

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal NO(s). 18327-18331 of 2017  
(Arising out of SLP No(s).762-766 of 2017)

VIKRAMBHAI BHAGABHAI PATEL ETC.

Appellant(s)

VERSUS

DY. GENERAL MANAGER, ONGC LTD.  
AND ANR. ETC.

Respondent(s)

WITH

Civil Appeal NO(s).18342-18345 of 2017  
(Arising out of SLP(C) No(s). 8133-8136/2017)

Civil Appeal NO(s).18332-18334 of 2017  
(Arising out of SLP(C) No(s). 785-787/2017 (III))

Civil Appeal NO(s).18335-18337 of 2017  
(Arising out of SLP(C) No(s). 768-770/2017 (III))

Civil Appeal NO(s).18338-18341 of 2017  
(Arising out of SLP(C) No(s).775-778/2017 (III))

Civil Appeal NO(s).18762 of 2017  
(Arising out of SLP(C) No(s).31309 of 2017  
@ Diary No(s). 8566/2017)

Civil Appeal NO(s).18346-18352 of 2017  
(Arising out of SLP(C) No(s).25561-25567/2017)

Civil Appeal NO(s).18353-18354 of 2017  
(Arising out of SLP(C) No(s).28958-28959/2017)

O R D E R

Delay condoned.

Leave granted.

For the sake of convenience, facts of Civil Appeals arising out of S.L.P. (C) No(s).762-766 of 2017 are taken.

The only question agitated in these appeals is that whether the High Court, by relying upon the previous award in respect of village Julund, was right in reducing the compensation that had been awarded to the appellants by the Reference Court. No application was moved under Order 41 Rule 27 of the C.P.C. for taking on record the award passed with respect to Julund. The High Court did not rely upon the earlier award, in respect of village Dhamasana itself, though it was relied upon by the Reference Court. In our opinion it was impermissible to consider the award passed in respect of village Julund. In view of the decision of this Court in the *Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah & Ors.* (1976) 4 SCC 9 this Court held to consider award in other case application for additional evidence has to be moved and opportunity of rebuttal has to be granted to opposite party to prove similarity / dissimilarity of the land as the case may be, it was

observed:

25. We find that the High Court did not consider it, for some reason, necessary to refer to the provisions of the Indian Evidence Act which regulate the admissibility of all evidence including judgments. There could be no question of res judicata in such a case. The previous judgment was not between the same parties. Furthermore, the appellant was not given any opportunity of showing that the judgment related to land which was at some distance from the lands whose value was to be determined or that its site value was, for some reason, higher. Even the time at which the value of the other land was determined was not shown to be identical. Such judgments are not judgments in rem. They are Judgments in personam. The general provision of law governing admissibility of all Judgments, whether they are judgments in rem or judgments in personam operating as res judicata, is Section 43 of the Evidence Act which reads as follows :

43. Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act.

26. ....

27. In *Special Land Acquisition Officer, Bombay v. Lakhamsi Ghela-bhai* A.I.R. 1960 Bom. 78 Shelat J, held that Judgments not inter parties , relating to land acquired are not admissible merely because the land dealt with in the Judgment was situated

near the land of which the value is to be determined. It was held there that such judgments would fall neither under Section 11 nor under Section 13 of the Evidence Act. Questions relating to value of particular pieces of land depend upon the evidence in the particular case in which those facts are proved. They embody findings or opinions relating to facts in issue and investigated in different cases. The existence of a judgment would not prove the value of some piece of land not dealt with at all in the Judgment admitted in evidence. Even slight differences in situation can, sometimes, cause considerable differences in value. We do not think it necessary to take so restrictive a view of the provisions of Sections 11 and 13 of the Evidence Act as to exclude such Judgments altogether from evidence even when good grounds are made out for their admission. In *Khaja Fizuddin v. State of Andhra Pradesh*, C.A. No. 176 of 1962, decided on 10-4-1963 a bench of three Judges of this Court held such Judgments to be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date in a case.

28. The Karnataka High Court had, however, not complied with provisions of Order 41, Rule 27 of the C.P.C. which require that an Appellate Courts should be satisfied that the additional evidence is required to enable them either to pronounce judgment or for any other substantial cause. It had recorded no reasons to show that it had considered the requirements of Rule 27, Order 41, of the C.P.C. we are of opinion that, the High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. And

if it found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence.

29. The result is that we allow these appeals and set aside the Judgment and order of the Karnataka High Court and direct it to decide the cases afresh on evidence on record, so as to determine the market value of the land acquired on the date of the notification under Section 16 of the Bangalore Act. It will also decide the question, after affording parties opportunities to lead necessary evidence, whether the judgment, sought to be offered as additional evidence, could be admitted."

In *Printer House Pvt. Ltd. v. Mst. Saiyadan (Deceased) By Lrs. & Ors.* (1994) 2 SCC 133 this Court considered value of previous awards it was held:

16. If the comparable sales or previous awards are more than one, whether the average price fetched by all the comparable sales should form the 'price basis' for determination of the market value of the acquired land or the price fetched by the nearest or closest of the comparable sales should alone form the 'price basis' for determination of the market value of the acquired land, being the real point requiring our consideration here, we shall deal with it. When several sale-deeds or previous awards are produced in Court as evidence of comparable sales, Court has to necessarily examine every sale or award to find out as to what is the land which is the subject of sale or award and as to what is the price fetched

by its sale or by the award made therefor.

17. If the sale if found to be a genuine one or the award is an accepted one, and the sale or award pertains to land which was sold or acquired at about the time of publication of preliminary Notification under the Act in respect of the acquired land, the market value of which has to be determined, the Court, has to mark the location and the features (advantages and disadvantages) of the land covered by the sale or the award. This process involves the marking by Court of the size, shape, tenure, potentiality etc. of the land. Keeping in view the various factors marked or noticed respecting the land covered by the sale or award, as the case may be, presence or absence of such factors, degree of presence or degree of absence of such factors in the acquired land the market value of which has to be determined, should be seen. When so seen, if it is found that the land covered by the sale or award, as the case may be, is almost identical with the acquired land under consideration, the land under the sale of the market value determined for the land in the award could be taken by the Court as the 'price basis' for determining the market value of the acquired land under consideration. If there are more comparable sales or awards of the same type, no difficulty arises since the 'price basis' to be got from them would be common. But, difficulty arises when the comparable sales or awards are not of the same kind and when each of them furnish a different 'price basis'. This difficulty cannot be overcome by averaging the prices fetched by all the comparable sales or awards for getting the 'price basis' on which the market value of the acquired land could be determined. It is so, for the obvious reason that such

'price basis' may very largely depending even no comparable sales or awards. Moreover, 'price basis' got by averaging comparable sales or awards which are not of the same kind, cannot be a correct reflection of the price which the willing seller would have got from the willing buyer, if the acquired land had been sold in the market. For instance, in the case on hand, there are three claimants. The plots of their acquired land, which are five in numbers, are not similar, in that, their location, size, shape greatly vary. One plot of land of one claimant and another plot of another claimant appear to be one type. Another plot of land of one of them appear to be of a different type. Yet another plot of the second of them appears to be different. If so far as third claimant's plot of land is concerned, it appears to be altogether different from the rest. Therefore, if each of claimants were to sell her/his respective plots of land in the open market, it is impossible to think that they would have got a uniform rate for their land. The position cannot be different if the comparable sales or awards when relate to different lands. Therefore, when there are several comparable sales or awards pertaining to different lands, what is required of the Court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land of market value of which it has to determine, and to take the price of land of such sale or award as the basis for determining the market value of the land under consideration.

In *Karan Singh & Ors. v. Union of India* (1997) 8 SCC 186, this Court held that evidence has to be adduced to

show similarity of the land in question to the one covered under award/judgment. This Court observed :

8. Learned counsel for the appellants then urged that the High Court erroneously discarded Ext. A-11 which was an award in respect of a land at village Jhilmil Tahirpur on the ground that it was not a previous judgment of the Court. The land comprised in the award was acquired under notification issued under Section 4 of the Act on 27.7.81. By the said award, the Court awarded compensation @ Rs. 625 per sq. yds. It has earlier been seen that in the present case the notification issued under Section 4 of the Act was earlier in point of time than the notification issued for acquisition of land comprised in Ext. A-1 1. There is no quarrel with the proposition that judgments of Courts in land acquisition cases or awards given by the Land Acquisition Officers can be relied upon as a good piece of evidence for determining the market value of the land acquired under certain circumstances. One of the circumstances being that such an award or judgement of the Court of law must be a previous judgment. In the case of Pal Singh and Ors v. Union Territory of Chandigarh (1992) 4 SCC 400, it was observed thus :

"But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to

all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land."

Following this decision, we hold that it is only the previous judgment of a court or an Award which can be made basis for assessment of the market value of the acquired land subject to party relying such judgment to adduce evidence for showing that due regard being given to all attendant facts it could form the basis for fixing the market value of acquired land.

In view of the aforesaid decisions, we find that the High Court has erred in relying on the judgment in the case of village Julund. Even otherwise, the Reference Court had relied on the award of village in question itself where acquisition had been made which could not have been ignored. Thus, Reference Court, in the present case, has rightly re-determined the compensation at Rs.264/- per sq. meter. In our opinion, the award, which has been relied upon by the Reference Court was a proper exemplar. Though the High Court has modified the said Award and reduced the compensation relying upon its earlier judgment which approach in the case of village Julund, we have not agreed. The land owners are held

entitled to compensation as determined by the Reference Court. However, interest awarded by the Reference Court shall be paid in accordance with the statutory provisions of the Act.

Accordingly, we restore the award passed by the Reference Court, and set aside the judgment and order passed by the High Court.

The appeals are accordingly disposed of.

.....J.  
(ARUN MISHRA)

.....J.  
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI,  
NOVEMBER 7, 2017.

ITEM NO.9

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). 762-766/2017

(Arising out of impugned final judgment and order dated 27-07-2015 in FA No. 29/2015 27-07-2015 in FA No. 30/2015 27-07-2015 in FA No. 31/2015 27-07-2015 in FA No. 32/2015 27-07-2015 in FA No. 33/2015 passed by the High Court Of Gujarat At Ahmedabad)

VIKRAMBHAI BHAGABHAI PATEL ETC.

Petitioner(s)

VERSUS

DY. GENERAL MANAGER, ONGC LTD. AND ANR. ETC.

Respondent(s)

WITH SLP(C) No. 8133-8136/2017 (III)

SLP(C) No. 785-787/2017 (III)

SLP(C) No. 768-770/2017 (III)

SLP(C) No. 775-778/2017 (III)

SLP (C)NO..... of 2017 (@Diary No(s). 8566/2017) (III)

SLP(C) No. 25561-25567/2017 (III)

SLP(C) No. 28958-28959/2017 (III)

(IA No.104842/2017-CONDONATION OF DELAY IN FILING and IA No.104843/2017-EXEMPTION FROM FILING O.T.)

Date : 07-11-2017 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. Sunil Gupta, Sr. Adv.  
Mr. Jatin Zaveri, AOR  
Mr. Hitesh B. Patel, Adv.  
Mr. Neel Kamal Mishra, Adv.

For Respondent(s) Mr. Sukumar Pattjoshi, Sr. Adv.  
Mr. Sunil Kumar Jain, AOR  
Mr. Kaushik Choudhury, Adv.  
Mr. Punya Garg, Adv.

Mr. Sukumar Pattjoshi, Sr. Adv.

Mr. Gaurav Agrawal, AOR  
Mr. Abhikalp Pratap Singh, Adv.  
Mr. Abhay Anil A., Adv.

Mr. Sukumar Pattjoshi, Sr. Adv.  
Mr. Sandeep Mahapatra, Adv.  
Ms. Mrinmayee Sahu, Adv.  
For M/s. Juris Corp.

Mr. Sukumar Pattjjoshi, Sr. Adv.  
Ms. Sangeeta Bharti, Adv.  
Mr. Krishanu Adhikary, Adv.  
Mr. Sushil Kumar Singh, AOR

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

Delay condoned.

Leave granted.

In terms of the signed order, the appeals are disposed of.

Pending applications, if any, shall also stand disposed  
of.

(MAHABIR SINGH)  
COURT MASTER

(JAGDISH CHANDER)  
COURT MASTER

(Signed order is placed on the file)