(2015) 01 BOM CK 0129

In the Bombay High Court

Case No : First Appeal No. 144 of 2008

Deputy Collector and (L.A.) Margao — APPELLANT

Vs

Georgina Merces Jacques — RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4, 4(1)

Citation : (2016) 1 ALLMR 720

Hon'ble Judges : U.V. Bakre, J.

Bench : Single Bench

Advocate : Nikhil Pai, Additional Government Advocate, for the Appellant; Siddhesh Shet, Advocates for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Heard Mr. Pai, learned Additional Government Advocate for the appellants and Mr. Shet, learned Counsel for the respondents.

2. This appeal is directed against the judgment and award dated 04/05/2007 passed by the learned Principal District Judge, South Goa (Reference Court, for short) in Land Acquisition Case No. 215/1999.

3. The respondents were applicants, whereas appellants were the respondents in the said Land Acquisition Case. Parties shall, hereinafter, be referred to as per their status in the said Land Acquisition Case.

4. Vide notification issued under Section 4(1) of the Land Acquisition Act, 1894 (L. A. Act, for short) and published in the Official Gazette dated 09/04/1992, land was acquired for construction of Dongorim, Majorda, Dongorim, Kucha Gabriel Church Road, Our Lady Church to Tolleaband Guirim Road and Godinho Road in V. P. Majorda, Salcete-Goa. This included an area of 280 square metres of land from Survey No. 72/2; 600 square metres from Survey No. 78/2; 1400 square metres from Survey No. 80/1 and 625 square metres from Survey No. 82/1, all of Majorda village. By award dated 08/02/1995, the Land Acquisition Officer

(L.A.O., for short) awarded compensation at the rate of Rs. 7/-per square metre, for the acquired land. Not being satisfied with the offer made by the L.A.O., the applicants, who were the owners of the acquired lands, made reference under Section 18 of the L. A. Act before the L.A.O. which gave rise to the said Land Acquisition Case No. 215/1999.

5. The applicants stated that the acquired land was situated in the settlement zone very close to the coast and Five Star Hotels, where there was scarcity of land. The applicants claimed compensation at the rate of Rs. 1,00,000/-for the trees and Rs. 7,26,250/-for the acquired land. They further stated that on account of the acquisition, four plots of the applicants were bifurcated into small sub plots, which cannot be put to any use or development. The applicants, therefore, claimed severance in respect of the four plots amounting to Rs. 5,00,000/-.

6. Accordingly, issues were framed by the Reference Court. The applicants examined applicant no. 7, Smt. Sumitra Jacques as AW1. She produced a sale deed dated 26/12/1990 as exhibit 19; sale deed dated 17/06/1991 as exhibit 20 and sale deed dated 24/05/1999 at exhibit 21. AW1 also produced the plan as exhibit 22, the Survey Records in Form No. I and XIV as exhibits 23, 24, 25 and 26. The applicants examined Shri Joaquim Santana Fernandes, the husband of the purchaser of the plot of sale deed dated 17/06/1991 (exhibit 20) as AW2 and a Civil Engineer-cum-Government Registered Valuer, namely Shri Vikas Dessai as AW3. He produced his valuation report and a plan drawn by him.

7. Upon consideration of the entire evidence on record, the learned Reference Court found that the sale deed dated 17/06/1991 at exhibit 20 was the most appropriate sale instance to work out the quantum of compensation. By giving appropriate deductions, the compensation has been worked out at Rs. 86.40/-per square metre. All statutory benefits have also been granted. The respondents are aggrieved by the impugned judgment and award.

8. Mr. Pai, learned Additional Government Advocate submitted that the land was acquired for construction of road and because of the said road, the value of the remaining portions of the properties of the applicants had improved. He submitted that only strips of land from the properties of the applicants were acquired and they were not at all comparable with the plot of the sale deed at exhibit 20. He further submitted that since the acquired land was on the boundary, there was no severance at all. He submitted that there was no basis for enhancing the compensation from Rs. 7/-as awarded by the L.A.O. to Rs. 86.40/-per square metre. He submitted that the sale deed at exhibit 20 was of small plot whereas the acquired property is a vast area and further the plot of the sale deed was a subdivided and fully developed plot and whereas the acquired land was not at all developed. He, therefore, urged that there was no evidence at all for enhancement of the compensation. He, therefore, prayed that the appeal be allowed and the impugned judgment and award be quashed and set aside.

9. On the other hand, Mr. Shet, learned Counsel for the respondents submitted that the acquired lands from various survey holdings were parts of bigger properties. He invited my attention to the Forms No. I and XIV and the Survey Plan produced by AW1. He further submitted that the applicants had produced three sale deeds and only one of them was considered by the Reference Court. He also invited my attention to the evidence of the Civil Engineer. He submitted that the evidence on record was sufficient to prove that the applicants were entitled for enhancement. He submitted that appropriate deductions have been made by the Reference Court since the sale deed plot was developed land. He urged that the compensation awarded by the Reference Court is just and reasonable and no interference is called for with the same.

10. I have gone through the record and proceedings of Land Acquisition Case No. 215 of 1999. I have considered the arguments advanced by the learned Counsel for both the parties.

11. The point that arises for my determination is whether the compensation awarded by the Reference Court is just and reasonable or whether the same deserves to be reduced as prayed by the respondents.

12. AW1 has produced on record Forms No. I and XIV of the properties from which land has been acquired. Form No. I and XIV of Survey No. 72/2, which is at exhibit 23 shows that the total area of the same is 4200 square metres from which an area of 280 square metres was acquired. Form No. I and XIV of Survey No.78/2 which is at exhibit 24 shows that the total area is 13275 square metres and an area of 600 square metres has been acquired from the said survey holding. Form No. I and XIV of Survey No. 80/1 which is at exhibit 25 shows that it has total area of 16925 square metres. An area of 1400 square metres has been acquired from this survey holding. Lastly, Form No. I and XIV of Survey No. 82/1 which is at exhibit 26 shows that the total area is 8525 square metres. An area of 625 square metres has been acquired from this survey holding. In the circumstances above, though it may be true that strips of land on the boundary have been acquired for construction of road, however, these strips are parts of bigger properties of the applicants. The evidence on record reveals that the said properties of the applicants were agricultural properties containing coconut trees, mango trees, etc. The acquired lands were all adjoining to one another. The evidence of AW1 establishes that even prior to the construction of the public road, there was a private road touching the properties bearing Survey No. 80/1 and 82/2. Therefore, the properties of the applicants were accessible even at the time of publication of notification under Section 4 of the L. A. Act. AW1 has stated that the acquired land was flat and having potentiality of being used for construction purposes. She has stated that there were residential houses in the vicinity of the acquired land and all civic amenities such as electricity supply, water supply, telephone were available to the acquired land. AW1 stated that the main Margao-Vasco road is at a distance of about 150 metres from the properties of the applicants and that their properties were classified as settlement zone.

AW1 stated that Majorda beach is about 500 metres away from the acquired land and Railway station and Majorda Market were about 1 Kilometre away. She stated that High School, Bank, etc. were in the close vicinity of Majorda village and transport facilities were available at a distance of 150 metres away from the acquired land. In her cross-examination, AW1 stated that the property was not subdivided into plots and or developed and that they had not obtained sanad. She stated that she has house in Survey No. 82/1 and there is a shed in Survey no. 80/1. She further stated that there is a mundkarial house in Survey No. 78/2 as also in Survey No. 77/2. She admitted that sale deed dated 17/06/1991 at exhibit 20 pertains to a developed subdivided plot and there is a public road as well as internal road available for the same.

13. AW2, Shri Joaquim has deposed that he knows the portions of the property acquired by the Government from the property of the applicants for construction of the road. He has confirmed that though there was no road passing through the properties of the applicants, however, there was a motorable access which ended at the mouth of the property bearing Survey No. 82/1. He stated that on 17/06/1991 his wife, namely Smt. Milagrina Victoria Fernandes purchased a piece of land along with Sebastino Cirilo Dias from Cofre de Mae de Deus de Igreja de Majorda. He has confirmed that the sale deed is at exhibit 20. He stated that plot ''C'' admeasuring 787 square metres of the property bearing Survey No. 5/2 of Majorda village was purchased, which was a part of a bigger property belonging to the Church. He stated that purchase was at rate of Rs. 30/- per square metre. He also stated that the said land purchased by his wife is at a distance of about 3 minutes walk from the acquired land and that the nature of the sale deed plot and the acquired land is similar and both were suitable for construction. He stated that when they purchased the said plot, facilities like, water, electricity, telephone were already available at the site and the market, church, bank and school were close by and Majorda beach was about 5 minutes walk from their plot. He stated that after purchasing the plot, they put on construction in the said land.

14. It is, therefore, duly proved that the plot of the sale deed at exhibit 20 was very close to the acquired land and was also similar to the same. No doubt, the said plot was a subdivided and developed plot. Considering the deductions towards the development and also considering the proximity, etc., the learned Reference Court has worked out the market value of the acquired land at Rs. 86.40/-per square metre. In my considered view, the said compensation arrived at on the basis of the sale deed at exhibit 20 cannot be faulted and is just and reasonable compensation. In the circumstances above, in my view, there is no merit in the present appeal. No interference is called for with the impugned judgment and award.

15. In the result, the appeal is rejected.

