IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2002 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 2002 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 2002 of 2021

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DILIPBHAI PACHANBHAI GOHIL
Versus
SPECIAL LAND ACQUISITION OFFICER

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Appearance:
MR AB GATESHANIYA(3766) for the Petitioner(s) No. 1
MS DHARA P BHATT(7530) for the Respondent(s) No. 2
MR PARTH H BHATT(6381) for the Respondent(s) No. 2
NOTICE SERVED for the Respondent(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 14/02/2024

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. The Civil Applications seeking for joining parties in view of the order dated 19.01.2024 passed by us, are hereby allowed. All the persons, who are sought to be impleaded as petitioner and respondent herein, are permitted to be incorporated in the array of parties.

2. The petitioner herein is one of the co-owners of survey No.87 paiki, Village Timba, Taluka Wadhwan, a portion of which is in the ownership of the respondent Nos.3 and 4, whose names could find in the original award dated 23.07.1998. The contention in the Writ

Petition is that the mother of the petitioner, viz. Samuben Pachanbhai Gohil had purchased the land bearing survey No.87 paiki, admeasuring Acre 5-23 Gunthas of Village Timba, Taluka Wadhwan by way of registered sale deed dated 21.09.1990. The mutation entry No.1354 was made in Village Form No.6 on 27.09.1990 pursuant to the said sale deed and was duly certified on 30.11.1990. The mother of the petitioner had died in the year 2010 and thereafter, the name of the petitioner and other co-owners were recorded in the revenue record. In the year 1995, the acquisition proceedings for construction of Narmada canal i. e. Botad Branch Canal was undertaken, whereby the lands of Village Timba, wherein the land of the petitioner is situated, were acquired. The notifications under Sections 4 and 6 were published on 20.04.1995 and 20.08.1996 respectively. The notice under Section 9 was issued on 23.05.1997 and the award acquiring the area of survey No.87 paiki of Village Timba in LAQ Case No.235 of 1995 was declared on 23.07.1998.

3. It is sought to be submitted by the learned counsel for the petitioner that the canal was passing through the land of the petitioner and actually, the land of the petitioner in survey No.87 paiki was used for the purpose of construction of canal, however, the award was prepared in the name of other persons, i. e. respondent Nos.3 and 4, whose heirs are sought to be brought on record. There is a reference of the application dated 05.10.2006 given by the mother of the petitioner to bring the said anomaly to the notice of the Deputy Executive Engineer. It is stated that on the request made by the mother of the petitioner, the award dated 23.07.1998 was amended on 28.02.2018 by incorporating the name of the petitioner being beneficiary of the award. However,

thereafter, the amended award dated 28.02.2018 was recalled on 24.02.2020 by the Special Land Acquisition Officer, Narmada Yojna, Surendranagar, noticing that the writ petition filed by the petitioner before this Court had been dismissed as withdrawn. The sole contention for challenging the order dated 24.02.2020 is that no notice or opportunity was granted to the petitioner before recalling the amended award dated 28.02.2018. Noticing that the original award dated 23.07.1998 with respect to survey No.87paiki admeasuring 1-54-53 was in the name of the newly impleaded respondent Nos.3 and 4 and further, there may be other heirs of the original claimant, viz. Samuben Pachanbhai Gohil, by order dated 19.01.2024, we permitted the learned counsel for the petitioner to file impleadment application to bring on record all the heirs of Samuben Pachanbhai Gohil and the persons interested in whose names, the award dated 23.07.1998 was passed. The amendment application has already been allowed.

4. Be that as it may, suffice it to note that the claim of the petitioner/predecessor in interest being beneficiary of the award is solely on the basis that they claim to be owner of a portion of survey No.87 paiki. The contention in the Writ Petition that the names of wrong persons have been disclosed in the award and hence, the petitioners have been excluded from the benefit of the award, is of on consequence, in as much as, the award by the Land Acquisition Officer is prepared to determine the compensation of the acquired land and it has nothing to do with the right, title or interest of the persons interested. The inquiry with regard to the persons interested being entitled to the award is made at two stages. Firstly, at the stage of Section 9 notice, when a public notice is issued calling upon all the persons. The public notice is issued stating

particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The second inquiry about entitlement of the persons interested is made after declaration of the award under Section 11 of the Land Acquisition Act, 1894, which is governed by Section 30, which provides that if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

5. In the instant case, there is no assertion in the Writ Petition that on issuance of public notice under Section 9 on 23.05.1997, the predecessor in interest of the petitioner had approached the Collector to state about their respective interest in the land. There is nothing on record that any objection has been filed, or any claim has been made by the predecessor in interest of the petitioner before declaration of the award under Section 11 on 23.07.1998 that they are persons interested in the land in question and were entitled to the benefit of compensation. The Writ Petition is silent about any objection filed by the predecessor in interest of the petitioner in the proceedings of making an award by taking an interest in the determination of the compensation amount. No application seeking for disbursement of the compensation has been filed even after making of the award on 23.07.1998. From the statements made in the Writ Petition, it seems that for the first time, the dispute was raised with regard to the payment of compensation

to the predecessor in interest of the newly added respondents by moving an application on 05.10.2006. The error committed by the Special Land Acquisition Officer in modifying/amending the original award dated 23.07.1998 by passing an order dated 28.02.2018 has been rectified by passing the impugned order dated 24.02.2020. It may be further recorded that the predecessor in interest of the respondent Nos.3 and 4 have also filed a reference under section 18 being Land Reference Case No.74 of 2000, which has been finally decided by the competent authority vide judgment and order dated 25.01.2008 as per the statement in paragraph 4.7 of the Writ Petition.

6. From the above noted facts, it is evident that the petitioner is trying to raise a dispute with regard the claim of the predecessor in interest of the newly added private respondents about the benefit of compensation under the award dated 23.07.1998 only on the premise that the predecessor in interest of the petitioner were owner of the portion of survey No.87 paiki, which admittedly is a large piece of land. On the contention of the learned counsel for the petitioner that no notice or opportunity has been granted to the petitioner before recalling the amended award dated 28.02.2018, suffice it to note that the Special Land Acquisition Officer become functus officio after making of the award and was not entitled to make any amendment in the original award. The only power given to the Special Land Acquisition Officer/Collector is to make correction of clerical errors under Section 13(A) of the Land Acquisition Act, 1894, which too is confined to the applications made within six months from the date of the award.

7. In view of the above discussion, we find the challenge absolutely misconceived. The Writ Petition is accordingly, dismissed.

Sd/-
(SUNITA AGARWAL, CJ)

Sd/-
(ANIRUDDHA P. MAYEE, J.)

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