
(2013) 09 BOM CK 0012
In the Bombay High Court
Case No : First Appeal No. 98 of 2008

Deputy Collector and S.D.O. and L.A.O., Sub-division, Panaji	APPELLANT
Vs	
Mrs. Filomena da Fransco Barreto and Others	RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2014) 1 ABR 239

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

Bench : Single Bench

Advocate : Susan Linhares, Addl. Government Advocate, for the Appellant; G. Teles, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—The above Appeal challenges the Judgment and Award passed by the learned District Judge, North Goa, at Panaji in Land Acquisition Case No. 34 of 2006 dated 29.11.2007, whereby a reference u/s 18 of the Land Acquisition Act, 1894, (hereinafter referred to as the "said Act"), came to be partly allowed and compensation for the land which was subject-matter of the property surveyed under No. 22/2 and 18/0 admeasuring a total area of 6550 square metres was enhanced to Rs. 150/- per square metres. After being served with the summons in the above Appeal preferred by the Appellants, the Respondents filed the above Cross Objections and, inter alia, claimed compensation to be enhanced to Rs. 400/- per square metre. Briefly, the facts of the case are that pursuant to a Notification dated 19.02.2003 published in the Official Gazetted dated 21.02.2003, land was notified for acquisition u/s 4 of the said Act at Corjuem Village for the construction of the approach road to Aldona-Corjuem bridge in Bardez Taluka. After complying with the formalities as provided under the said Act, an Award came to be passed by the Land Acquisition Officer dated 04.10.2004 whereby the compensation was offered to the Applicants with regard to the land acquired at the rate of Rs. 15/- per square metre in respect of the tenanted lands and a sum of Rs. 20/- per square metre as far as the said land

which is the subject-matter of the present Appeal. Being dissatisfied with the compensation awarded by the Land Acquisition Officer, the Respondents sought a reference u/s 18 of the said Act and claimed enhancement of compensation to the nine of Rs. 400/- per square metre. The learned Reference Court by the impugned Judgment and Award dated 29.11.2007, partly allowed the said reference and enhanced the compensation for the said land to Rs. 150/- per square metre. As far as the tenanted lands are concerned, the reference preferred by the Respondents came to be dismissed.

2. Ms. Susan Linhares, learned Addl. Government Advocate, appearing for the Appellants, has assailed the impugned Judgment on the ground that the learned Judge whilst passing the impugned Award, has fixed the compensation on the basis of a sale-deed which is at Exhibit 9 dated 10.03.1992 wherein land was sold at the rate of Rs. 90/- per square metre. Learned Addl. Government Advocate further pointed out that the learned Judge has appreciated the said amount by fixing an uniform escalation of 10 per cent. on cumulative basis without ascertaining that there was no material on record to come to the conclusion that the rate of escalation was to that extent. Learned Addl. Government Advocate further pointed out that considering that the land was acquired in the Village, such escalation is not at all justified. Learned Addl. Government Advocate further submits that the land which was subject-matter of the said sale-deed was a subdivided plot whereas the land acquired was a paddy field. Learned Addl. Government Advocate further pointed out that the boundaries shown in the said sale-deed further established that the sub-divided plot was adjoining a road whereas the land acquired did not have any accessibility. Learned Addl. Government Advocate further pointed out that the learned Judge whilst passing the impugned Award, relying upon the said sale-deed, has determined the compensation at the rate of Rs. 150/- per square metre without considering the dissimilarities of the land acquired and the sale-deed plot. Learned Addl. Government Advocate further pointed out that as far as the tenanted land is concerned, the learned Judge has rightly refused any compensation for such land and as no appeal has been filed by the Respondents challenging the said passing of the award, to that extent the award has attained finality. Learned Addl. Government Advocate further pointed out that the learned Judge has given deductions of only 40 percent for the purpose of dissimilarities between the land acquired and the sale-deed plot when, according to the learned Counsel, such deductions ought to have been to the extent of 66.6 percent. considering the gross dissimilarities between the lands. Learned Addl. Government Advocate further pointed out that the learned Judge has misconstrued the Judgments referred to in the impugned Judgment and has erroneously come to the conclusion that the market value of the acquired land was at the rate of Rs. 150/- per square metre. Learned Addl. Government Advocate has taken me through the impugned Judgment and pointed out that the learned Judge has failed to consider the evidence adduced by the parties on record and erroneously has come to the conclusion that the compensation for the

land acquired is to be fixed at Rs. 150/- per square metre. Learned Addl. Government Advocate as such submits that the impugned Judgment deserves to be quashed and set aside.

3. Shri Teles, learned Counsel appearing for the Respondents, has submitted that the amount of compensation fixed by the learned Reference Court is much less than the actual value of the acquired land in the vicinity of the acquired land. Learned Counsel further pointed out that the Respondents have produced sale-deed in the vicinity of the acquired land which establishes that the price prevailing at the locality was to the tune of Rs. 350/- per square metre. Learned Counsel further pointed out that the land acquired had lot of demand in the vicinity and, as such, the learned Judge has erroneously fixed the compensation at the rate of Rs. 150/- per square metre when, according to him, such market value at the relevant time was to the tune of Rs. 400/- per square metre. Learned Counsel further pointed out that the learned Judge has rightly given deductions to the tune of 40 per cent. and the contention of learned Addl. Government Advocate to the effect that such deductions is at lower side is totally misplaced. Learned Counsel further pointed out that the Respondents have inadvertently not raised cross-objections with regard to the compensation fixed for the land which was tenanted when, according to him, in view of the judgment of the Apex Court reported in Goa Housing Board Vs. Rameshchandra Govind Pawaskar and Another, , even in cases of tenanted lands, there is no bar to fix a compensation on the basis of developed plots after ascertaining the agricultural value of the land without potentiality of using for non-agricultural purpose. Learned Counsel further pointed out that considering that Respondents are otherwise entitled for enhancement of compensation for the tenanted land acquired, the learned Judge was not justified to fix the compensation only at the rate of Rs. 150/- per square metre for untenanted land. Learned Counsel further pointed out that considering that the learned Judge has not enhanced the compensation for the tenanted land, it was incumbent upon the Reference Court to give more reasonable compensation for the land which was not tenanted as, according to him, there was high potentiality for such land in the vicinity of the acquired land. Learned Counsel further pointed out that the Reference Court has rightly fixed the escalation at the rate of 10 percent per annum when it is well settled by the Apex Court as the rates of land are increasing from time to time, a reasonable rate of escalation is at the rate of 10 percent per annum. Learned Counsel further pointed out that considering the sale-deed produced by the Respondents at the rate of Rs. 350/- per square metre, at exhibit 10, the compensation to be fixed by the Reference Court ought to have been at the rate of Rs. 400/- per square metre. Learned Counsel as such submits that the cross-objections filed by the Respondents be allowed and the compensation be enhanced at the rate of Rs. 400/- per square metre.

4. Ms. Linhares, learned Addl. Government Advocate, in reply to the submissions of the learned Counsel appearing for the Respondents, has pointed out that as no compensation has been fixed by the Reference Court for the tenanted land, the

question of enhancing compensation with regard to such land at this stage is totally unwarranted. Learned Addl. Government Advocate further pointed out that considering that the remaining portion of the land was tenanted, this itself would be an encumbrance for the alleged development potentiality of the acquired land. Learned Addl. Government Advocate further submits that the sale-deed at exhibit 10 has been held to be not comparable with the land acquired and, as such, the question of relying upon the said sale-deed to fix the compensation in the present case, does not arise at all. Learned Counsel has taken me through the impugned Judgment and pointed out that the learned Judge has rightly discarded the sale-deed at exhibit 10 and no interference is called for as far as that aspect is concerned. Learned Addl. Government Advocate as such submits that the Appeal be allowed and the cross-objections filed by the Respondents, be rejected.

5. Upon hearing the learned Counsel and on perusal of the record, the following point for determination arises for my consideration in the present Appeal:

POINT FOR DETERMINATION

1. Whether the amount of compensation fixed by the Reference Court at the rate of Rs. 150/- per square metre is just and reasonable?

6. On perusal of the impugned Judgment I find that the learned Reference Court has rejected the sale-deeds produced by the Respondents namely at exhibit 10, 16, 17, 22 and 23 on the ground that there was no comparability established by the Respondents with the land acquired. With the assistance of the respective Counsel, I have gone through the evidence on record and I find that the evidence does not disclose any similarity with the land acquired and the sale-deed plot. There is no material on record produced by the Respondents to show the proximate between the land acquired and the sale-deed plots or the nature of such land. There is no material produced to disclose the distance between the land acquired and the sale-deed plots. Unless and until some cogent evidence is produced by the Respondents to show the comparability of the land acquired vis-a-vis the sale-deed plots, the question of relying upon such sale-deed to fix the compensation, does not arise. Taking note of the fact that there is no appreciable evidence to establish the comparability of the land acquired with the sale-deed plots, I find that the findings of the learned Reference Court to the effect that the said sale-deed plots are not comparable with the land acquired, cannot be said to be wrong.

7. The Reference Court whilst passing the Award has relied upon the sale-deed at exhibit 9 to fix the compensation of the land acquired. No doubt, the Apex Court in the Judgment reported in *The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another*, . has, inter alia, observed that as far as rural areas are concerned, the escalation is normally 5 to 7 percent whereas in urban areas, such escalation ranges from 10 to 15 percent, nevertheless, this rate of escalation can depend upon the facts and

circumstances of each case. In the present case, the evidence disclosed that a sale-deed at exhibit 9 was part of a development which was at a distance of 250 metres from the acquired land. Taking note of the fact that such development had already started way back in the year 1992 at a distance of only 250 metres from the acquired land, it cannot be disputed that the land acquired had development potentialities. Though the deductions effect by the Reference Court is at 40 percent and according to the learned Addl. Government Advocate appearing for the Appellants such deductions should be at least 66 percent, I find that taking note of the dissimilarities of the land acquired and that the said land was a paddy field, the deductions could have been more than what the Reference Court had awarded. But, however, taking note of the contention of Shri Teles, learned Counsel appearing for the Respondents, relying upon the said Judgment of the Apex Court in the case of Goa Housing Board Vs. Rameshchandra Govind Pawaskar and Another, , I find it appropriate, without going into the said aspect, not to interfere with the amount of compensation awarded by the Reference Court at the rate of Rs. 150/- per square metre for the untenanted lands in the peculiar facts and circumstances of the case. Considering that the Reference Court has taken an overall view of the matter and fixed the compensation at the rate of Rs. 150/- per square metre, I find that such compensation in the facts and circumstances of the case cannot be said to be unjust or unreasonable. As such, I find no case is made out for any interference in the impugned Judgment and Award passed by the learned Reference Court. So also, as the sale-deed at exhibit 10 is not comparable with the land acquired, there is no substance in the cross-objections filed by the Respondents herein. The point for determination is answered accordingly. In view of the above, no case is made out for any interference in the impugned Judgment and Award. The Appeal and the Cross Objections accordingly stand dismissed with no orders as to costs.