

(2010) 11 BOM CK 0011

In the Bombay High Court

Case No : First Appeal No's. 155 of 2005 and 29 of 2006

Comunidade of Cortalim

APPELLANT

Vs

Special Land Acquisition Officer and The Chief Engineer,
Konkan Railway Corporation Ltd.
 Special Land
Acquisition Officer and The Chief Engineer, Konkan Railway
Corporation Ltd. Vs Comunidade of Cortalim

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

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

Citation : (2010) 11 BOM CK 0011

Hon'ble Judges : S.B. Deshmukh, J;F.M. Reis, J

Bench : Division Bench

Advocate : Sudesh Usgaonkar, for the Appellant; A.D. Bhobe, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Deshmukh, J.—We have heard learned Counsel appearing for respective parties.

The Appellant in First Appeal Nos. 155/2005, was the Applicant/ Claimant(before the Reference Court) in Land Acquisition case No. 514/1995 and the Appellants in this First Appeal No. 29/2006 were Respondents in that case. The said Land Acquisition Case, was a reference made by the original claimant u/s 18 of the Land Acquisition Act, 1894(hereinafter referred to as "the said Act" for short.)

2. The notification u/s 4 of the said Act was issued on 27.9.1994. The Special Land Acquisition Officer, after following procedure laid down under the said Act, passed an award u/s 11 of the said Act. There is no dispute among the parties regarding area acquired, i.e to the extent of 13410 square metres from the land surveyed under No. "W" situated at village Cortalim Goa. The purpose for acquisition of land by the acquiring body was for laying out track for broad guage railway i.e for Konkan railway. The Land Acquisition Officer while passing the award determine the market price at Rs. 2/- per square metre. The Appellant in

First Appeal No. 155/2005 hereinafter referred to as the claimant, was not satisfied with the amount offered by the Special Land Acquisition Officer. The claimant therefore undisputedly applied for enhancement of the market value u/s 18 of the said Act. The said application, was made over to learned II Ird Additional District Judge, South Goa Margao which was registered as Land Acquisition Case No. 514/1995.

Both the parties have led documentary as well as oral evidence. Learned II Ird Additional District Judge, South Goa Margao, after considering the material brought on record by the parties determined the market price by judgment delivered on 11.2.2005, wherein the learned Reference Court has fixed the market value at Rs. 144/-per square metre. As we have noticed that Rs. 2/-per square metre was offer made by the Special Land Acquisition Officer, enhancement was made by the Reference Court by Rs. 142/-per square metre. It is this Judgment/award passed by the Reference Court u/s 18 of the said Act, is challenged by both the parties i.e original claimant and the Respondents. Claimant's appeal is registered as First Appeal No. 155/2005 and the appeal filed on behalf of acquiring body is First Appeal No. 29/2006. Both these appeals are heard by this Court today. Record is made available to us.

3. Counsel appearing for the Appellant/claimant points out the findings of the Reference Court. According to him the previous judgment copy of which is on record is not properly considered by the Reference Court while determining the market price. According to him previous award bearing No. 99/42/L.A.85-86 was passed on 28.2.1989. Apart from this previous award counsel appearing for the Appellant/claimant drew our attention to the copy of the sale deed dated 1.10.1986. There the land to the extent of 325 square metres, was sold at Rs. 95/-per square metre. Another sale deed, is also pointed out to us by the learned Counsel appearing for the Appellant/claimant, which is sale deed dated 23.4.1991. The land under the sale deed dated 23.4.1991 appears to have been sold by the seller at Rs. 200/- per square metre.

4. The claimant, had prayed market price at the rate of Rs. 250/-per square metre u/s 18. The counsel appearing for the Appellant/claimant substantiates his submissions, by material which he pointed out to us.

5. We have heard Mr. A. D. Bhohe, learned Counsel appearing for the acquiring body in both these appeals as referred to herein above. Acquiring body is the Respondents in First Appeal No. 155/2005 and Appellants in First Appeals No. 29/2006. He pointed out evidence which is brought on record by the parties. He however submitted that his appeal i.e the appeal filed on behalf acquiring body may be allowed and appeal filed by the claimant be dismissed.

6. We have given consideration to the submission made on behalf of the counsel for the parties. The award in Land acquisition case No. 99/42/L.A.85-86 is not passed by the Reference Court as contemplated u/s 18 of the said Act. Undisputedly, it is an award passed u/s 11 of the said Act passed by the Special

Land Acquisition Officer. In our opinion evidentiary value of the adjudicatory judgment of the competent Reference Court and award passed by the Special Land Acquisition Officer, have their own advantages and disadvantages. Award by Special Land Acquisition Officer is always an offer made to the claimant. Said offer, if tested on Section 18 by the Competent Court, the said judgment of Reference Court has its own evidentiary value. Coupled with other factors i.e the location of the land acquired, area of the land acquired and material placed on record before the Reference Court etc. There is no such weightage to the award passed by the Special Land Acquisition Officer.

7. Mr. Sudesh Usgaonkar, learned Counsel appearing for the claimant fairly concedes that previous is the award made by the Special Land Acquisition Officer and it is not a judgment of the Reference Court u/s 18 of the said Act. We have also considered the area of the sale instance i.e sale deed dated 1.10.1986 which is around 325 square metres at the rate of Rs. 200/-per square metre. We are conscious of the fact that the area acquired in these two appeals is a large piece of land around 13410 square metres. Comparability of the sale instance to that of the acquired area in the case in hand is not only relevant but it has importance. Time and again Hon"ble Supreme Court and this Court has stated that smaller piece of land depending on other factors may fetch more price. Such phenomena, may not be in existence in case of transaction of large piece of land. The issue of escalation is also addressed to us by learned Counsel appearing for the claimant. The escalation depends on various factors, however principally the area from which the land is acquired, needs to be considered. The status of area as urban area, semi urban area, rural area is important. This may vary from State to State since we are union of various States. We have considered the submissions of learned Counsel Mr. Usgaonkar that State of Goa and the lands situated at Goa have their own importance from the view point of status as rural area or urban area. We have duly considered the submissions made by the learned Counsel Mr. Sudesh Usgaonkar for escalation of price also.

8. Having regards to the facts of the present case and in view of the submission advanced on behalf of the parties, in our opinion learned Reference Court, has reached to a reasonable conclusion while determining the market price of the acquired land. The learned Counsel appearing for the acquiring body was unable to point out from the evidence on record that there were any dissimilarities between the land acquired and the land which was subject matter of the said previous award relied upon by the claimant though it is an admitted that both the lands are in the proximity of one another. No sale instance has been produced by the acquiring body to demonstrate that the market value of the land acquired as on the date of Section 4 notification was less than the one determined by the Reference Court. As such on the basis of the material produced by the parties in the present case, we do not find any ground to interfere either in First Appeal No. 155/2005 filed by the claimant or in the First Appeal No. 29/2006 filed by the acquiring body. We therefore propose to dismiss both the appeals. In facts of the present case, both the appeals stand dismissed

with no order as to costs.