

(2009) 04 BOM CK 0043

In the Bombay High Court

Case No : First Appeal No. 33 of 2000 and Cross Objection No. 4 of 2000

Dy. Collector and Land Acquisition Officer and Executive Engineer, Works Division VI (R and B), Public Works Department

APPELLANT

Vs

Shri Aureliano Mendes
 Shri Aureliano Mendes through his duly constituted attorney Shri Efigenio Dias Vs Dy. Collector and Land Acquisition Officer and Executive Engineer, Works Division VI (R and B), Public Works Department

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2009) 111 BOMLR 2018

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : G. Shirodkar, Government in First Appeal No. 33/2000 and G. Teles, in Cross Objection No. 4/2000, for the Appellant; G. Teles in First Appeal No. 33/2000 and G. Shirodkar, Government Advocate in Cross Objection No. 4/2000, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—The appellants have filed the above appeal, challenging the Award dated 19.7.99 passed by the IInd Addl. District Judge, South Goa, Margao in Land Acquisition Case No. 266/92, partly allowing the reference u/s 18 of the Land Acquisition Act ("the Act" for short).

2. The State of Goa issued Notification u/s 4 of the Act acquiring land for the public purpose viz. construction of a road from Cavelossim Church to Assolna ferry point. The said notification was published in the Official Gazette on 29.11.1983. Land admeasuring 290 sq. metres bearing Survey No. 59/4(part) of Village Cavelossim belonging to the respondent was part of the acquired land. The Land Acquisition Officer passed the Award dated 24.4.1989 and granted compensation at the rate of Rs. 10/- per sq. metre. Aggrieved by the said award,

the respondent sought reference u/s 18 of the Act and claimed Rs. 100/- per sq. metre.

3. In the Land Acquisition Case No. 266/92, the respondent examined his brother Efigenio Dias (AW.1) as his constituted attorney who produced two sale deeds dated 25.3.1974 by which the respondent and Efigeneio had purchased two plots admeasuring 447 sq. metres and 551 sq. metres at the rate of Rs. 23/- per sq. metre. The respondent also examined Mr. Vincent Afonso (AW.2) as an expert. On behalf of the appellants, Armogas Fernandes (RW.1) who was working as Assistant Engineer in P.W.D. was examined. The reference Court, upon appreciation of the evidence, oral and documentary, enhanced the compensation from Rs. 10/- to Rs. 48/- per sq. metre. Aggrieved by the said award, the appellants have filed the appeal; whereas, aggrieved by inadequacy of the compensation granted, the respondent has filed cross objection, claiming Rs. 100/- per sq. metre.

4. Shri Shirodkar, learned Government Advocate appearing on behalf of the appellants submitted that the reasons given by the reference Court for enhancing the compensation are absolutely untenable in law. He further submitted that the acquired land had neither building potential, nor the same could have been put to commercial use and, therefore, the reference Court ought not to have granted 10 % yearly increase. He further submitted that the compensation granted by the Land Acquisition Officer was just and proper. He submitted that the reference Court has enhanced the compensation without any cogent evidence having been led by the respondent in support of his claim for enhancement of compensation. He, therefore, submitted that the impugned award be set aside.

5. Per contra, Mr. Teles, learned Counsel for the respondent submitted that the compensation granted is inadequate and having regard to the evidence led by the parties, the reference Court ought to have granted compensation at the rate of Rs. 100/- per sq. metre.

6. I have considered the submissions made by the learned Counsel for the parties and perused the record.

7. In view of the rival submissions, the following point arises for determination:

Whether the compensation granted by the reference Court in respect of the acquired land at the rate of Rs. 48/- per sq. metre is just and proper ? If not, what is the compensation the respondent is entitled to

8. The reference Court for the purpose of fixing the market rate of the acquired land primarily relied upon two sale deeds dated 25.3.1974 by which the respondent and his brother Efigenio had purchased two plots of land admeasuring 447 and 551 sq. metres respectively. The reference Court held that since the acquisition was in respect of the very same land, the prices mentioned in the sale deeds could be safely taken as the basis for fixing the market rate of the acquired land. T5he reference Court held that the land belonging to Efigenio

was accessible by motorable road and had better potential as compared to the acquired land in the case. Moreover, the land belonging to the brother of the respondent was closer to Church and market and, therefore, the reference Court deducted 10 % from the market rate and arrived at the figure of Rs. 20/- per sq. metre. Thereafter, the reference Court considered 10 % yearly increase in the price of land and arrived at a figure of Rs. 48/- per sq. metre as on the date of publication of Section 4 Notification.

9. In my considered opinion, the approach of the reference Court cannot be faulted. It is well settled that while fixing the market rate of the acquired land, the rate at which the acquired land was purchased by the claimant can be taken as basis for fixing the market rate of the acquired land. In the instant case, the reference Court has deducted 10 % from the price at which the respondent had purchased the land, on the ground that it was away from the Church, market, etc.. This approach of the reference Court also cannot be faulted.

10. In so far as yearly increase of 10 % is concerned, I do not find any illegality having been committed by the reference Court inasmuch as the Apex Court in a catena of decisions has held that normally in land acquisition cases 10 % yearly increase has to be granted. Moreover, a judicial notice can be taken of the fact that during the period from 1974 to 1983 land prices in Goa have increased substantially.

11. Considering all the above factors, I am of the considered opinion that the compensation awarded by the reference Court cannot be said to be shockingly high so as to warrant interference in appeal. In my opinion, the reference Court has correctly appreciated the evidence, oral and documentary, led by the parties and fixed the compensation payable in respect of the acquired land. Therefore, the impugned Award is not liable to be interfered with.

12. For the reasons aforesaid, the appeal and the cross objection are dismissed. Having regard to the facts and circumstances, the parties are directed to bear their own costs.