that time by way of interim order, direction was given to State to deposit the amount. The matter of interim order travelled to this Court and this court directed that amount be paid to the land owners as per determination made by the reference court. Pursuant to the order passed in the year 2011 amount had been disbursed to the land owners which was determined by the reference court at the rate of

Rs.21.48 per square Meter that too after filing of Contempt Petition.

8. In the facts and circumstances of the case, the reference court was right in awarding the compensation on the market price which prevailed in the year 1997. In our opinion, though it was open to the State Government to enter into an agreement before issuance of the Notification under Section 4 of the Act, as held by this court in *Ishwarlal Premchand Shah & Ors. v. State of Gujarat*, AIR 1996 SC 1616, in which the agreements were entered into three years before. However, in the peculiar facts of these cases, it is apparent that the State Government could not have waited for seven years after the consent forms were obtained in 1989 at particular rate prevailing at relevant time to make acquisition in the year 1996 and it would be totally unjust to pass consent awards on the basis of almost blank consent forms obtained in the year 1989. The relevant date of determination of compensation is the date of issuance of notification under Section 4 of the Act. It was incumbent upon the State

Government to obtain fresh consent forms in view of repudiation made in 1995 the way of filing application before Land Acquisition Collector, whether the land owners were willing, due to lapse of time, to hand over the land in 1997 at the rate which prevailed in the year 1989 but that was not so done in the instant cases. Thus we are of the considered opinion that reference was rightly made and reference could not be said to be not maintainable as the land owners way back in the year 1995 had submitted the application that they were not satisfied with the validity and correctness of the Agreement and again immediately they had filed applications seeking reference when consent award was passed. In the fact of the case it could not be said that land owners consented in 1996/ 1997 for acquisition at the rate of 1989. It could not have been termed to be a consent award in the eye of law.

9. In the circumstances, we are of the considered opinion that the Reference court was justified in making the determination of the compensation at the rate of Rs.21.48/- per square meter and that was appropriate compensation to be awarded to the land

owners. Merely payment of the meagre rent to the land owners for the occupation, would not come to the rescue of the respondents not to pay the actual value of the land that prevailed in 1996. There was deprivation of possession and usufruct for 7/8 years that could not have been compensated in terms of meagre rent, in the peculiar facts and circumstances of the cases.

10. We set aside the impugned judgment passed by the High Court restore the judgment passed by the reference court. The appeals are allowed. The compensation has already been paid. In case any amount remains unpaid, the same shall be paid within a period of three months from today. The costs are quantified at Rs.10,000/- in each case that shall be paid by the respondents to each of the appellants within the aforesaid period.

.....J.
(ARUN MISHRA)

.....J.
(MOHAN M. SHANTANAGUDAR)

NEW DELHI;
NOVEMBER 16, 2017.

ITEM NO.1

COURT NO.10

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 21067-21069/2014

(Arising out of impugned final judgment and order dated 01-05-2014 in FA No. 234/2012 01-05-2014 in FA No. 2157/2010 01-05-2014 in CRO No. 41/2013 passed by the High Court Of Gujarat At Ahmedabad)

MITESH KUMAR RAMANBHAI PATEL & ORS.

Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent(s)

WITH

SLP(C) No. 25806-25808/2015 (III)

SLP(C) No. 15676-15678/2015 (III)

SLP(C) No. 528-530/2015 (III)

SLP(C) No. 2302-2304/2015 (III)

SLP(C) No. 12813-12815/2015 (III)

SLP(C) No. 552-554/2015 (III)

SLP(C) No. 12819-12821/2015 (III)

SLP(C) No. 555-557/2015 (III)

SLP(C) No. 36249-36251/2014 (III)

Date : 16-11-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Sharma, AOR
Mr. A. Parikh, Adv.

For Respondent(s) Mr. Preetesh Kapoor, Adv.
Ms. Hemantika Wahi, AOR
Mrs. jesal Wahi, Adv.
Ms. Puja Singh, Adv.
Ms. Shodhika Sharma, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

The impugned judgment passed by the High Court is set aside and the judgment passed by the reference court is restored. The appeals are allowed. The compensation has already been paid. In case any amount remains unpaid, the same shall be paid within a period of three months from today. The costs are quantified at Rs.10,000/- in each case that shall be paid by the respondents to each of the appellants within the aforesaid period.

Pending application, if any shall stand disposed of.

**(NEELAM GULATI)
COURT MASTER (SH)**

(SIGNED REPORTABLE ORDER IS PLACED ON THE FILE)

**(JAGDISH CHANDER)
BRANCH OFFICER**