
(2013) 03 BOM CK 0246
In the Bombay High Court
Case No : First Appeal No. 98 of 2007

Dy. Collector and S.D.O. and The Executive Engineer	APPELLANT
Vs	
Shri Kishor V. Kharangate (since deceased through L.Rs:) (Smt. Lata Kishore Kharangate, Shri Kiran Kishore Kharangate and Smt. Shweta Kiran Kharangate)	RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Citation : (2013) 5 ALLMR 177 : (2013) 5 MhLj 671

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Heard Ms. Linhares, learned Additional Government Advocate on behalf of the appellants and Mr. Lotlikar, learned Senior Counsel appearing on behalf of the respondents. This appeal has been filed by the respondents of Land Acquisition Case No. 70 of 2003 against the judgment and award dated 29/03/2006 passed by the learned Additional District Judge, south Goa, Margao ("Reference Court", for short) in the said case. The parties shall hereinafter be referred to in the manner in which they appear in the cause title of the said case.

2. Land was acquired for widening of Margao-Quepem road from Rawanfond to Paroda Skew canal in Salcete Taluka. Notification u/s 4(1) of the Land Acquisition Act, 1894 (L.A. Act) was published in the official gazette dated 17/04/1997. This included an area of 470 square metres of land from survey No. 17/3 and an area of 930 square metres of land from survey No. 16(part) from village Paroda. By award dated 19/10/2001, the Land Acquisition Officer offered the market rate for the said land at Rs. 20/- per square metre. The original applicant who claimed to be the owner of the said acquired land was not satisfied with the said offer and he filed an application u/s 18 of the L.A. Act before the Land Acquisition Officer. The Land Acquisition Officer referred the matter to the Reference Court.

3. In the Reference application, the original applicant claimed the market value

at the rate of 500/- per square metres for the acquired land. He stated that the land was non-agricultural and fit for construction and is adjacent to Margao-Quepem road. He further stated that Quepem market is hardly one Kilometre away and Margao city is 11 Kilometres away. He further stated that the Quepem Police Station, Paroda Panchayat, Primary/Secondary High School, etc. are all hardly at a distance of about 500 metres away. He also stated that there are residential houses near the acquired land and electricity and water pipe line are passing by the said of the property.

4. The original applicant examined himself as AW1 and produced the survey forms No. I and XIV of survey No. 17/3 and 16/1 as Exhibit 16-Colly.; Sale Deed dated 10/07/1998 as Exhibit 17; valuation report of Engineer Vikas Dessai, as "X" for identification; survey plan of survey Nos. 16 and 17/3 as Exhibit 18 and a letter dated 31/07/2003 addressed by him to the Deputy Collector as Exhibit 19. The applicant then examined the said Engineer Vikas Dessai as AW2 to prove the valuation report prepared by him. The same was taken on record as Exhibit 24. The applicant also examined Mr. Vallabh Poi Fondekar who is the son of the vendor of Sale Deed dated 10/07/1998. The respondents did not examine any witness.

5. Upon assessment of the entire evidence on record, the learned Reference Court found that though the acquired land was in the form of a long strip falling by the side of existing Quepem-Margao Road, however it was a part and parcel of a bigger property and even the plan produced at Exhibit 18 which is of the proposed acquisition shows that the acquired land is by the side of the earlier existing road. Learned Reference Court found that the sale deed dated 10/07/1998 was suitable for determination of the market value. He took into account the fact that the plot of the said sale deed was at a distance of 500 metres from the main road whereas the acquired land was abutting the road due to which the acquired land would fetch more value. The learned Reference Court also considered the fact that the sale deed was executed subsequent to the publication of Notification u/s 4 of L.A. Act. He found that there was no evidence to show that on account of the proposed acquisition, the price of the sale deed plot had increased. According to the Reference Court, though the acquired land was coming within the setback area of the present road, however, the FAR of the acquired land could be used for construction within the unacquired land. He took into account the facilities available to the acquired land. The Reference Court therefore fixed the market rate of the acquired land at Rs. 100/- per square metre and held that the applicant is entitled also to other statutory benefits under the L.A. Act. The respondents are aggrieved by the impugned judgment and award.

6. Learned Counsel for the respondents submitted that the Sale Deed considered by the Reference Court is post-notification transaction and therefore could not have been considered. She further submitted that the acquired land was on two sides of already existing Quepem- Margao road and therefore the area of the

land from both the survey holdings had to be considered independently which was respectively 470 square metres and 930 square metres, and thus was smaller in size as compared to the sale deed plot which was having an area of 1200 square metres. According to her, even if the said sale deed is to be considered then, the deduction made by the Reference Court is too less and that adequate deduction on account of annual escalation of the price of land, the size of the sale deed plot and the nature of the sale deed plot which was suitable for construction had to be considered. She therefore submitted that the enhancement made by the learned Reference Court is not proper, she therefore prayed that the appeal be allowed.

7. On the other hand, learned Senior Counsel, appearing on behalf of the legal representatives of the applicant submitted that the evidence on record establishes that though the acquired land was on either side of the Quepem - Margao Road, however both the acquired lands were parts of bigger properties on either side of the road. He further submitted that the said properties were falling in the settlement zone at the time of acquisition and houses were existing in survey holding No. 17/3. He submitted that the evidence on record sufficiently proves that the acquired land had the advantage of all the facilities and amenities and he further submitted that the evidence of AW3 who is the son of the vendor of the sale deed dated 10/07/1998 has gone unchallenged and the same proves that the sale deed was executed between his father and Smt. Escolante Natalina Rodrigues who was their Mundkar. He further submitted that the evidence of AW3 proves that the market value of the sale deed plot was actually Rs. 600/- per square metre but it was sold at a lesser rate, the purchaser being their Mundkar. It is submitted that the evidence on record sufficiently proves that there was no escalation in the price of the land on account of acquisition. He pointed out that the rate of the sale deed plot was Rs. 125/- per square metre and the learned Reference Court has given appropriate deduction and has fixed the market value at Rs. 100/- per square metre. He therefore urged that no interference is warranted with the impugned judgment and warrant.

8. I have gone through the entire record and proceedings in the light of arguments advanced by both the parties.

9. The point that arises for determination is as to what is the true market value of the acquired land as on the date of publication of notification u/s 4(1) of the L.A. Act.

10. AW1, who is the original applicant has specifically stated that the acquired land comes under settlement zone and that there is residential house and shed in the property bearing survey No. 17/3 and there are houses in the surrounding properties on three sides. In the cross-examination of AW1 there is nothing except denials. The Survey form No. I and XIV and survey plan of survey No. 17/3 show that there is house and other structure in the said land and there are other houses surrounding the said survey holdings on three sides. The evidence

of AW2, the expert, read with his valuation report, also reveals that the acquired land lies in settlement zone and there was residential house and a shed in the property bearing survey No. 17/3 and there were other houses in the surrounding properties towards north, east and west. The evidence on record sufficiently proves that the acquired land was served with electricity, telephone, tap water, well water, transport etc. and temple, dispensaries, high school, market, play ground, primary school, chapel, bus stops, police station were all within a range of 400-1500 metres.

11. It is true that the acquired land is strip of land from either side of the earlier existing road. But from the survey plan at Exhibit 18, it can be understood that both the acquired strips of land are part of bigger properties lying on either side of the road. In the case of *State of Goa and Another Vs. Gopal Baburao Gaudo and Others*, , the Apex Court has held that a long strip of land lying alongside and adjoining the Highway cannot be treated as land without value or without any potential for development. Hence the acquired lands on both side of the road, lying in the settlement Zone, had value and potential for development.

12. The plot of the sale deed dated 10/7/1998, which is at Exhibit 17, lies at a distance of within 500 metres from the acquired land and as per the valuation report which is at Exhibit 24 prepared by AW2, the land of the said sale deed is of similar type as compared to the acquired land. The sale deed plot admeasuring 1200 square metres was sold for Rs. 125/- per square metre. The acquired land totally admeasures 1400 square metres. Since the acquired land lies in settlement zone and the sale deed plot is not a developed plot, the same has been rightly considered by the Reference Court for determination of the market value. The road of Quepem-Margao was already existing and this land was acquired for widening of the said road. Therefore, the escalation in price of land in the locality on account of acquisition would not arise, as the position had not changed, expect the widening of already existing road. Besides the above, there is on record unchallenged testimony of AW3, the son of the vendor of the said sale deed stating that the market rate of the sale deed land was actually Rs. 600/- per square metre but since the purchaser was their mundkar, less rate was quoted.

13. The Reference Court has taken into account the fact that the sale deed was executed subsequent to the publication of Notification u/s 4(1) of the L.A. Act. He has held that there is nothing on record to show that on account of acquisition, the price of the sale deed plot had increased. He has also taken into account the fact that the plot of sale deed was at a distance of 500 metres from the main road but the acquired land was abutting the main road. The Reference Court has also considered the fact that the FAR of the acquired land could have been used for the purpose of construction within unacquired portion. The rate of Rs. 125/- per square metre, of the sale deed plot, has been reduced to Rs. 100/- per square metre, in order to bring it at par with the value of the acquired land as on the date of publication of Notification u/s 4(1) of the L.A. Act, considering

the advantages and disadvantages of the acquired land and the sale deed land.

14. In my view the market rate of the acquired land fixed by the Reference Court is just and reasonable, considering the facts and circumstances brought on record.

15. There is therefore no substance in the appeal. Hence, the appeal is dismissed. No order as to costs.