

(2011) 05 BOM CK 0074

In the Bombay High Court

Case No : F. A. No"s. 109 and 233 of 2006

Camilo Pereira

APPELLANT

Vs

Government of Goa and another

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 4

Citation : (2011) 7 ALLMR 553 : (2012) 2 BomCR 468 : (2011) 5 MhLj 120

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : M.P. Almeida in 109 of 2006 and Ms. S. Linhares in 233 of 2006, for the Appellant; S. Linhares, Additional Government Advocate in 109 of 2006 and M.P. Almeida, Advocate in 233 of 2006, for the Respondent

Judgement

F.M. Reis, J.—Both the above appeals are taken together for final hearing as they challenge the same judgment and award passed in Land Acquisition Case No. 12/2000 dated 29-11-2005.

2. The parties shall be referred to in the manner they so appear in the cause title of the impugned judgment.

3. Pursuant to a notification u/s 4 of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act" dated 24-4-1992, land was acquired from Betalbatim in Salcete Taluka for construction of road from Nagwaddo, Humpto via Cemetery, Bhimwado and from Ranwado Chapel to Betalbatim main road in Village Panchayat of Betalbatim main road and amongst the land which was acquired a portion of the property under Survey No. 1/1 situated at Consua Village admeasuring an area of 400 square metres, was also acquired. By an award passed u/s 11 of the said Act dated 6-9-1994, the Land Acquisition Officer offered the compensation of a sum of Rs. 11.50 per square metre for the land acquired.

4. Being dissatisfied with the said amount the applicant sought a reference u/s

18 of the said Act and claimed a compensation at the rate of Rs. 300/- per square metre for the land acquired. By judgment and award dated 29-11-2005, the learned Reference Court partly allowed the said reference and fixed the compensation at the rate of Rs. 41/- per square metre. Being aggrieved by the said judgment, the applicant as well as the respondents have preferred the present appeal.

5. Ms. S. Linhares, the learned Additional Government Advocate appearing for the respondents has assailed the impugned judgment and pointed out that the land acquired was a narrow strip of land which was used for the road by the applicant and, as such, the question of fixing the compensation on the basis of sale instance as sought to be done by the Reference Court while awarding a sum of Rs. 41/- per square metre is totally erroneous. The learned Counsel has taken me through the evidence on record and pointed out that the land acquired had no potentiality of being used for any other purpose as admittedly the land was purchased by the applicant for the purpose of providing access to his property. The learned Counsel has further pointed out that the Reference Court has erroneously enhanced the compensation offered by the Land Acquisition Officer as according to her the amount offered in the award u/s 11 of the said Act was just and appropriate. The learned Counsel further submitted that it is not the case of the applicant that in view of the acquisition of the land, the property of the applicant has become land locked and, as such, the question of alleging that the compensation be fixed at the rate of Rs. 125/- per square metre on the basis of the sale instance produced by the applicant does not arise at all. The learned Counsel has taken me through the impugned judgment and pointed out that the Reference Court has totally misdirected itself in enhancing the compensation and, as such, the appeal preferred by the respondents deserves to be allowed and the impugned judgment be quashed and set aside.

6. On the other hand, Shri M. P. Almeida, the learned Counsel appearing for the applicant has submitted that the amount awarded by the Reference Court at the rate of Rs. 41/- per square metre is on the lower side. The learned Counsel has further submitted that it is well settled that the price at which the land acquired has been purchased by the land owner should be the amount of compensation to be awarded for acquiring such land and, as such, the question of the Reference Court effecting any deductions on the amount of the price fixed in the sale instance produced by the applicant at the rate of Rs. 125/- per square metre does not arise. The learned Counsel has further pointed out that the applicant is entitled for the compensation on the basis of the said sale instance in respect of the very land acquired after giving necessary appreciation for the period between the date of the sale deed and the date of the section 4 notification. The learned Counsel, as such, submitted that the Reference Court has totally misdirected itself in awarding the meagre compensation of Rs. 41/- per square metre, which is on the lower side, when there was evidence on record adduced by the applicants to disclose that there was appreciation in the land value in the vicinity of the land acquired even after the notification in the present case. The learned

Counsel further pointed out that the applicant has produced sale instance of the year 1998 to demonstrate the appreciation of land value in the Village where the land is located. The learned Counsel, as such, pointed out that the impugned judgment deserves to be modified and the compensation for the land acquired is to be fixed at the minimum rate of Rs. 125/- per square metre after giving necessary appreciation. The learned Counsel, as such, submitted that the appeal preferred by the applicant deserves to be allowed and the appeal preferred by the respondents be rejected.

7. Ms. S. Linhares, the learned Additional Government Advocate in answer to the submissions of the learned Counsel appearing for the applicant has pointed out that the applicant himself has admitted that the land was purchased by him as a means of access to proceed to his property where his house was located. The learned Additional Government Advocate has further submitted that the applicant's property was land locked and, as such, for the purpose of providing a road to his house property, the portion of the said property under Survey No. 1/1 was purchased by him pursuant to the said sale deed. The learned Counsel as such pointed out that this itself discloses that it was a distress purchase by the applicant and, as such, the price mentioned therein cannot be considered as the market value for the purpose of determining compensation for the land acquired, without Substantial deduction so as to fix the market value of the acquired land.

8. Having heard the learned Counsel and on perusal of the impugned judgment as well as the records, the following point for determination arises in the present appeal:

POINT FOR DETERMINATION:

Whether the Reference Court was justified to fix the market value of the acquired land at the rate of Rs. 41/- per square metre.

9. In support of his claim for enhancement of compensation, the applicant has examined as AW1/Norbert D"Costa. He has stated in his affidavit that the applicant owns property surveyed under No. 1/19,1/20,1/21,2/15 & 3/0 of Gonsua of Betalbatim Village wherein he has a house in the portion of the property surveyed under No. 1/20. He has further stated that the said property is situated at a distance of about 1,000 metres from Arabian sea and, as such, it has high potentiality of being used for a hotel/project. He has further stated that within the radius of about 2 kilometres there are different hotels come up in the locality. He has further stated that the market value of the land in the year 1997 was Rs. 1,200/- per square metre and, as such, the land acquired had high potentiality. He has further stated that in the sale deed dated 20-2-1987, the applicant had purchased a portion of the property which has been acquired at the rate of Rs. 125/- per square metre. He has produced the said sale deed of the year 1987 which is at Exhibit 23. He has also produced sale deed dated 4-12-1979 which is marked as Exhibit 24 besides another sale deed of the year 1979 which is at Exhibit 25. The sale deeds of the year 1979 disclose the price of

the sale deed land therein at the rate of Rs. 20.72 per square metre. In the cross-examination, he has stated that there was no public road to come to the survey numbers of the said property of the applicant and that the public road was at a distance of about 300 metres from the said survey numbers. He has further stated that there were seven different properties of different landlords in the intervening area. He has further stated that earlier the applicant was going through a pathway to go to the public road which was passing through the property of Emerante Carvalho Fernandes bearing Survey No. 1/1 and was later on purchased by him, at the time of construction of his house. He has further stated that nobody else was using the said access besides the applicant which was purchased by the applicant having a width of 3 metres. He has further stated that in between the said access purchased by the applicant and the public road there were three different properties. He has further stated that the public was also using the said access including the said applicant. He has further admitted that width of the new road constructed by the respondents is 6 metres and the said portion of the property purchased for the access by the applicant was acquired along with the adjoining land. As far as the sale instances of the year 1979 are concerned, he has stated that he is not aware of the length and breadth of the said plot, but however, stated that there were coconut gardens. The next witness who has been examined is Shri Shridhar Kamat, who has stated that an area of 400 square metres out of property surveyed under No. 1/1 was notified for acquisition in the year 1992 besides an area of 480 square metres from property under Survey No. 1/21 and an area of 165 square metres from the property surveyed under No. 3/0 was notified in the year 1998. He has given the location of the land and the facilities available in Gonsua village where the land was located. According to him he has valued the land surveyed under No. 1/1 at the rate of Rs. 167/- per square metre and the land surveyed under No. 1/21 and 3/0 at the rate of Rs. 213.50 per square metre. In the cross-examination, he has admitted that he has inspected the acquired land on 28-12-2003 and as on the date of such inspection the road was already constructed. He has further stated that prior to the acquisition, the acquired land bearing Survey No. 1/1 was touching the public road. He has further stated that he cannot give the boundaries of property surveyed under No. 1/1 and said survey number is a vast property. He has further admitted that the land which is land locked will fetch less price than the property which has an access. He has further admitted that if the property is landlocked and the access road to such property is much beyond the road widening area, in that case, the landlord of the adjoining property may quote higher price to the land to provide an access to the landlocked land. He has further admitted that in the property surveyed under No. 1/21 there are rooms which have been given to tourists. The learned Judge while passing the impugned judgment has considered the judgment of the Apex Court with regard to the fixing of the compensation in respect of the lands which have been acquired by the Government and on the basis of the judgment of the Division Bench of this Court dated 23-6-2004 in First Appeal No. 176/2000 and Cross-objection No. 11/2000, has come to the conclusion that what has been acquired

was only the nominal and naked right of ownership of the applicant and awarded 20% of the value of the sale deed plot at Exhibit 23 which was of the year 1987 and fixed the compensation at the rate of Rs. 41/- per square metre.

10. On perusal of the evidence on record there is no doubt that the sale deed plot which is at Exhibit 23 is in respect of the land which was purchased by the applicant as a means of access to his house property surveyed under No. 1/20. To a pointed query put to the learned Counsel appearing for the applicant Shri Almeida as to whether such price could be offered by a person who was not purchasing such land as a means of access to his larger property, the learned Counsel fairly conceded that such amount would not have been offered as such land could not be used for any other purpose, but only as a means of access to go to the land of the applicant. In such circumstances, while assessing the market value of the land acquired the Court would have to determine the price which a willing purchaser would offer to such acquired land.

11. Considering that the said price in the sale deed at Exhibit 23 was offered so as to provide an access to go to his house property, I find that the price mentioned therein cannot be the market value of the land which could be offered in the open market for the acquired portion of the land. Apart from that AW2 / Shri Kamat who is an expert valuer has himself admitted that in such cases where the lands are land locked the owners of adjoining property would quote a higher price to provide means of access to such landlocked property. These factors would have to be considered for the purpose of fixing the market value of the acquired land.

12. The finding of the learned Reference Court that what has been acquired was merely the nominal and naked sight of ownership of the applicant, in the facts of the present case cannot be accepted. The facts before the learned Division Bench of this Court were totally different than the facts in the present case. The case before the learned Division Bench was that the land acquired was a portion of the land which was a road constructed in a sub-divided developed area and such land was already asphalted by the P.W.D. much before the acquisition. The learned Division Bench has further considered the fact that such portion of the land could be used only for road. Apart from that, it is well settled that under the statutory provisions lands which are reserved for road while subdividing the land cannot be used for any other purpose and there are even benefits which in her to the developers for reserving such roads. In the present case, the land of the applicant was not sub-divided nor can it be said that the land was purchased by the applicant pursuant to sale deed at Exhibit 23 was a developed road. As such, the learned Judge was not justified to come to the conclusion that only the nominal and naked right of ownership was acquired by the respondents.

13. In the present case, the price fixed by the sale deed Exhibit 23 is Rs. 125/- per square metre in the year 1987. The negative factors to be considered for the purpose of fixing the market value of the acquired land would be that such price was offered as the land purchased was a means of access to the house property

of the applicant. Even the access road was not touching the public road as there were three properties in between as admitted by AW1 himself. There is no evidence on record to show that the said access road was in fact constructed and developed by the applicant by incurring any substantial expenditure. The applicant has not been deprived of an access to his property nor is the applicant forced to purchase another piece of land as the means of access to go to his property. If such situation was existing naturally the applicant would be entitled for compensation on account of the damage suspended (sic) by him for purchasing any such new means of access. Considering the facts and circumstances of the case, specially the factors as stated herein above, I find that a just deduction for the purpose of fixing the compensation in the present case would be 50% from the price as mentioned in the sale deed at Exhibit 23. After such deduction, the amount works out to Rs. 62.50. The sale deed was of the year 1987 and the notification in the present case was of the year 1992 and there is a gap of five years. The land acquired is located in the rural area. There is no evidence to establish the rate of appreciation of land during the intervening period. The land acquired was agricultural land and could not by itself have any potentiality of being used for non-agricultural purpose and in such circumstances an appreciation of 7.5% per annum would be just and appropriate. The amount, as such, works out to Rs. 85/- per square metre approximately. To that extent, the impugned judgment deserves to be modified.

14. The learned Government Advocate is not justified to contend that the applicant has failed to establish that the price offered by Land Acquisition Officer was not inadequate. The respondents failed to adduce any evidence to establish that the price offered by the Land Acquisition Officer while passing the award u/s 11 of the said Act was just and proper. On the contrary, the evidence discloses that the price offered by the Land Acquisition Officer while passing the award u/s 11 of the said Act was wholly inadequate and the applicant was entitled for enhancement of compensation. The point for determination is answered accordingly.

15. In view of the above, I pass the following order:

ORDER

(i) First Appeal No. 109/2006 is partly allowed and the impugned judgment and award dated 29-11-2005 is modified and the compensation for the land acquired is fixed at Rs. 85/- per square metre.

(ii) The remaining part of the award granting statutory benefits is confirmed,

(iii) First Appeal No. 233/2006 stands dismissed,

(iv) Both the appeals stand disposed of accordingly with no order as to costs.