
(1996) 01 BOM CK 0004
In the Bombay High Court
Case No : First Appeal No. 114 of 1988

Comunidade de Boma

APPELLANT

Vs

State of Goa and Another

RESPONDENT

Date of Decision : 24-01-1996

Acts Referred:

Evidence Act, 1872 — Section 3, 59, 61

Land Acquisition Act, 1894 — Section 18, 22, 23

Citation : (1996) 5 BomCR 228

Hon'ble Judges : T.K. Chandrashekhara Das, J; M.S. Rane, J

Bench : Division Bench

Advocate : V.P. Thali, for the Appellant; V.B. Nadkarni, A.G., along and Ferreira, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

M.S. Rane, J.—This appeal has been filed by the original claimant u/s 54 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act" for brevity sake), wherein the appellant has challenged the judgment dated 28-6-1988, passed by the Addl. District Judge, South Goa, at Margao in Land Reference Case No. 296 of 1981, rejecting the application of the claimant for enhancement of the compensation awarded.

2. We will advert to the facts briefly relevant in the matter :

By Notification dated 23-9-1972, issued under the provisions of section 4(1) of the said Act and published in the Official Gazette on 12-10-1972, the Acquisition Authority proposed to acquire a chunk of land admeasuring 13,01,903 sq. metres, belonging to the claimant herein for the purpose of University Campus. The Land Acquisition Officer, who held an inquiry, after issuance of Notification, awarded a sum of Rs. 2/- per sq. metre for a land which was level, admeasuring about 1,79,100 sq. metres and for the rest of the land, awarded compensation at the rate of 40 paise per sq. metre. The Land Acquisition Officer also awarded costs to the claimant amounting to Rs. 3,000/- and other permissible benefits

under the provisions of the said Act. The claimants as they were not satisfied with the compensation awarded as aforesaid, sought reference as provided u/s 18 of the said Act and claimed a sum of Rs. 15/- per sq. metre in respect of the land, where a compensation at the rate of Rs. 2/- per sq. metre was awarded and for the rest of the land, claimed a compensation at the enhanced rate of Rs. 12/- per sq. metre, in place of 40 paise per sq. metre. The Reference Court has rejected the said reference of the claimant and it has approached this Court, in appeal. The Reference Court on consideration of the evidence placed before it, held that the claimant has failed to establish its claim for the enhancement of compensation and then proceeded to dismiss the same. As stated above, the appellant has questioned the said findings of the Reference Court.

3. The claimant adduced oral as well as the documentary evidence before the Reference Court. The claimant relied upon 3 sale instances, first dated 10-4-1968, covering a land of 2012 sq.metres, which was sold at the rate of Rs. 5/- per sq.metre and situated at a distance of 4.5 kms. from the acquired plot; second sale deed dated 11-9-1973, in respect of the land admeasuring 453 sq.metres, which was sold at the rate of Rs. 11.04 per sq.metre and which was situated at a distance of 1 km. from the acquired plot and third being dated 17-4-1973, admeasuring 275 sq.metres, sold at the rate of Rs. 18/- per sq.metre and situated at a distance of 2 kms. away from the acquired plot. In addition, the claimant also relied upon an Award in respect of the land admeasuring 5353 sq.metres, where the S.L.O. awarded Rs. 4/- per sq.metre, which was enhanced by the Reference Court to Rs. 9.60 per sq.metre. The said award related to the section 4(1) Notification dated 3-2-1968 and the land involved therein was at a distance of 9 kms. from the acquired plot and was situated on either side of the road.

4. As far as oral evidence is concerned, the claimant examined Shambu Amenkar as A.W. 1, constituted Attorney of the claimant. His oral evidence does not throw much light to the issue, which is to be resolved in this matter, as he came on the scene as constituted attorney of the claimant in the year 1980. He has, however, admitted that the acquired land was agricultural and grazing pasture. He has also conceded that the lands pertaining to the sale instances and the award were not similar to the acquired land. The next witness is A.W. 2, Mr. Sakaram N. Bende, a Civil Engineer, who has been examined as an expert, on behalf of the claimant. He has also produced his report, which inspection is a report. However, we do not wish to burden the Judgment by referring to the evidence of the said witness for the simple reason that this witness has prepared the report in the year 1987, few days prior to his testifying before the Court. His evidence, as also the report, do not represent the situation and condition of the acquired land as existed as on the date of acquisition. A.W. 3, Mr. Lingu Dalvi, a Government Employee in the category of Jr. Engineer has been examined, who claimed to have surveyed the acquired land in the year 1973. However, he was unable to give break-ups with regard to the physical features of the land. The last witness is Narayan Amonkar, A.W. 4. He has stated that he has made efforts to trace the sale instances in and

around the vicinity of the acquired property. He has produced one sale deed in respect of the acquired plot of land, which is at a distance of 2.5 kms. from the acquired land.

5. No evidence adduced on behalf of the Acquiring Authority.

6. On going through the Judgment impugned in this appeal, it is noticed that the Reference Court considered the evidence adduced by and on behalf of the claimant, oral as well as documentary mentioned hereinabove and it concluded that the claimant has failed to establish any ground for interference with the amount of compensation as awarded by the Land Acquisition Officer. The Reference Court, after examining the entire evidence concluded that the evidence made available by and on behalf of the claimant, did not warrant or justify the enhancement as claimed. This, we may state, notwithstanding the fact that no evidence was adduced by the claimant to prove the genuineness and bona fide of the sale instances relied upon and produced before the Reference Court. Similar is the position with regard to the award which were relied upon.

7. It is settled principle of law that to accept any evidence with regard the sale deeds or Awards or Judgments of the Land Acquisition Officers or Courts, in first place copies of sale instances, Awards and Judgments have to be placed before the concerned Forum; then the evidence has to be adduced with regard to the sale instances that the same were genuine and bona fide transactions effected in usual and normal circumstances. This can be done by examining either the vendors or the vendees and if both of them are not available, by attesting witnesses, who will have personal knowledge about such transactions. This is to obviate any possibility of any sale instances relied upon being procured by manipulating at inflated rates. Further more, the evidence has also to be made available before the concerned forum to ascertain whether the lands being subject matter of such sale instances or award or for that matter of the earlier Judgments are comparable to the lands in acquisition in dispute of which the market value is to be determined.

8. The lands under such sale instances, awards or judgments have to be in the first place in the close vicinity of the acquired land, their physical features and potential value have to be similar or near similar. From the point of time also, the same must be also in the neighbourhood of the date of Notification in respect of the acquired land. All these factors are required to be considered before any instance of sale transaction is accepted as comparable to the acquired land.

9. As far as matter in hand is concerned, no such evidence has been adduced by the claimant or for that matter neither the Vendors or Vendees or attesting witnesses having personal knowledge about such sale transactions have been examined. There is also no evidence adduced how and in what respect the lands covered under the various sale deeds, were comparable to the acquired land. Similar is the position with regard to the awards relied upon. It would, thus, be noticed that the evidence in this regard is lacking in this matter.

10. Learned Advocate General appearing for the respondents contended that apart from the fact that the claimant has not adduced evidence to establish the market value of the acquired land, the Reference Court ought not have accepted and considered the evidence which was made available by the claimant by way of production of sale deeds and certain Awards, without proving their genuineness and bona fide, as such, as also the comparability vis-a-vis the acquired land. We do not wish to burden the Judgment or further elaborate, as the law on the point has been luminously laid down by the Apex Court. The principle enunciated is as what we have already mentioned earlier.

11. Since the Reference Court has dealt with some of the details of the evidence made available by the claimant, which we have already advocated hereinabove, we find that even otherwise the said instances relied upon by the claimant, so also the Awards were not comparable to the acquired land. Inasmuch as, considering the area of the acquired land, which is fairly large, the lands involved in the sale instances and the Awards relied upon by the claimant, covered plots of land, which were of much smaller sizes. Some of the plots were situated at far away distances from the acquired land. There were also long gaps in the date of section 4(1) Notification in those matters. This we clarify notwithstanding the lack of evidence about the genuineness and comparative assessment thereof.

12. Learned Counsel appearing for the claimant submitted that the claimant be given opportunity to adduce the requisite evidence and for that purpose this matter be remanded to the Reference Court. We do not find the request made is reasonable and just in the circumstances. first of all, this matter has been hanging over since October, 1972.

Section 4(1) as stated earlier, has been issued on 12-10-1972. Furthermore, the claimant was given opportunity to place the evidence before the Reference Court and ought to have availed of the same. The another fact, which would militate against such request is that even otherwise, the material on record which the learned District Judge has discussed in the impugned Judgement would not elevate further the case of the claimant and render any assistance or would be of any help to them, as the instance of the sale, relied upon cannot be said to be comparable to the acquired land.

13. In the circumstances, considering the matter from another angle, we also do not find any merits in the matter. Inasmuch as, it is also the case of the claimant that the land under the acquisition was agricultural and grazing pasture. As on the date of Notification, there were no developments as such in the near vicinity of the acquired land. The claimants have admitted this fact in their evidence itself.

14. Therefore, taking into consideration the totality of the circumstances and the fact of the circumstances, as obtained in the matter herein, we do not find any merits in this appeal. In our view, the Reference Court was right in declining to interfere with the matter, although the reasonings assigned by it in view of consideration of the evidence, which ought to have been discussed broadly, the

conclusion is proper and we are in agreement with the same.

15. In the circumstances no merits. The appeal stands dismissed.

16. There is one factor, however, which we would like to consider in favour of the appellant. The Reference Court has ordered the claimant/appellant to pay the cost of Rs. 3,000/- to the respondent which in our view, appear to be little harsh. In fairness, learned Advocate General has also conceded this fact. To that extent, we modify the judgment impugned in this appeal by setting aside the Order of costs awarded in the matter. Hence the following order :

The appeal is partly allowed, as indicated herein below :

- a) The judgment of the Reference Court, rejecting the reference in respect of the enhancement of the compensation claimed by the claimant, stands upheld and confirmed.
- b) The order with regard to the payment of costs of Rs. 3,000/- by the claimant/appellant, stands set aside.
- c) The amount of costs, if paid and/or received by the respondent be refunded to the claimant.

As far as this appeal is concerned, no Order as to costs.