IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6623 of 2022

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LH OF LATE HARIJAN SHIVABHAI BAPUBHAI, HARIJAN VINODBHAI S/O LATE ZAVERBHAI SHIVABHAI HARIJAN

Versus

STATE OF GUJARAT

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Appearance:
MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1,2,3
for the Respondent(s) No. 2,3,4
MS DIVYANGANA JHALA ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1
MR MAULIK NANAVATI for Respondent (s) No. 2
MR KSHITIJ AMIN for Respondent (s) No. 3

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CORAM:HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 06/04/2022

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

1. We have heard Mr. S.P. Majmudar, learned advocate appearing for the petitioners, Ms. Divyangana Jhala, learned Assistant Government Pleader for respondent No.1, Maulik Nanavati, learned counsel for respondent No.2 (National Highway Authority of India), and Mr. Kshitij Amin, learned Central Government Standing Counsel for respondent No.3.

2. By this petition under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs:

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"(A) Your Lordships may be pleased to issue a writ of mandamus/certiorari or a writ in the nature of mandamus/ certiorari and/or any other appropriate writ, order or directions directing the Competent Authority and Special Land Acquisition Officer, respondent no. 3 herein to amend/modify/revise the award dated 28.06.2017 passed in Compensation Case No. 11 of 2013, and re-compute the compensation qua the land of the petitioners by applying market value of the land with Multiplier Factor-2 and by applying all other statutory benefits as provided under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 including solatium under Section 30(1) and interest under Section 30(3) of the said Act and further be pleased to direct the respondents to pay the same to the petitioners with interest from 28.06.2017 @ 9% p.a. and @ 15% per annum for subsequent years till date of realization within six weeks of the judgment;

(B) During the pendency and final disposal of the present petition, Your Lordships may be pleased to direct the respondents not to put up any construction of any kind over the land in question and direct the Competent Authority and Special Land Acquisition, respondent no. 3 herein to amend/modify/revise the award dated 28.06.2017 passed in Compensation Case No. 11 of 2013 and to recompute the compensation qua the land of the petitioners by applying market value of the land with Multiplier Factor-2 and by applying all other statutory benefits as provided under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 including solatium under Section 30(1) and interest under Section 30(3) of the said Act and further be pleased to direct the respondents to pay the same to the petitioners with interest from 28.06.2017 @ 9% per annum and @ 15% per annum for subsequent years till date of realization within six weeks from the judgment;

(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of

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the present case."

3. It is the submission of Mr. S.P. Majmudar, learned advocate appearing for the petitioners that the dispute pertains to land situated at Block/Survey No. 30 of Village Anghad, Taluka and District- Vadodara admeasuring 3401 sq.mtrs. The land in question according to learned advocate Mr. Majmudar is not falling within the limits of any 'transitional area, smaller urban area or larger urban area' as defined and specified under Article 243Q (2) and is not part of any area falling within the limits of any Urban Local body or Municipality or Municipal Corporation and as such, the land in not covered under any urban area. According to learned advocate Mr. Majmudar, the major economic activity is agriculture and there are no significant non-agriculture activities in the village or surrounding area and the village limits of Vadodara Urban Development Authority, however, no T.P. Scheme is proposed in the area and the land is still in agriculture zone. It is contended that by virtue of Notification dated 03.03.2014, issued by the Government of India in exercise of power under Section 3A of the National Highways Act, 1956 the land of the petitioners was undertaken for acquisition for the purpose of construction of

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Vadodara-Mumbai Express way and by virtue of further Notification under Section 3D, published on 05.03.2015, the land vested in respondent no. 3. It is contended that for the purpose of compensation, the competent authority passed an award on 28.06.2017 in Compensation Case No. 11/2013 and the market value of the acquired land was arrived and though the acquired land is situated in rural area, the authority i.e. respondent No.2 applied factor 1 and not factor 2. Hence, the present petition. The main grievance raised in the petition is that erroneously respondent no. 2 authority applied factor 1 instead of factor 2.

4. At this juncture, learned counsels appearing for the respective parties submitted that the issue involved in this petition is identical to the issue decided by the Coordinate Bench of this Court in case of Shah *Rajesh Manibhai vs. National Highway Authority of India* rendered in Special Civil Application No. 5913 of 2021 dated 23.04.2021. The said order is further based upon a Division Bench judgment of this Court dated 12.09.2019 passed in a group of petitions led by Special Civil Application No. 8734 of 2019, which has since been affirmed by the Supreme Court as the Special Leave Petition

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filed by the State Government has been dismissed on 07.01.2021 in Special Leave Petition (Civil) Diary No. being 18777 of 2020. It is also submitted that the issue in the present case is identical to the case of *Dilipbhai Ganpatbhai Parmar vs. Competent Authority* rendered in Special Civil Application No.12140 of 2021 dated 27.08.2021. It was, therefore, submitted that this petition may also be disposed of, following the order passed in Special Civil Application No.5913 of 2021 dated 23.04.2021. No other submissions were made.

5. Learned counsel for respondent No.2 - NHAI, further submitted that as in the other cases if it is found that the petitioners are entitled to Factor-"2" being applied for determination of compensation and other benefits, respondent No.2 – Authority shall make deposit within 21 days of such determination.

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6. Thus, following the decision of the Coordinate Bench rendered in Special Civil Application No.5913 of 2021 dated 23.04.2021, the present petition is disposed of with the same directions and terms as contained in the order dated 23.04.2021 passed in Special Civil Application No. 5913 of 2021.

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7. However, it is clarified that if the petitioners have moved for re-determination of compensation before the Arbitrator under Section 3G (5) of the National Highways Act, 1956, the petitioners may not insist for Factor-"2" claim or in the alternative the respondents may be permitted to appraise the Arbitrator of the said issue, so that there is no further multiplicity or complications in the proceedings.

8. The present petition, therefore, stands disposed of accordingly. There shall be no order as to costs.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

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