(2010) 09 BOM CK 0114

In the Bombay High Court

Case No : First Appeal No. 75 of 2005

Dy. Collector and S.D.O. and L.A.O. and Executive Engineer APPELLANT

Vs

Dev Chandreshwar Bhutnath Devasthan, through its Attorney RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:
Land Acquisition Act, 1894 — Section 30, 4(1)

Citation : (2010) 09 BOM CK 0114

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

Bench : Single Bench

Advocate : Guru Shirodkar, Additional Government Advocate, for the Appellant; P.A. Kamat, for the Respondent

Judgement

N.A. Britto, J.—Heard Shri Shirodkar, the learned Counsel on behalf of the appellants. None present for the respondent.

2. This appeal is directed against the judgment/award of the learned Reference Court dated 26/12/2003, by which the learned Reference Court enhanced the compensation payable from Rs. 2/ - to Rs. 8/ - per square metre.

3. A perusal of the record and the judgment shows that by virtue of notification issued u/s 4(1) of the Land Acquisition Act, 1894 published on official Gazette dated 21/05/1992, the Government had acquired a total area of 40675 square metres of land, 27800 square metres from Survey Nos. 86 and 18200 square metres from Survey No. 82 of Village Mullem and 800 square metres from Survey Nos. 86 and 2975 square metres from Survey No. 85 of village Paroda, both in Quepem Taluka for the purpose of improvement and black topping of road leading to Chandreshwar temple at Paroda. It appears that there was already an existing road, which was acquired for the aforesaid stated purpose.

4. By award dated 6/12/1994, the Land Acquisition Officer awarded compensation at the rate of Rs. 2/ - per square metre, and compensation in respect of Survey No. 82 of village Mullem and Survey No. 86 of village Paroda,

was paid to the applicant (respondent, herein). There appears to have been a dispute in respect of acquired land of Survey No. 86 of village Mullem and 85 of village Paroda and, as such, reference was made u/s 30 of the said Act.

5. The applicant sought a reference and claimed compensation at the rate of Rs. 60/ - per square metre. In support of the reference, the applicant produced the sale deed dated 14/06/1991 by which a plot of land admeasuring 522.22 square metres was sold at the rate of Rs. 75/ - per square metre. This was a sub-divided plot and was sold at the rate of Rs. 75/ - per square metre. The evidence of applicant''s expert witness has been rejected by the learned Reference Court for reasons stated in para 10 of the judgment.

6. The learned Reference Court has taken a deduction of 40% towards development and further deduction of 80% on account of dissimilarities between the acquired property and the plot of the sale deed. The learned Reference Court found that the acquired land was a hilly terrain and coming in natural cover zone where there were no residential houses close by except at the starting point of the acquired land at Mullem and Paroda whereas the said plot of sale deed was located in settlement zone. The learned Reference Court also noted that the acquired land did not have electricity and water connection and, therefore, this major disadvantageous factor would warrant further deduction of at least 80% and together with other deductions worked out the compensation payable at the rate of Rs. 7/ - per square metre.

7. Shri Shirodkar, learned Counsel on behalf of the Government submits that the plot of the sale deed could not at all have been compared with the acquired land as the plot of the sale deed is in a sub-division while the acquired land was a hilly terrain., going up the hillock where Chandreshwar temple was situated. The submission of Shri Shirodkar cannot be accepted. It is well settled now that comparable sales method of valuation is the most preferred method of valuation of land. When such a method is used it is required to be proved that the sales instance is a genuine transaction and must be executed at the time proximate to the date of notification, both from time angle and situation angle. In case of dissimilarities it is always open to the Court to reduce the amount of compensation depending upon the disadvantages attached to the acquired land. That is exactly what has been done by the learned Reference Court.

8. In my view, the learned Reference Court has rightly taken note of all the disadvantages which the acquired land suffered from as compared to the plot of the sale deed and have sounded the said disadvantages by way of appropriate deductions. In fact the learned reference Court has taken a deduction of 120% i.e. 40% towards development and 80% towards other disadvantages, a deduction which the Government could hardly complain.

9. However, the only mistake which appears to have been made by the learned Reference Court is that the sale deed has been considered to be one prior to the date of notification when in fact it is soon thereafter and for that the price has

been enhanced from Rs. 7/ - to Rs. 8/ - per square metre. The sale deed was about 6 months prior to the date of the notification and considering the facts of the case, the enhancement of the compensation payable from Rs. 7/- to Rs. 8/- could not be justified.

10. In view of the above, the appeal is partly allowed and the judgment/award dated 26/12/2003 is modified in that the compensation ordered to be paid to the applicant (respondent, herein) shall be at the rate of Rs. 7/ - per square metre with all consequential benefits. Considering the facts, there will be no order as to costs.