(2010) 12 BOM CK 0058

In the Bombay High Court

Case No : First Appeal No. 209 of 2005 and Cross Objection No. 2 of 2006

Deputy Collector(LA) and The Executive Engineer — APPELLANT

Vs

Mrs. Alina Menezes Xavier — RESPONDENT

Date of Decision : 10-12-2010

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

Citation : (2010) 12 BOM CK 0058

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : G. Shirodkar, for the Appellant; M.B. Da Costa, Senior Advocate and J.A. Lobo, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—By consent and for convenience, these appeals with Cross Objections are disposed off by this common Judgment.

2. First Appeal No. 209 of 2005 arises from L.A.C. No. 67/03/1. First Appeal No. 210 of 2005 arises from L.A.C. No. 69/03/1 and First Appeal No. 281 of 2005 arises from L.A.C. No. 53/03/1. In all the cases, the lands involved were acquired by a common notification issued u/s 4(1) of the Land Acquisition Act, 1894 published on Gazette dated 20-5-1996 for the purpose of widening and blacktopping of the road from Arlem to Borim in villages Raia, Camurlim and Lotoulim in Salcete taluka which is a State Highway. In all the cases by award dated 30-11-1999 the Land Acquisition Officer had awarded compensation at the rate of Rs. 20/- per sq. meter.

3. In First Appeal No. 209 of 2005 which pertains to the case of Alina Menezes Xavier what was acquired was 150 sq. meters of land from survey No. 257/8. It was a strip of about 21 meters in length and 7 meters in width, approximately. She had examined herself. Respondents had examined their engineer. In First Appeal No. 210 of 2005 which pertains to the case of Dr. Hugo Menezes what

was acquired was 120 sq. meters of land from survey No. 257/6. It was a strip of land of about 17 meters in length and 6 meters in width, approximately. He had examined himself. Respondents had examined their engineer. In First Appeal No. 281 of 2005 which pertains to the case of Luis Arnaldo Menezes what was acquired was 225 sq. meters from survey No. 4/1. It was a strip of land of about 33 meters and width of 5.50 to 7.25 meters. He had examined himself and Civil Engineer Shri Ernest Moniz, as an expert.

4. In survey No. 257/8 of Alina Menezes Xavier there was a residential house, a room, carpentry workshop and a saw mill but no distances were given from the said structures to the edge of the existing road or for that matter from the center of the road. Survey No. 257/6 was a barren land and the applicant himself did not know what was the length and breadth of his entire property or the length or breadth of the acquired land nor the width of the existing road though he claimed that he visited the plots of the sale deeds. In survey No. 4/1 there was again a residential house but no distances therefrom was given either from the edge of the existing road or from the center of the road and the remaining property on the eastern side of survey No. 4/1 was a paddy field.

5. All the three cases pertained to Raia village only. According to Shri Moniz, the said existing road was shown in the regional plan having a prescribed width of 30 meters. Shri Moniz had admitted that no construction could be put up in the prescribed width of the highway. He had also opined that in case one wanted to put up a construction, it was possible to get additional F.A.R. provided the owner gifts the road widening area and in case no such gift was made, it was open to the Government to acquire the area. Respondents'' engineer had confirmed that the prescribed width of the Highway was 30 meters. He had also confirmed that no construction is permitted by the authorities in such road widening areas. His opinion was that 50% of the road widening area could be utilized as F.A.R. while doing construction.

6. The applicants had produced several sale deeds in support of their case for enhancement. The learned reference Court selected the sale deed dated 4-10-1994 as most comparable and discarded others as they were post notification sale deeds and then took a deduction of 33% towards development charges as the said plot was a developed plot from a sub-divided property and as the said sale deed was about one year seven months prior to the date of notification i.e. 20-5-1996, the learned reference Court gave an annual increase on compounding basis at the rate of 10% based on a decision of the case of V.M. Salgoacar and Brother Ltd. Vs. Union of India (UOI), and further considering that the acquired land was within road widening area took another deduction of 33% and thus a total deduction of 66%, and arrived at the market value of Rs. 141/- per sq. meter.

7. Shri G. Shirodkar, the learned Government Advocate, as far as the appeals are concerned submits that the Government would have no case as the learned reference Court has taken a deduction of 66% as against 67% which could be

taken as stated by the Apex Court in the case of Subh Ram and Others Vs. Haryana State and Another, and in view of the judgment of the Apex Court in State of Goa and Anr. v. Gopal Baburao Gaudo (2009) 10 SCC 8686 wherein the Apex Court has held that a long strip of land admeasuring more than two-third of an acre lying alongside and adjoining the highway cannot be treated as a land without value or without any potential for development, merely on the ground that the law relating to highways prohibited construction on either side of the highway, upto a depth of 40 meters from the center of the highway.

8. In view of the submissions made on behalf of the State and in any event, in the light of the judgment dated 20-10-2010 in First Appeal No. 55 of 2006 in the case of Deputy Collector(LA) and Anr. v. Mrs. Lidia Barbosa and Ors. the appeals filed by the State are bound to fail. First Appeal No. 55 of 2006 arose from L.A.C. No. 47 of 2003. It pertained to the same notification and survey Nos. 6/3 and 6/4 of Raia village.

9. That leaves us with the Cross Objections. Shri M. B. Da Costa, the learned Senior Counsel appearing on behalf of the original applicants firstly submits relying on Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, that compensation higher than claimed can be granted. Then, relying on Union of India and others etc. Vs. Mangatu Ram, etc., learned Senior Counsel submits that all lands are not equal in all respects; they differ from one another and bear different features i.e. nature, quality and character, and, therefore all the lands do not command the same market value when they are sold to a willing purchaser by a willing vendor in the open market. Then learned Senior Counsel submits that the learned reference Court was not justified in making a deduction of 66% and there might have been such a justification in case such a deduction was made for large tracks of land. Learned Senior Counsel submits that all that the applicants were required was only to obtain a conversion sanad before the land was put for construction. Learned Senior Counsel further submits that the applicants could have built a row of shops in the acquired strip but concedes that the location of the existing houses was not shown nor is there any evidence to disclose as to what was the distance available from the existing houses/structures and the center of the road. Learned Senior Counsel then relying on C.R. Nagaraja Shetty v. Special Land Acquisition Officer and Estate Officer and Anr. (2009) 11 SCC 75 further submits that there must be evidence for the need of the development contemplated and the possible expenditure for such development.

10. First decision cited does not support the first submission made by the learned Counsel. In C.R. Nagaraja Shetty v. Special Land Acquisition Officer and Estate Officer and Anr. (supra) the Apex Court has stated that:

where lands are acquired for public purpose such as setting up of industries or setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges, but it has to be established by positive evidence that such development charges are justified

11. We have seen the state of evidence in the cases, including the conflicting opinions given by the experts. Absence of evidence of comparison in one case. Absence of evidence by experts that the acquired strips could be merged with the land to its rear due to the existence of houses, structures etc. There can be no doubt, as observed by the Apex Court(by three learned Judges) in Basant Kumar and Others Vs. Union of India (UOI) and Others, that in the same village no two lands command the same market value. Indeed, the Apex Court has further stated that:

No doubt, each individual had different parcels of the land out of that vast land. If that principle is accepted, as propounded by the High Court, irrespective of the quality of the land, all will be entitled to the same compensation. That principle is not the correct approach in law. The doctrine of equality in determination and payment of same compensation for all claimants involved in the same notification is not a good principle acceptable for the aforestated reasons

At the same time the Apex Court has also stated that when both the lands are proved to be possessed of same advantages, features, etc., then only equal compensation is permissible

emphasis supplied

12. In M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, (also a three Judge decision) the Apex Court has held that:

If ''Comparable Sales Method of valuation of land'' is adopted for determining the market value of an acquired plot of land, it generally holds good for determination of the market value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same preliminary notification. But, if any of the factors, such as, location, shape, size, potentiality or tenure of one plot of acquired land widely differs from the other plot(s) of acquired land(s), then the market value of each plot of land acquired has to be determined independently of the other(s) even if all of them had been acquired pursuant to the same preliminary notification. The reason is not far to seek since the differential factors relating to different acquired plots greatly affect their value. Hence, if any salient factor of different acquired plots of land, which greatly affects their value is ignored or is not taken into consideration by the court while determining the market value of acquired lands, it will have failed to apply the correct principle of valuation adoptable in valuation of different types of acquired lands

13. What deduction is to be taken in a particular case is not based on any principle of law but depends from case to case, place to place and on variety of other factors including the nature of development in the place where the acquired land is situated and the disadvantages the acquired land suffers from, when compared to the land of the sale deed chosen to form the basis of

determination of the price of the acquired land. In the case of Smt. Basavva and others Vs. Special Land Acquisition Officer and others, the Apex Court had held that deduction need not always be one-third and a deduction from one-third to 53% was held to be valid in several Judgments. In the case of Subh Ram and Ors. v. State of Haryana (supra) it is held that if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third(for roads, etc.) plus one- third(for expenditure of development), in all two-thirds (or 67%), as "development cost" from the value of small plot. The percentage of deduction may however vary between 20% to 75%. In the case of Basant Kumar and Others Vs. Union of India (UOI) and Others, the Hon''ble Supreme Court speaking through three learned Judges held that at least one-third of the compensation has to be deducted towards providing amenities, like roads, parks, electricity, sewage, water facilities, etc. Needless to say that the said one-third deduction is both towards roads, open spaces etc. as well as for expenditure of development. That is the minimum to be deducted, not the maximum.

14. Considering the facts of this case and the nature of the evidence led by the parties a deduction of 67% could not be complained about. It is common knowledge that L.A. Os visit the properties prior to acquisition and passing of the award. In these cases, the Land Acquisition Officer had awarded compensation at the uniform rate of Rs. 20/-per sq. meter. These are but strips of bharad land lying on the side of existing road within a small stretch of about 2 to 3 kms. situated in the same village. Their features therefore ought to be common. There are no differential factors proved. In three appeals including First Appeal No. 55 of 2006 arising from L.A.C. No. 47 of 2003 in the case of Deputy Collector(LA) and Anr. v. Mrs. Lidia Barbosa and Ors., this Court has maintained the enhancement granted by the learned reference Court. Even in the case of Union of India v. Balram and Anr. (2010) 5 SCC 747 the Apex Court has acknowledged the principle that it would be unfair to discriminate between the land owners to pay more to some and less to others when the purpose of acquisition is the same and the lands are identical and similar, though lying in different villages. As said before, lands in these three cases like those in the three appeals disposed off by this Court, were similar and situated on either side of the road and located at close distances from one another. It would be unfair to discriminate the land holders in the payment of compensation. In my view, the same compensation as granted by the learned reference Court deserves to be maintained.

15. For reasons aforesaid, I am inclined to dismiss not only the First Appeals but as well as the Cross Objections filed by the parties, with no order as to costs.

16. Appeals as well as Cross Objections are therefore hereby dismissed.

