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In the Bombay High Court

Case No : First Appeal No''s. 233 and 234 of 2000 with Cross Objection No''s. 13 of 2000 and 4 of 2001

Additional Deputy Collector and Another — APPELLANT

Vs

Gajanan S. Ghantkar and Another — RESPONDENT

Date of Decision : 20-06-2001

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 18, 6

Citation : (2002) 1 BomCR 298

Hon'ble Judges : K.K. Baam, J;A.S. Aguiar, J

Bench : Division Bench

Advocate : V.P. Thali, A.A.G. and P.A. Kamat, for the Appellant; M.B. Da Costa, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Baam, J.—These appeals are being disposed of by a common judgment in view of the fact that the evidence led before the trial Court in Land Acquisition Case Nos. 33 of 1987 and 68 of 1988 was made part of the evidence in Land Acquisition Case No. 68 of 1988 and the deposition of witnesses and documents were treated as common by order dated 24th February, 1998.

2. These appeals have been filed by the appellants Additional Deputy Collector and Director of Agriculture challenging the order of the Additional District Judge dated 28th February, 2000, by which enhancement of compensation has been granted from Rs. 15/- to Rs. 34/- in respect of the acquired lands. It is vehemently urged on behalf of the appellants that the respondents had not produced any material on record to justify the enhancement and further the lands acquired were large pieces of lands having an area of 1,72,275 sq. metres in the case of Land Acquisition No. 33 of 1987 whereas in the case of Land Acquisition No. 68 of 1988 it was 1,64,150 sq. metres. It is also urged on behalf of the appellants that the learned Additional District Judge failed to consider the nature of the acquired lands and the land under the Sale Deed dated 30th March,

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1983, which was not comparable and, hence, it is urged on behalf of the appellants that the enhancement could not have been granted on the basis of the said Sale Deed. It is also urged on behalf of the appellants that the Expert, who has been examined by the respondents, had visited the acquired properties after publication of the notification and his evidence was not to be considered. It is further urged that the enhancement by the Additional District Judge on the basis of the Sale Deed dated 30th March, 1983 by granting a deduction of 15% is illegal and the Award has to be set aside.

3. So far as the impugned order is concerned, reference was made u/s 18 of the Land Acquisition Act as an objection was raised by the claimants/respondents herein as regards the amount of compensation awarded by the Land Acquisition Officer. The compensation awarded was Rs. 15/- per sq. metre whereas the claimants claimed that the amount should be fixed at Rs. 80/- per sq. metre. The claimants had also challenged the award of the Land Acquisition Officer as regards the value of trees, structures and wells. In support of their claim the claimants had examined 15 witnesses whereas the respondent/appellants herein had examined one witness. It is necessary to note that the claimants had examined witnesses from the Government Offices of Collectorate and Forest Department to support their contention that the lands under reference had development potentialities.

4. The claimants had examined Anant Nagarsekar A.W. 9, who is an approved Government Valuer of the agricultural land and who has produced his valuation report Exh. A.W. 8/U and Rui Ribeiro Santana A.W. 10, who is also an approved Valuer, produced documents, namely, notification dated 22nd January, 1982 Exh. A.W. 10/A, notification dated 11th December, 1986 Exh. A.W. 10/B, plan prepared by him and his valuation report. A.W. 11 Mario P. D''Souza was examined by the claimants who is the Attorney of the sellers to prove the Sale Deed dated 30th March, 1983, which is the basis on which the compensation has been enhanced. Claimant has also examined himself as a witness.

5. The evidence of the claimants and their expert reflects that the land under acquisition is an agricultural land on the date of acquisition. The learned Additional District Judge has, whilst considering the records and proceedings and the evidence, considered the evidence led by the claimants with regard to the potentiality of the land. As witness Arvind Ghatkar (A.W. 8) in his deposition stated there is a tar road leading from Old Goa to Zuari Bridge via Neura Pillar which touches the boundary of their property to the extent of 330 metres and there is another village road which touches the southern boundary of their property to the extent of 600 metres and that the acquired land is a corner plot. Evidence has also been led to show that so far as the acquired land is concerned, half of the land upto a distance of 300 meters from the main road is levelled land and used for horticulture plantation and the remaining portion is slightly sloppy and is of laterite soil and used for horticulture purpose. The evidence of this witness also reflects that there was a three phase electricity line on the main

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road cutting the property and water pipe line passing on both sides touching the property. There are 10 to 15 wells and the acquired land is at a distance of 1.2 kms. from old Goa Gandhi Statue, 10 kms. from Zuari Bridge, 1.2 kms. from the National Highway passing from old Goa which is connected by the road linking old Goa to Agacaim Via Neura and there are many houses near it. Evidence has also been produced by the claimants to show that from the year 1973 there is manifold increase in the number of houses in the said Carambolim village. There are buses, tempos and other transport facilities available on the road passing by the side of the property and traffic has increased after the commission of the Zuari Bridge in the year 1983. Primary Schools are to be found in the village Carambolim at a distance of 1.4 kms. as well as a High School. The evidence of the claimants'' witnesses, who have produced documents to support the contention that the plot under acquisition has development potentiality, has not been challenged by the respondents.

6. A.W. 1 Gajanan S. Rane, a Planning Assistant in the Office of the Chief Town Planner, has produced an application made for the conversion of use of land from one purpose to another, that is, the application made by Erasmo Sequeira whose sale instance has been considered as relevant for the purpose of determining the compensation. An application was made on 4th October, 1985 for proposed construction of Industrial shed by Erasmo Sequeira, who had purchased the plot covered under the sale instance. The letter written by the Chief Town Planner to the Sarpanch recorded that the plot under reference fell partially in the agricultural and partially in the orchard zone. Reliance is also placed on behalf of the respondents herein upon the Minutes of the 31st Meeting of the Goa Town and Country Planning Board held on 24th June, 1988. A reference is made in the said Minutes to the effect that the land in Carambolim village is allowed for settlement purpose as the same is found surrounded by houses. There is no cross-examination of this witness and there is no challenge.

7. A.W. 2 Datta Gaitonde has been examined. He has also produced several documents to support the case of the respondents herein. He has also produced a letter dated 27th June, 1983 with regard to application for provisional sub-division of Plot No. 15 of Ella Village for agricultural purpose, an application dated 20th June, 1983 which reflects that the property, which is the subject matter of the sale instance, was not sub-divided and this document and the evidence of the witness, which was not challenged, is contrary to the case of the appellants herein as it is urged on behalf of the appellants that the map attached to the sale instance reflects that the same is sub-divided and hence cannot be relied on as a comparable sale instance. So far as this issue of sub-division is concerned, the appellants herein have not cross-examined Mario P. D''Souza (A.W. 11) as he has been examined to prove the sale instance dated 30th March, 1983 and would have been in a position to throw light whether the land is sub-divided. Apart from this factor, evidence of A.W. 2 Datta Gaitonde negatives the contention of the claimants on this aspect. Further he has not been cross-examined by the appellants herein.

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8. The claimants have also examined their Valuer Anant Nagarsekar (A.W. 9), who is a Government approved Valuer, who has valued the land under reference at Rs. 45/- per sq. metre. Though he has in his evidence stated that he visited the said property for the purpose of valuation on 15th May, 1986, he has deposed to the effect that he has visited the said property in his official capacity as he used to take his Gram Sevak to the property for the purpose of giving them instructions and as the property was close to the extension centre at Ella. He has also narrated in detail the location of the property and has stated that he has not considered the building potentiality in valuing the land as agricultural land and whilst valuing the property, he has considered the sale instance of 30th March, 1983. Though this witness has been cross-examined on behalf of the appellants, the cross-examination is pertaining to the value of the plantations/ trees. So far as the value of the land is concerned, there is no effective cross-examination on this issue.

9. The claimants have examined Rui Ribeiro Santana (A.W. 10), who has valued the property and submitted his valuation report. He has stated that he first visited the property in July 1986 and thereafter in February 1989. In his evidence he has stated that the property was an agricultural property with building potential. He has also described the various building potentials as also the fact that at the time of acquisition there were many houses around the property, two High Schools, Temple, Chapel, industries close by including Ciba Geigy and there was also an access by road. He has in his evidence also stated that the area shown as orchard can be easily converted into settlement and industrial zone and development and that zoning were changed in many properties and villages and that the acquired land also had the potential of changes as number of areas were changed as far as zoning were concerned and from orchard or cultivable lands they were changed to settlement, commercial or industrial areas. He has produced Government Gazettes which reflect changes including changes in Carambolim village and, on that basis, he has given his valuation in his report as being Rs. 110/- per sq. metre. On the said basis and after considering the sale instance and other factors, the witness has in his evidence stated that the suit property was better than the land in the sale instance as it has the advantage of being a corner plot. He has relied upon other sale deeds as well. His evidence also reflects that in submitting the report he has considered the peculiarities of the suit plot of the acquired land, the fact that it is a corner plot and it is partially a levelled land. Though this witness has given substantial evidence in support of his report and his valuation, curiously enough this witness has not been cross-examined neither has his report been challenged.

10. The witness examined by the respondent/appellants herein is Heroji Apaji Patil, Assistant Director of Agriculture, who has deposed that the acquired land was covered by orchard zone and is shown as horta zone and some portions are shown as settlement area. The respondent has not produced any valuation report neither has this witness produced any report to support the contention of the respondent that the valuation of the land is Rs. 15/- per sq. metre. By and large,

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the witness has given evidence with regard to the trees and what he has deposed is from records and not from personal knowledge as regards the number of fruit bearing trees found on the plot under reference. The witness has stated that buildings can be constructed in this acquired land. The evidence of this witness, therefore, does not in any way help the appellants herein nor furthers their case. Hence, so far as the evidence is concerned, the facts which prove the advantages of the acquired land have not been disputed by this witness and the same are required to be considered while determining the valuation.

11. Evidence reflects that there is a tarred road going from Old Goa to Naura-Pillar touching the acquired land. There is also another tarred road touching the acquired land which goes perpendicular to the main road. The fact that the acquired land has access to the roads is apparent from the survey plan at Exh. A.W. 8/B.

12. The second aspect is that the acquired land is a corner plot. Half of the acquired land upto the distance of 300 metres is levelled and remaining portion is slightly sloppy. Hence, so far as development is concerned, the expenses for development would be considerably low. The sole witness of the appellants has admitted the fact that the acquired land can be used for construction of buildings. There are many houses near the acquired land. There are transport facilities available. There are other amenities like schools, chapel, tourist spots, industrial complex and sea food factories. Witnesses have been examined, documents produced to support the case of the respondents as regards factors to be taken into consideration for enhancement, their evidence as also documents relied upon have not been challenged in cross-examination to support the case of the appellants that lands have not been converted freely on the date of acquisition or that there was a building potential of the suit plot of land, which factor is required to be taken into consideration.

13. Further, one important fact which is required to be noted is that the sale deed, on which reliance has been placed, is dated 30th March, 1983, pertains to an area of 10,847 sq. metres and the rate at which the said property was sold was Rs. 40/- per sq. metre. It is vehemently urged on behalf of the respondents herein that in view of the fact that reliance is placed on sale deed of 1983 when the notification was two years subsequent, hence the price requires to be enhanced. Further, another factor which is required to be noted is that the land referred to under the sale instance, that is, Sequeira''s land did not have any electricity and water connection. It did not have a direct access to the main road and, therefore, bearing in mind these additional factors, as the land under reference was a corner plot, had a direct access, was partly levelled, had water and electric connection, the value of the acquired land should have been higher than Rs. 40/- per sq. metre. It is also the case of the respondents that the trial Judge failed to appreciate the advantages and also there was an appreciation in the value of the land and that the trial Court should have taken into consideration the escalation of the price. On behalf of the respondents, it has

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been vehemently urged that there was overwhelming evidence to fix the value of the land at Rs. 80/- per sq. metre by virtue of the fact that the land had development potential. No doubt on behalf of the appellants reliance has been placed upon rulings to support the contention that reliance could not have been placed on the sale instance on account of the fact that the land under reference was a large piece of land. However, except for this distinction, the appellants have not been able to bring on record any material which would help the Court to determine the market value of the land.

14. Reliance has been placed on behalf of the appellants on P. Rajan and Another Vs. Kerala State Electricity Board and Another, ; Kummari Veeraiah and Others Vs. State of A.P., ; The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, ; P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, ; State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, ; Smt. Kamalabai Jageshwar Joshi and others Vs. State of Maharashtra and others, ; V.M. Salgoacar and Brother Ltd. Vs. Union of India (UOI), and Union of India v. V.M. Salgaonkar & Brother Ltd., 1989 (1) GLT (251).

15. However, so far as these rulings are concerned, the same are liable to be distinguished and do not apply to the facts of the present case as so far as the land under reference and the sale instance is concerned, except for the fact that the area of the land under reference is large, in other respects the land under reference is comparable to the land in the sale instance.

16. Further, as observed in Kummari Veeraiah and others (supra) :-

"A willing buyer would not offer the same price when a large extent of land is offered for sale in an open market on a free bargain, either in one lot or different lots, in comparison with small piece or pieces of land. In case it is found that the sale deeds of small extent of the land are genuine and the acquired land possessed of the same or similar special advantageous features, then reasonable price is required to be determined by giving suitable deduction depending upon the extent of land covered by the sale transaction and the acquired land."

In the light of the aforesaid ruling, on the contrary, so far as the land under reference is concerned, the same has an advantage over the one covered by the sale instance as it is developed, it is a corner plot, it has water and electricity connection and further, so far as the sale instance is concerned, the purchaser has been examined, the document on which reliance is placed being genuine and authenticated, it is not open to the appellants to contend that the sale instance cannot be relied upon.

17. As observed in Land Acquisition Officer, Revenue Divisional Officer, Chittor (supra) :-

"When no sales of comparable land were available where larger chunks of land

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had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved information of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed."

In the instant case in view of the fact that the land has potentialities of development, it has access from the main road, it has electricity and water connection, it has building potential on the basis of the material and evidence on record, which is not challenged and which is required to be taken into consideration for the purpose of assessing the value of the land.

18. In view of the fact that the sale instance has been proved coupled with the fact that the appellants have not cross-examined the important witness of the respondents on the question of the valuation report so far as the order of the trial Judge is concerned, the same cannot be faulted with.

19. It has been urged on behalf of the appellants that the fact that there is no cross-examination of A.W. 10 by the appellants, does not entitle the respondents to claim higher compensation. In support of that contention reliance is placed on P. Ram Reddy and others (supra). It is observed therein :-

"It is no doubt true that whenever oral evidence is adduced by parties on certain matters in controversy, it may become difficult for the Court to overlook such evidence, if it is not shown by effective cross-examination of such witnesses who have given such evidence or by adducing contra-evidence, that the oral evidence was unreliable or the witnesses themselves are not creditworthy. But, in land acquisition references before Civil Courts, when witnesses give oral evidence in support of the claims of the claimants for higher compensation the ineffective cross-examination of such witnesses, is not an uncommon feature if regard is had to the manner in which claims for enhanced compensation in land acquisition cases are defended in courts on behalf of the State.

Hence, it cannot be said that whenever the statements made by claimants witnesses in courts are not got over on behalf of the Collector or the Land Acquisition Officer by subjecting the witnesses to effective cross-examination or by not adducing evidence in rebuttal, the courts are obligated to accept such statements of witnesses as true, if tested on the basis of probabilities, become unreliable. No Court which tests the oral evidence of the claimants on the touch at one of probabilities calling into aid, its experience of life, men and matters and find such evidence to be untrustworthy, the same cannot be found fault with.

Therefore the value of the land mentioned in an instance of sale or an instance of gift claimed to compare with the acquired land does not warrant acceptance as the correct value of such land merely because the witnesses who would have given evidence as regards them, on behalf of the claimants had not been cross-examined or effectively cross-examined on behalf of the Land Acquisition Officer."

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Taking support of this judgment, it was urged on behalf of the appellants that merely because the witnesses have not been cross-examined, the same does not help or further the case of the claimants. However, whilst appreciating the argument canvassed on behalf of the appellants, one fact and an important aspect needs to be noted is that the claimants have examined witnesses, who are Government Officers, who have produced records and extracts which support the case of the claimants, that is, the respondents herein, as to the building potentialities of the land under acquisition. These Officers have not been cross-examined on the documents, creditworthiness of these witnesses, therefore, cannot be challenged. Further, so far as the appellants are concerned, they have not cared to cross-examine A.W. 10, the Valuer, who has given his report as they were not present at the time of cross-examination, hence, an endorsement was made to the effect: ''No cross''. No application was made on behalf of the appellants on the next date of hearing seeking permission to cross-examine the witness. This lethargy on the part of the appellants cannot be condoned. Neither can it be said that merely because A.W. 10 was not cross-examined, his report should not be accepted. The next aspect that requires consideration is reliance is placed upon the map attached to the sale instance of 30th March, 1983. It was orally contended on behalf of the appellants without any basis, that the map reflects that the property is sub-divided. This argument is contrary to the voluminous correspondence produced by the respondents'' witnesses to show that sub-division of the property was not granted by the authorities concerned. On this count no questions in cross were put to the witness, who was examined to prove the sale instance, to enable the party to satisfactorily offer an explanation as to why the map reflected sub-divided plots. It is, therefore, not open to the appellants herein to seek shelter and contend that eventhough there was no cross-examination on behalf of the Land Acquisition Officer, the arguments advanced on behalf of the appellants is to be accepted to the extent that the property as regards the sale instance was sub-divided and, therefore, could not be relied upon. So far as the witnesses produced by the claimants, that is, the respondents herein are concerned they are reliable witnesses who have produced documents to support their contention. Hence, it is not open to the appellants to contend that credence is not required to be given to these witnesses merely because they have not been cross-examined as these witnesses can by no stretch of imagination be termed as untrustworthy witnesses.

20. In order to support the contention of the respondents that the acquired land had building potential, reliance is placed on the following Rulings, Ebrahim Akbaralli v. The District Deputy Collector, P&Harpur Division, District Sholapur, (1969) 3 SCC 735 and P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, . It has been observed in Ebrahim Akbaralli and others (supra) :-

"It is true that the major portion of the land bears the technical nomenclature non-agricultural land but it possesses all the requisite potentialities for being converted into building sites. The important features to be noticed in the present

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case are that the disputed land is situated within zone No. 1 of Pandharpur Municipality and part of the land has already been converted to non-agricultural land. There are some buildings already constructed adjacent to the disputed land which also formerly belonged to the original claimant. It is well established that adaptability of the agricultural land as site for buildings is an essential element to be taken into account for determining the market value. It is also observed therein as observed by the Privy Council in AIR 1939 98 (Privy Council) that land is not to be valued merely by reference to the use at the time at which it is valued as to be determined but also by reference to the uses for which it is reasonably capable of being in future. It is the possibilities of the land and not its realized possibility that must be taken into consideration."

In the instant case the land is an orchard land which has the potentialities of being converted into non-agricultural land and used for building purposes. The land in the neighbourhood has been developed. There are several buildings. The land under acquisition has direct access to the roads. There are several amenities like school, tourist attraction, electricity and water supply. Hence, that factor is required to be taken into consideration as for the purpose of development so far as the land under reference is concerned, the same is fully equipped with building potentialities and is capable of development. Therefore, it is not open to the appellants to contend that deduction for development is required to be taken into consideration. Further, so far as the land under acquisition is concerned, the same being at the corner, is in a developed area. That it is a valuable piece of land is an aspect which requires consideration for fixing the market price. It is not open for the appellants to contend that they are entitled to deductions for development.

21. The land of the respondents, though agricultural land comprising of orchards, has the future potentiality for development as building site. Further, the comparable sale is genuine. The same has been proved by examining A.W. 11 Mario P. D''Souza. It is not open to the appellants to contend that the order of reference deserves to be set aside as apart from the bare contention to the effect that at the highest it could have been raised to 25%, the appellants have not adduced any reliable evidence before the Court. On the contrary on the face of the evidence produced as also on the basis of the Valuer''s report, which has not been challenged though A.W. 10, who has submitted his valuation report, has stated that the price arrived at by him is Rs. 110/- per sq. metre, the report has not been challenged nor any evidence is produced by the appellants to show the valuation of land.

22. Cross-objections have been filed by the respondents, who have claimed that the price be fixed at Rs. 80/- per sq. metre, we are of the opinion that taking into consideration the sale instance, the building potentialities the value should be enhanced to Rs. 60/- per sq. metre more particularly since the learned trial Judge has arrived at a conclusion based on the evidence that the value should be Rs. 40/- per sq. metre. The sale instance relied upon is of 30th March, 1983.

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Notification u/s 4 is dated 7th November, 1985. Section 6 notification being of 1986, the respondents are entitled to an enhancement in the value of the land spread over a period of 2 years. Further, in view of the fact that the property surrounding has been developed, the subject matter of land under acquisition has building potentialities, there is no question of considering any deductions.

23. Hence, bearing in mind the aforesaid factors, we are of the opinion that the respondents are entitled to the value of the land being fixed at Rs. 60/- per sq. metre.

24. Hence, the appeals stand dismissed. Cross-objections are allowed. Value fixed at Rs. 60/- per sq. metre.

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