

(2013) 03 BOM CK 0100
In the Bombay High Court
Case No : First Appeal No. 32 of 2007

Dy. Chief Officer, Goa Industrial Development Corporation	APPELLANT
Vs	
Jesus Alberto Basilo Mozart Costabir and Others	RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

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

Citation : (2013) 3 ABR 100 : (2013) 4 ALLMR 767

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

Bench : Single Bench

Advocate : M.S. Sonak and J. Supekar, for the Appellant; J. Godinho and V. Rodrigues, for the Respondent

Judgement

U.V. Bakre, J.—This appeal arises out of judgment and award dated 30/08/2006 passed by the learned Ad hoc Additional District Judge, Fast Track Court - II, South Goa, Margao in Land Acquisition Case No. 85 of 2000. Parties shall hereinafter be referred to in the manner in which they appear in the cause title of the said Land Acquisition Case.

2. Vide notification issued u/s 4(1) of the Land Acquisition Act, 1894 (the Act, for short) and published in the Official Gazette dated 05/10/1987, land was acquired for setting up an industrial estate at Verna Plateau. This included land bearing survey Nos. 87/1 to 87/30 and 95/1 to 95/11, totally admeasuring 42,075 square metres, situated in Quelossim village of Mormugao taluka. By award dated 29/11/1994, the Land Acquisition Officer (L.A.O.) awarded different rates of compensation for various types of lands. The acquired land bearing survey Nos. 87/1 to 87/6, 87/8 to 87/30, 95/1, 95/3 to 95/11, totally admeasuring 31,825 square metres was tenanted land for which compensation at the rate of Rs. 4.50/- per square metre was awarded whereas the acquired land from survey No. 87/7 and 95/2 admeasuring 9025 square metres was untenanted land. Compensation at the rate of Rs. 5/- per square metre was awarded for acquired land from survey no 87/7 admeasuring 1125 square metres whereas

compensation at the rate of Rs. 6/- per square metre was awarded for the acquired land admeasuring 7900 square metres from survey No. 95/2. Aggrieved by the said offer of the L.A.O., the original applicant who was interested in the above acquired lands filed an application u/s 18 of the Act before the L.A.O. who referred the matter to the District Court. South Goa and that gave rise to the Land Acquisition Case No. 85 of 2000.

3. In the reference application, the original applicant stated that the principle of valuation by belting was not correct and the same has been done arbitrarily and without scrutiny. The applicant stated that his land is a continuous and compact stretch of land, running parallel to the National Highway 17A and at the same level and entirely zoned for Industrial purposes and hence could not have been divided into different belts. The applicant stated that the acquired land:- is ideally situated in the centre of Goa, that is towards east of the Margao-Cortalim road, at a distance of about 300 metres away from the said road which is National Highway 17A and is connected to the same by kutcha road; is situated at a distance of 7 kilometers from the Dabolim airport; is serviced by electricity and water; is close to the spring and Kesarval Hotel and is about one and half kilometers away from the village Nagoa-Verna. The applicant further stated that the acquired land has all the amenities namely petrol/diesel pump, schools, churches, temples, shopping centres, groceries, hair cutting saloons, general stores, fish and vegetable markets, pharmacies, bars, restaurants, tailoring shops, co-operative Societies, cemetery and railway station, at a very close distance. The applicant, therefore, claimed market rate of Rs. 150/- per square metre.

4. In support of his claim, the original applicant examined his son and power of attorney holder as A.W. 1 who produced survey plan of survey Nos. 87/1 to 87/30 and 95/1 to 95/11 as Exhibit-23; survey forms No. I & XIV of said survey holdings as Exhibit 24-colly; award dated 27/02/1992 passed by learned District Judge in Land Acquisition Case No. 169 of 1988 as Exhibit-25; award dated 03/05/1991 passed by learned District Judge in Land Acquisition Case No. 116 of 1989 as Exhibit-26; award dated 03/05/1991 passed by learned District Judge in Land Acquisition Case No. 269 of 1988 as Exhibit-27; Sale-Deed dated 10/9/1990 as Exhibit-28; Sale-Deed dated 06/11/1989 as Exhibit-29 and a Sale-Deed dated 09/08/1990 as Exhibit-30. The applicant examined one Engineer namely Vikas Dessai as A.W.2 who produced valuation report and plan which are at Exhibit-33 (Colly.) The respondents examined a Civil Engineer then working with Industrial Development Corporation as RW1.

5. Learned reference Court analyzed the entire evidence on record and held that the tenanted land of the original applicant could not have been used for any purpose other than agriculture in view of the Goa Land Use (Regulation) Act and Agricultural Tenancy Act and relying upon "Gorakshwadi Samitee v. State" (2000 (2) Goa LT 81), observed that the same does not have any construction potentiality. She therefore held that the applicant is not entitled for any

enhancement in respect of the acquired land admeasuring 31,825 square metres from survey No. 87/1 to 87/6, 87/8 to 87/30, 95/1, and 95/3, which was tenanted land. The learned reference Court found that all the three sale-deeds relied upon by the applicant were post-notification sale transactions. Relying upon *Karan Singh and others etc. Vs. Union of India*, and since the applicant had not led any evidence to show that the price of the land remained static and there was no upward rise in the price during the period of issue of notification u/s 4 of the Act and the date of transactions, the reference Court held that said post-notification sale transactions cannot be considered. She further found that A.W.2, the valuer had carried out the inspection of the property almost after five years from the date of publication of notification u/s 4 of the Act. Relying upon *The Special Land Acquisition Officer (7) Bombay and Bombay Sabarban District Municipal Corporation Vs. Vishanji Virji Mepani and another*, and "*State of Goa v. Desiderio Menezes*", reported in 1996 (1) Goa LT 12: (1996 AIHC 3177), the reference Court held that the valuation report is not reliable and cannot be made basis for arriving at market value of the land. What then remained was only three awards which were at Exhibits 25, 26 and 27. The reference Court found that the land which is subject matter of the award dated 27/02/1992 at Exhibit-25 and also of that dated 03/05/1991 at Exhibit-27 was not similar and comparable to the acquired land. According to her, the acquired land which was subject matter of the Land Acquisition Case No. 116 of 1989 and in respect of which the award dated 03/05/1991 was passed and which is at Exhibit-26 was the most similar and comparable instance to assess the market value of the acquired land. Considering the fact that there were stone quarries and blasting depressions of sizable area in the acquired land which would require lot of filling to make them fit for construction purpose, the learned reference Court made a deduction of 50% from Rs. 79/- per square metre which was awarded as compensation in the said award dated 03/05/1991 at Exhibit-26. That brought down the value at the rate of Rs. 40/- per square metre as on 20/12/1985. Taking it for granted that there was 10% increase in the price of the land every year on compounding basis from 20/12/1985 to 05/10/1987, the reference Court fixed the market value of the untenanted acquired land from survey Nos. 95/2 and 87/7 totally admeasuring 9025 square metres at Rs. 49/- per square metre. The reference Court also granted to the applicant all the statutory benefits under the Act and fixed the costs at Rs. 1000/-. The respondent No. 2 is aggrieved by the impugned judgment and award.

6. Heard learned counsel for all the parties.

7. Mr. Sonak, the learned counsel appearing on behalf of respondent No. 2 did not take any exception to consideration of the award dated 3/5/1991, in L.A.C. No. 116/1989, for determination of market value of the untenanted acquired land. He, however, submitted that the acquired land is situated in rural area i.e. at Quelossim village and therefore the learned reference Court has erred in giving escalation at 10% per annum, on compounding basis, on account of gap of about 2 years in the notifications u/s 4(1) of the Act, published in respect of

the acquired land of the present case and that of L.A.C. No. 116/89. He relied upon judgment of the Apex Court in the case of The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, : The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, and urged that the said escalation at the most could be 7% per annum. He further submitted that the land which was subject matter of said L.A.C. No. 116 of 1989 was already developed land whereas the acquired land of the present case was rocky and had stone quarries and blasting depressions. He submitted that the above dissimilarity was not considered by the learned reference Court. He further submitted that the reference Court has wrongly observed that the acquired land of the present case is abutting highway. He pointed out from the evidence on record that the acquired land of the present case was at a distance of about 900 metres away from the National Highway whereas the acquired land of L.A.C. No. 116/89 was abutting the National Highway. He further submitted that the land which was subject matter of L.A.C. No. 116 of 1989 had the advantage of road frontage whereas the acquired land of the present case did not have this advantage. He invited my attention to the impugned judgment wherein the learned reference Court, after making deduction of only 50% in the market value of Rs. 79/- per square metre granted in L.A.C. No. 116/89, which is on ground that there are quarries in the acquired land which would require filling to make them fit for construction purpose, has proceeded to give escalation of 10% per annum, on compounding basis, to the amount of Rs. 40/- and has arrived at the market value of Rs. 49/- per square metre. He submitted that other disadvantages mentioned by him above having not been considered by the reference Court, the said market value fixed at Rs. 49/- per square metre is much on a higher side, not justifiable and bound to be reduced. He relied upon the judgment dated 26/11/2010 passed by a Division Bench of this Court in the case of "Goa Industrial Development Corporation through its Deputy Chief Executive Officer v. Comunidade of Cortalim and another" (First Appeal No. 138 of 2008), wherein the market value of the acquired land, which was subject matter of L.A.C. No. 73 of 2000 pertaining to the same notification published on 05/10/1987, was fixed at Rs. 36/- per square metre, by relying upon the award in the same L.A.C. No. 116 of 1989. He further submitted that the acquired land of the present case has some more disadvantages as compared to the acquired land of L.A.C. No. 73 of 2000 due to which further deduction in the rate of Rs. 36/- per square meter will have to be made. He relied upon the judgment dated 08/04/2011 passed by the learned single Judge of this Court in the case of "Deputy Chief Executive Officer, Goa IDC v. Shri. Michael Fernandes and two others" (First Appeal No. 70 of 2006) in respect of land which was acquired under the same notification published on 05/10/1987 wherein the market value of the acquired land fixed by the reference Court at the rate of Rs. 18/- per square metre was upheld. He also relied upon the judgment dated 29/07/2011 passed by learned single Judge of this Court in the case of "Deputy Chief Executive Officer, Goa IDC v. Shri. Manuel Salvador D'sa (since deceased) through legal heir" (First Appeal No. 240 of 2006) wherein

the subject matter was the land acquired from survey No. 97/12 of village Quellossim, Mormugao Taluka. The reference Court had fixed the compensation at the rate of Rs. 18/- per square meter and the learned single Judge upheld the said market rate. The learned counsel therefore submitted that the appeal be allowed and the compensation fixed by the learned reference Court be appropriately reduced to something below Rs. 36/- per square metre.

8. On the other hand, Mr. Godinho, learned counsel appearing on behalf of the legal heirs of the original applicant submitted that there is no dispute that the award in L.A.C. No. 116 of 1989 was suitable for determination of market value of the acquired land. He submitted that a Division Bench of this Court by judgment dated 17/09/2012 in the case of "V.M. Salgaoncar & Brother Pvt. Ltd. v. The Deputy Collector and another" (First Appeal No. 145 of 2006) had considered the escalation at the rate of Rs. 7.5% per year. He submitted that the land which was subject matter of the said First Appeal No. 145 of 2006 was acquired under the same notification published in Gazette dated 05/10/1987 and the Division Bench of this Court has fixed the compensation at the rate of Rs. 40/- per square metre. He submitted that the land was situated in Village Quellossim. The learned counsel further submitted that by judgment dated 05/08/2010 in the case of "Comunidade of Cortalim v. Dy. Collector and another" (First Appeal No. 318 of 2003), a Division Bench of this Court has fixed market value of the land which was acquired for the purpose of expansion of the same Verna Industrial Estate (Phase II), by subsequent notification published in the Official Gazette dated 22/03/1990, at Rs. 43/- per square metre. He submitted that in this First Appeal No. 318 of 2003, the land which was subject matter of L.A.C. No. 116 of 1989 was duly considered. He submitted that the acquired land of the present case was suitable for construction and was intact suitable for construction of even a hotel project and all facilities were available within a range of about 300 metres to 1500 square metres. According to him, therefore there is no scope for interference with impugned judgment and award. He therefore prayed that the appeal be dismissed.

9. I have gone through the entire material on record in the light of arguments advanced by both the parties and I have also considered the judgments relied upon by both the parties, the copies of which were produced before me for perusal.

10. Point that arises for determination is whether the learned reference Court has erred in enhancing the compensation to Rs. 49/- per square meter and if yes what should be the true market value of the acquired land at the time of publication of notification u/s 4(1) of the Act.

11. Learned reference Court, in the impugned judgment, has refused to rely upon the three sale-deeds produced by the applicant as Exhibits 28, 29 and 30 since they are post-notification transactions and since there is no evidence on record to prove that there is no appreciation of the value of the land during the period of issue of notification u/s 4(1) of the Act and the date of transactions of

the said sale-deeds. The learned reference Court has also refused to rely upon the award dated 27/02/1992 which is at Exhibit-25 which pertains to the land acquired under notification published on 15/11/1984, which award is at Exhibit-25 and award in Land Acquisition Case No. 269 of 1988 which pertains to the land acquired under notification published in the Gazette dated 20/12/1985 which award is at Exhibit-27, on the ground that the lands which are subject matter of those awards are not similar to and comparable with the acquired land of the present case. The learned reference Court has further discarded the valuation report of A.W.2 because of belated inspection of the land and preparation of the valuation report. All the above material has been rightly rejected for valid reasons given by the reference Court and neither the applicants have challenged the said findings nor| there is any scope for challenge.

12. It not denied by the respondent No. 2 that award dated 03/05/1991 passed in L.A.C. No. 116 of 1989 could be conveniently used to assess the market value of acquired land in the present case. The notification u/s 4(1) of the Act in respect of the acquired land of said L.A.C. No. 116 of 1989 was the same that is published in the Official Gazette dated 05/10/1987 and the land was acquired for the same purpose that is for setting up industrial estate at Verna Plateau. The area of the acquired land in the said L.A.C. No. 116 of 1989 was only 3500 square metres and the learned District Judge had awarded Rs. 79/-per square metre as compensation. In the First Appeal No. 138/2008, a Division Bench of this Court while deciding about the acquired land which was subject matter of Land Acquisition Case No. 73 of 2000, which was also acquired for the same purpose and under the same notification, has held that the appropriate compensation is Rs. 36/- per square metre. In the said First Appeal, the learned Division Bench has taken into account the said judgment of the District Court in L.A.C. No. 116 of 1989. In the case of The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, , the Apex Court has held that if the increase in market value in urban or semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. The Apex Court has observed that this rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices, Relying upon the said judgment of the Apex Court, the learned Division Bench in the said First Appeal No. 138/2008 held that the escalation should be 7% per annum. In the present case, the learned Reference Court has given escalation of 10% per annum. The acquired land, being situated in rural area, the escalation could not have been more than 7.5% per annum. By giving escalation of 7% per annum, the rate of Rs. 79/- per square metre would become Rs. 90/- per square metre. In First Appeal No. 138 of 2008, the learned Division Bench of this Court, on account of largeness of acquired land of L.A.C. No. 73 of 2000 as compared to the land of L.A.C. No. 116 of 1989 and closeness of this land to Margao City and its nearness to the market place and banks etc. in Nagoa Village, held that the aggregate deduction of 60% was just and proper.

Deducting 60% from the amount of Rs. 90/- per square metre, the compensation was worked out at Rs. 36/- per square metre. In my considered view, in the present case also the deduction of 60% will have to be made instead of only 50% made by the reference Court and escalation of 7% per annum should be given instead of 10% per annum on compounding basis. While making deduction of 50%, the learned reference Court had taken into account only one factor namely that there were stone quarries in the acquired land which will need filling up to make the land fit for construction purpose and while giving escalation of 10% on compounding basis, did not take into account the fact that the acquired land was situated in rural area. Thus, the appropriate market value of the acquired land admeasuring 9025 square metres, from survey Nos. 87/7 and 95/2 of Quellossim village should be Rs. 36/- per square metre.

13. I am not inclined to accept the contention of learned counsel for the respondent No. 2 that the value of acquired land of the present case should be less than Rs. 36/- per square metre. It is seen from the judgment of the learned Division Bench in First Appeal No. 138 of 1998 that the acquired land of the Land Acquisition Case No. 73/2000 is similar in nature to the acquired land of the present case, in the sense that both were earmarked as Export Promotion Zone and there were stone quarries and blasting depressions. However, it is true that the acquired land of Land Acquisition Case No. 73 of 2000 had the advantage of road frontage to the extent of 350 metres and the acquired land of L.A.C. 116/89 was also abutting the Highway. It is true that the learned reference Court has wrongly held that the acquired land in the present case is abutting the National Highway. In fact, the same is about 900 metres away from the National Highway. There was, however, road available to the acquired land to approach the said National Highway. Be that as it may, the acquired land of L.A.C. No. 73 of 2000 and that of L.A.C. 116/89 had a disadvantage to the effect that some of the land was coming in the road widening area which disadvantage was not there in respect of the acquired land of the present case. Secondly, the acquired land of L.A.C. No. 73 of 2000 for which the compensation of Rs. 36/- per square metre was awarded had an area of 26,172 square metres which is about seven times more than the area of the acquired land of L.A.C. No. 116 of 1989. In so far as the acquired land of the present case is concerned which has area of 9025 square metres, the same is only three times more than the land concerned in Land Acquisition Case No. 116 of 1989. In the circumstances above, the question of making further deduction in the rate of Rs. 36/- per square metre does not arise.

14. In First Appeal No. 145/2006, though the acquired land was situated in Quellossim village, however, it was not rocky and did not have stone quarries and blasting depressions, It was levelled land and having rubble wall and structure. The acquired land which was subject matter of First Appeal No. 318/2003, was situated at Cortalim and not at Quellossim village. It was bharad land not having any stone quarries, etc. I am not inclined to consider the said judgments relied upon by the learned counsel for legal representatives of the applicant. in view of

the discussion supra.

15. In the result, the impugned Judgment and Award requires to be modified so as to reduce the market rate from Rs. 49/- per square metre to Rs. 36/- per square metre, as the same is found to be just and proper. In the result, the appeal is partly allowed.

(a) The impugned judgment and award stands modified with regard to the rate of compensation fixed. The rate of compensation in respect of the acquired land admeasuring 7900 square metres from survey No. 95/2 and 1125 square metres from survey No. 87/7, both from Quelossim village of Mormugao Taluka is fixed at Rs. 36/- per square metre. The remaining part of the impugned award granting statutory benefits and costs, etc. is upheld.

(b) The Appeal stands disposed of accordingly with no order as to costs.

(c) Decree to be drawn accordingly.