

(2013) 10 BOM CK 0064
In the Bombay High Court
Case No : First Appeal No. 90 of 2013

Dr. Eurico da Silva

APPELLANT

Vs

Special Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 6 ABR 644 : (2014) 2 ALLMR 305

Hon'ble Judges : N.H. Patil, J

Bench : Single Bench

Advocate : Shivan Dessai, for the Appellant; E. Afonso, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.H. Patil, J.—These two appeals arise out of the judgment and award passed on 30/01/2003 by IIIrd Additional District Judge, South Goa, Margao in Land Acquisition Case No. 231 of 1994. They are being disposed of by this Common Judgment. The claimant owned property bearing Survey No. 39/7 which was admeasuring 5000 square metres. Out of the said total area, land about 800 square metres was acquired in the year 1991 for laying down railway track. The notification u/s 4 of the Land Acquisition Act (for short, "L.A. Act") was issued on 08/08/1991 and the notification u/s 6 was issued on 6/11/1991. The Land Acquisition Officer passed award on 06/10/1993, wherein, the acquired land was awarded compensation at the rate of Rs. 23/- per square metre. The record reveals that the compensation of the subject property was taken by applying urgency clause, in view of the provisions u/s 17 of the L.A. Act, on 09/07/1992.

2. The applicant preferred Reference u/s 18 of the L.A. Act. In support of the claim, the claimant examined himself as AW1. AW 2 - Ernesto Moniz was examined as a Surveyor.

3. AW 1 in his deposition submitted before the Reference Court that the land bearing Survey No. 39/7 is adjacent to the tar road constructed prior to the date

of acquisition. The said road is 6 metres" wide road and it is adjacent to the entire western boundary of the property. The said 6 square metres" wide road was acquired by the Government and compensation of the said property was taken in the year 1981. The said property was situated by the side of the railway track of the South Central Railway. According to the witnesses, the railway track is about 5-10 metres away. The Majorda railway station is about 50 metres from the acquired land and it is across the railway track. Opposite the railway station, there is market place of Majorda. The Witnesses further described the location by stating that the church of Majorda, the primary school and the higher secondary school are located at a distance at about 500 metres to 1 K.M. from the acquired land. The subject property is bharad land with thick plantation of coconut trees and it is suitable for construction of residential houses since there are several such houses around. The tap water and electricity facilities were also available prior to the acquisition of the property. The claimant received amount for trees existing in the property. The claimant further submitted that in similar case, where the area of 481 square metres of the land from his property was acquired for which market rate was fixed by the Special Land Acquisition Officer at the rate of Rs. 50/- per square metre. According to the claimant, the appeal filed by the Government before the High Court was dismissed by Judgment and order dated 13/11/1998. The said copy of the judgment was produced on record by the claimant at the time of acquisition of the subject property. The subject land had access to 6 metres" wide road. The Appellant placed reliance on the transaction of sale-deed of a land, which is about 300 metres away from the subject property which was sold for Rs. 65.40 per square metre by Mrs. Francisco Xavier Balduino Gracias to Mrs. Cristalina Gonsalves and another sale transaction dated 7/10/1985 of the land admeasuring 569 square metres by which the land was sold by the same Mrs. Francisco Xavier Balduino Gracias to Ms. Rosalina Pereira for 80.85 per square metre. Both these sale-deed plots were undeveloped and not converted. As the subject properties in LAC No. 202 of 1991, belonging to the claimant were accessible by road, it was deposed that the learned District Judge granted rate of Rs. 50/- per square metre. The claimant referred to another case, wherein the Mamlatdar fixed the rate of the land sold to Mundcar at the rate of Rs. 90/- per square metre by order dated 12/01/1992. The name of Mundcar was Mr. Nagesh Krishna Parsekar and the Bhatkar was Francisco Baldiano Gracias.

4. During the cross-examination, some suggestions were given to the claimant which were denied. The appellant admitted that the acquired land has a coconut garden. There was no bus terminal on the road near the said property. Both the sale-deeds relied upon by the claimants were in respect of the land adjacent to the road passing near the property. The survey report of the AW2 was not relied upon by the Court as the surveyor inspected the said property after four years after issuance of the notification. Therefore, his evidence was discarded, according to the learned Counsel appearing for the respondents.

5. The learned Counsel for the appellant submitted that the acquired land 80 x

10 had access of 6 metres" wide road. Though the construction permission could not be granted as the said property was adjoining to railway track, but certainly, the claimant was entitled to utilise the Floor Area Ratio as the petitioner's property was continuous one as the total area was around 5000 square metres. The learned Counsel further submitted that the Reference Court committed an error in deducting 20% from the rate of Rs. 50/- per square metre as the applicant was not entitled to utilise to subject property for the purpose of construction of houses and by granting the deduction of Rs. 10/- per square metre, the applicant instead of Rs. 50/- per square metre got Rs. 40/- per square metre, as market value.

6. The learned Counsel for the appellant referred to the Judgment and order passed by this Court in First Appeal No. 20 of 1998 on 13th November, 1998 in respect of other property of the appellant to substantiate claim for enhancement in compensation and to counter the plea of the Railway's for reducing the amount of compensation granted in favour of the appellant. The learned Counsel referred to the judgment passed by the Apex Court in *State of Goa and Another Vs. Gopal Baburao Gaudo and Others*, . In paragraph Nos. 6 and 7, the Apex Court in the facts of the case, observed as under:

6. We may demonstrate the absurdity of such a contention with reference to an illustration. Let us take the example of a residential plot of land measuring 60" X 100". Let us assume that the municipal bye-laws require a front (road side) setback of 20" for construction of houses in a plot of that size. Therefore, the owner would leave a twenty feet wide front strip in the said plot free of any construction while putting up the construction in the plot. Obviously, he cannot thereafter construct in that front strip. Let us further assume that the front strip is acquired for road widening. Can the acquiring authority deny compensation to that strip on the ground that the said 20" strip acquired for road widening could not in any event be used for any construction purpose and therefore, was not of any value? Obviously not.

7. Therefore, determination of market value of the acquired land with reference to the value of comparable land cannot be faulted.

7. The learned counsel for the appellant submitted that the cogent and reliable evidence is placed by the claimant before the Reference Court and considering it in its entirety the market rate granted to the subject property, is required to be enhanced.

8. The learned Counsel for the respondents submitted that as the petitioner's land 80 x 10 square metres property was acquired, the remaining property of the claimant cannot be considered as continuous property. For trees found in the acquired land compensation was already paid to the claimant. By describing the location of the property with the help of sketch appearing at page 56 of the paper-book, the learned counsel submitted that the acquired property is located close to the already existing railway track since last more than 100 years. The

property of the claimant was bifurcated due to the acquisition for the purpose of road and railway track. Therefore, the subject property could not have been used for construction purposes nor the claimant was entitled to get benefit of the Floor Area Ratio Policy. The learned counsel submitted that the claim for enhancement made by the claimant cannot be granted in view of the evidence brought on record. Nobody could have purchased such a property which is abutting the railway track inside. The learned Counsel submitted that the further reduction of 10% is required to be granted on account of noise due to railway movement.

9. I have perused the original record and relevant documents and evidence. I have considered the submissions advanced by the learned counsel for the parties.

10. The Reference Court had considered the location of the property. The acquired land was within 10 metres distance from the already existing railway track. It is clear that no construction was possible on the acquired land. The applicant claimed that considering the location of the property, he could have claimed Floor Area Ratio benefits. The learned Counsel for the respondents has raised serious objection about as to whether the original claimant could have claimed such benefit. The learned counsel for the claimant submits that around 5000 square metres land was available out of which 800 square metres" land was acquired for the said purpose, therefore, he could very well take benefit of Floor Area Ratio. On the one side of the said land, there is already existing railway track and on the other side of the property, a public road is laid which was also an acquired property belonging to the claimant. The learned counsel for the appellant submits that still large area of property is available in between these locations, therefore, the benefits of Floor Area Ratio could be claimed by the claimant.

11. Considering the material placed on record, I am of the view that the market potentiality of the subject acquired property could be well assessed considering the location of the property itself. The said acquired land could not have been utilized for construction purpose and whether Floor Area Ratio under Planning and Development Authority Registration, 2000 could be utilized or granted, is matter for Authorities to be consider. Therefore, marketability of the property cannot be assessed on the plea raised by the claimant in reference thereto. The provisions of the Indian Railways Work Manual is referred to by the Reference Court which indicates that open space about 30 metres is indicated to be left between the railway boundary and nearest edge of the building. The said factor was considered as a depriving factor for determining market value of the said land adjacent, according to the Reference Court. The railway station which is 3 metres away from the railway track and railway quarters are 10 metres from the railway track, according to the R.W.1. The reference Court was right while calculating the market value of the acquired land. The Reference Court has taken into consideration the subject-matter of First Appeal No. 20 of 1998 for its consideration as the market value of the land acquired was assessed at the rate of Rs. 50/- per square metre.

12. The learned Counsel for the respondents submitted that the further reduction of 10% on noise disturbance ought to have been given by the Reference Court. In the light of the evidence brought on record and the location of the property, I am not of the opinion that the further reduction in the market rate is required to be granted.

13. I find that the Reference Court recorded an appropriate finding and calculated the amount of compensation by granting reduction of 20%. The Reference Court arrived at the rate of Rs. 40/- per square metre which in the facts of the case and considering the evidence on record, is just and proper. I am, therefore, inclined to dismiss both the appeals. Both the appeals are dismissed. No order as to costs.