

(2010) 10 BOM CK 0069

In the Bombay High Court

Case No : First Appeal No. 205 of 2004 with Cross Objection No. 5 of 2005 and
First Appeal No. 206 of 2004 with Cross Objection No. 4 of 2005

Dy. Collector and S.D.O.

APPELLANT

Vs

Antonio I.F. Barreto and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 51, 51(A)

Citation : (2011) 6 BomCR 805

Hon'ble Judges : Reis F.M, J

Bench : Single Bench

Advocate : S. Linhares, A.G.A, for the Appellant; A.R. Kantak, for the Respondent

Final Decision : Allowed

Judgement

Reis F.M., J.—Both the above appeals and the Cross Objections are taken for final hearing together as the lands have been acquired pursuant to the same Notification bearing No. 22/109/95-RD, dated 6th February, 1996. The parties shall be referred to in the manner as they so appeared in the cause title of the impugned judgment.

2. The facts in First Appeal No. 205 of 2004 and Cross Objection No. 5 of 2005.

A portion of the property belonging to the applicants was sought to be acquired pursuant to a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"), dated 6th February, 1996 published in the Official Gazette dated 22nd February, 1996 for the purpose of improvement and black topping of the road at Cotombi. The land which was acquired was admeasuring 25 square meters from the Survey No. 38/24 of Avedem Village, Quepem Taluka. By an award dated 24th April, 1997 passed by the Land Acquisition Officer, the compensation was fixed for the land acquired at the rate of Rs. 38/- per square metre in respect of the land which was classified as settlement zone and Rs. 25/-

per square metre was awarded in respect of the land classified as orchard/cultivable zone. The land involved in the present acquisition was classified as orchard/cultivable zone, and the amount offered was at the rate of Rs. 25/- per square metre. Being dissatisfied with the said amount, the applicants sought a reference u/s 18 of the said Act for enhancement of the compensation and claimed an amount of Rs. 200/- per square metre for the acquired land. By the judgment and award dated 31st March, 2004, the Reference Court has fixed the market value for the land acquired at the rate of Rs. 68/- per square metre.

3. Being aggrieved by the said judgment and award, the respondents filed the present appeal. The applicants filed the cross objection challenging the fixing of the price at the rate of Rs. 68/- per square metre and sought for an enhancement in the said amount.

4. The facts in First Appeal No. 206 of 2004 with Cross Objection No. 4 of 2005.

The land of the applicants was sought to be acquired pursuant to a notification published in the Official Gazette dated 22nd February, 1996 for the purpose of improvement and black topping of the road at Cotombi, admeasuring an area of 930 square meters of the property surveyed under Survey No. 45/1 of Village Avedem. By an award dated 22nd April, 1997, the compensation was fixed for the land acquired at the rate of Rs. 25/- per square metre as the said land was classified as orchard/cultivable zone. Being dissatisfied with the said amount, the applicants sought a reference u/s 18 of the said Act for enhancement of the compensation and claimed an amount of Rs. 200/- per square metre. By judgment and award dated 31st March, 2004 the Reference Court has fixed the compensation for the land acquired at the rate of Rs. 68/- per square metre.

5. Being aggrieved by the said judgment and award, the respondents filed the present appeal. The applicants filed the cross objection challenging the fixing of the price at the rate of Rs. 68/- per square metre and sought for an enhancement in the said amount.

6. Submissions and consideration of both the appeals:

The learned Counsel for the respondents has assailed the impugned judgment and submitted that the Reference Court has misdirected itself in fixing the compensation at the rate of Rs. 68/- per square metre. The learned Counsel pointed out that the applicant has failed to establish that the price offered by the Land Acquisition Officer was inadequate. The learned Counsel took me through the evidence on record and pointed out that the sale instances relied upon by the Reference Court are not comparable with the land acquired. She further submitted that there is no evidence on record adduced by the applicants to substantiate that the market value of the acquired land was at the rate of Rs. 68/- per square metre as on the date of section 4 notification.

7. Mr. A.R. Kantak, the learned Counsel appearing for the applicants has submitted that the price fixed by the Reference Court is totally inadequate

considering the evidence on record. He submitted that the Reference Court has misdirected itself in coming to the conclusion that the land acquired was not adjoining the road as according to him the purpose for acquisition itself suggest that the land was acquired for the purpose of improvement and black topping of the road at Cotombi. He submitted that the purpose for which the land has been acquired itself suggest that the land acquired belonging to the applicants was adjoining the existing road. The learned Counsel further submitted that there was appreciable evidence on record for the Reference Court to come to the conclusion that the market value of the acquired land was minimum amount of Rs. 150/- per square metre. The learned Counsel further took me through the evidence on record as well as the impugned judgment and submitted that the Reference Court has relied upon sale-deeds produced by the applicants and has come to the conclusion that the market value reflected from the said sale instances was ranging from Rs. 109/- to Rs. 162/- per square metre as on the date of section 4 notification and while determining the amount, the Reference Court has taken the base value of the land only at the rate of Rs. 110/ - per square metre without giving any reason as to why the sale-deed of Rs. 162/- per square metre was not considered for the purpose of fixing the market value. The learned Counsel further submitted that when different sale-deeds are produced for the purpose of ascertaining the comparability with the acquired land, the law is well settled that either the Reference Court should choose the most proximate sale instance and effect such deduction or otherwise take an average of all the sale instances which appear to be similar to the land acquired and thereafter effect the deduction so as to fix the market value of the acquired land. The learned Counsel further submitted that the Reference Court has totally misconstrued the provisions of law which is well settled while fixing the market value under the provisions of section 23 of the said Act and as such came to the erroneous conclusion that the market value is at the rate of Rs. 68/- per square metre. He as such submitted that the cross objection filed by the applicants deserves to be allowed and the market value of the land acquired be fixed at the minimum amount of Rs. 150/ - per square metre as on the date of section 4 notification. The learned Counsel for the applicants submitted that in case this Court is inclined to remand the matter back for deciding the reference afresh, the applicants be permitted to produce an award dated 13th March, 1995 passed by the Land Acquisition Officer in Land Acquisition Case No. LQN/DC-Q/5-94.

8. Having heard the learned Counsel for the appellants and respondents and on perusal of the records, the following point for determination arise in the present Appeals and cross objections:

POINT FOR DETERMINATION

Whether the Reference Court was justified to fix the market value of the acquired land belonging to the applicants at the rate of Rs. 68/- per square metre ?

9. For the purpose of claiming the enhancement of the compensation offered by the Land Acquisition Officer, the applicants have produced a sale-deed dated

23rd December, 1993 which is at Exhibit 19 between Vikram Gauns Dessai and others and Aura Pereira Fernandes. The said sale-deed plot admeasures an area of 824 square metres and the price fixed therein is Rs. 91/- per square metre. The evidence adduced by the applicants discloses that the said sale-deed plot is at a distance of about 700 metres from the acquired land and that the nature of the said deed plot is similar to that of the acquired land. On perusal of the sale-deed, it appears that the sale instance is a developed plot and the land was subdivided. The intrinsic evidence does not demonstrate that any Conversion was effected by the vendors. The next sale instance relied upon by the applicants is a sale-deed dated 24th August, 1994 which is at Exhibit 20 wherein a plot of 307 square metres was sold at the rate of Rs. 100/- per square metre. The son of vendor AW3 has also been examined to establish the genuineness of the said sale instance. The evidence further discloses that the sale instance plot is at a distance of 150 metres from Avedem-Cotombi road and that it is in the close vicinity of the acquired land. The sale instance at Exhibit 21 is dated 17th April, 1995 wherein a portion of the property admeasuring 1138 square metres was sold at the rate of Rs. 150/- per square metre. The plot in the said sale instance is at a distance of 500 metres from the acquired land. Another sale instances at Exhibit 22 is dated 27th September, 1995, and at Exhibit 23 is dated 23rd August, 1996 wherein the plots have been sold at the rate of Rs. 200/- per square metre and the said plots are stated to be at a distance of about 600 metres away from the acquired land. The plots appear to be developed plots. Another sale instance produced is at Exhibit 24 which is dated 7th April, 1994 wherein a plot of land admeasuring 425 square metres was sold in the year 1994 at the rate of Rs. 150/- per square metre. The said land is at a distance of 500 metres from the acquired land. The Reference Court whilst appreciating the evidence on record has come to the conclusion that the genuineness of the said sale instance has not been doubted and the acquired land is comparable to the sale instances and as such can form the basis for determining the market value subject to ascertaining the merits and demerits of the acquired land vis a-vis the said sale instances.

10. The Apex Court in the judgment reported in Lal Chand Vs. Union of India (UOI) and Another, , has held at paras 70, 71, 74 and 75 thus:

70. The evidence to reject an exemplar sale-deed as not relevant, may be either extrinsic or intrinsic. The Statement of a witness describing the advantageous or disadvantageous features of the land which is the subject-matter of such document will be extrinsic evidence. An absurdly low or high freakish value when compared to the prevailing price disclosed by other contemporaneous transactions may also be an extrinsic evidence. Where the sale-deed recites the financial difficulties of the vendor and the urgent need to find money as reasons for the sale, that will be an intrinsic evidence of a distress sale.

71. Therefore, though a certified copy of a sale-deed may be received in evidence and exhibited even without examining the vendor and vendee, and

accepted as proof of the transaction to which it relates, the Courts have the discretion to rely upon it or reject it as unreliable or unacceptable for reasons to be recorded. But a word of caution. What Narasaiah and Cement Corpn. Of India clarified was that a certified copy of a sale-deed could be marked as an exhibit and its contents may be relied upon as evidence of the sale transaction, even without examining either the vendor or the vendee, in view of the enabling provision in section 51 of the LA Act.

74. There would be lesser likelihood of rejection of a sale-deed exhibited to prove the market value, if some witness speaks about the property which is the subject matter of the exemplar sale-deed and explains its situation, potential, as also about the similarities or dissimilarities with the acquired land. The distance between the two properties, the nature and situation of the property, proximity to the village or a road and several other factors may all be relevant in determining the market value.

75. Mere production of some exemplar deeds without "connecting" the subject matter of the instrument, to the acquired lands will be of little assistance in determining the market value section 51-A of the LA Act only exempts the production of the original sale-deed and examination of the vendor or vendee.

11. In the present case, I find that the Reference Court ought to have considered the comparability of the sale instances vis-a-vis of the acquired land in the light of the principles as enunciated by the Apex Court in the said judgment. The Reference Court has not considered such comparability for the purpose of determining the market value of the acquired land. The purpose for which the land has been acquired itself suggest that the acquired land was adjoining the existing road and as such the question of effecting any deduction on the ground that the acquired land was not adjoining the main road would not arise.

12. The Reference Court whilst determining the market value of the land has found that the sale-deeds produced by the applicants suggest that the price prevailing at the relevant time is between Rs. 109/- to Rs. 162/- per square metre. The Reference Court has not found on the basis of material on record as to which sale instance is more comparable to the land acquired for the purpose of effecting necessary escalation and/or deduction to work out the market value of the acquired land. The Apex Court in the judgment reported in M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, has held at paras 14, 16, 17, 21 and 22 thus :

14. This point relates to making the choice of sales when market value of the acquired land has to be determined by "Comparable Sales Method". If a land sold under a sale-deed is comparable with the acquired land, then the Courts will have, ordinarily, recourse to "Comparable Sales Method of valuation" to determine the market value of the acquired land, cannot be doubted. What is done under the "Comparable Sales Method" of valuation of land is to find out the price fetched for sale of land under the sale-deed claimed to be comparable sale

and take that price as that which the acquired land would have fetched, if its sale had been effected in the open market and determine the market value of the acquired land accordingly. The "Comparable Sales Method of Valuation" of land is preferred to other known methods of valuation of land since the variety of factors appertaining to the land, which require adjustment by the Court (valuer) in determining the market value of the acquired land, would be the least. Where, however, certain factors appertaining to the land in a comparable sale have to be adjusted, it is done by varying the price of the land covered by the sale, i.e., by adding certain amount to the price fetched for the land sold or by deducting a certain amount in such price, depending on the nature of the factor concerned being a plus factor or a minus factor. Whatever it be, the genuineness or authenticity of the sale is a factor which permits no adjustment in price.

16. If the comparable sales or previous awards are more than one, whether the average price fetched by all the comparable sales should form the "price basis" for determination of the market value of the acquired land or the price fetched by the nearest or closest of the comparable sales should alone form the "price basis" for determination of the market value of the acquired land, being the real point requiring our consideration here, we shall deal with it. When several sale-deeds or previous awards are produced in Court as evidence of comparable sales, Court has to necessarily examine every sale or award to find out as to what is the land which is the subject of sale or award and as to what is the price fetched by its sale or by the award made therefore.

17.....The position cannot be different if the comparable sales or awards when relate to different lands. Therefore, when there are several comparable sales or awards pertaining to different lands, what is required of the Court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land the market value of which it has to determine, and to take the price of land of such sale or award as the basis for determining the market value of the land under consideration.

21. The determination of market value of the acquired plots of lands made by the High Court on average price basis, therefore, is incorrect, in that, it overlooks the important principle of valuation that the market value of the acquired land when is determined by adoption of the "Comparable Sales Method" the same has to be done with reference to the price fetched in a sale or market value given in an award, as the case may be, of a land which is closest or nearest to the acquired land and not with reference to average price fetched by several comparable sale-deeds or awards, of different types of lands.

22.....This situation, should have, in the normal course, led us to make an order setting aside the judgments under appeals and remitting the cases to the High Court for their fresh disposal by application of the appropriate principles of valuation relating to valuation of dissimilar plots of lands, although such plots adjoining each other were acquired pursuant to a common preliminary notification and for a common purpose. But the period of 32 years during which

the parties are in litigation has made us feel that we should ourselves decide the matter finally and save the parties from the agony of further litigation.

13. Different criteria and norms are required to be adopted for the purpose of determining the market value of the acquired land. A holistic view is required to be taken and the Reference Court will have to ascertain the positive and negative factors as has been laid down by the Apex Court. No Single factor would be decisive for the purpose of arriving at the market value of the land. The determination of the market value depends upon a large number of factors and the circumstances of each case are different. Potentiality for development and nature of land whether agricultural or homestead are some of the aspects which will have to be ascertained.

14. From the impugned judgment and award passed by the Reference Court, I find that the Reference Court has not done the exercise in the manner as is well established and enunciated herein above. The Reference Court after considering the sale instances produced by the applicants and finding that the price fixed therein ranges from Rs. 109/- to Rs. 162/- per square metre has chosen to fix the compensation on the assumption that the market value of the land in the vicinity is Rs. 110/- per square metre and effected deductions thereon without giving any adequate reason as to why the other sale instances were not considered and in fact as stated above one of the basis of the Reference Court for effecting deduction is not borne out from the records of the case. As such in the interest of justice, I find that the Reference Court shall have to decide the reference afresh in the light of the observations made herein above to determine the market value of the acquired land of the applicants. The learned Additional Government Advocate was as such justified to contend that the Reference Court has not given adequate reason for the purpose of determining the market value of the acquired land at the rate of Rs. 68/- per square metre. As far as the cross objections are concerned, for the reasons stated herein above, the learned Counsel appearing for the applicants as such is justified to contend that no adequate reason has been given as to why the Reference Court has arrived at the market value of the land on the assumption that the price prevailing in the vicinity of the acquired land is at the rate of Rs. 110/- per square metre when some of the sale instances produced by the respondents suggest that the market value was even ranging to the extent of Rs. 162/- per square metre. In view of the above, I find that the matter deserves to be remanded for deciding the reference afresh in the light of the observations made herein above. The applicants can also be permitted to produce the award dated 13th March, 1995 as no prejudice shall be caused to the respondents.

15. In view of the above, I pass the following :

(i) Both the Appeals and cross objections are partly allowed.

(ii) The impugned judgments and awards in both the appeals dated 31st March, 2004 are quashed and set aside.

(iii) The Land Acquisition Case Nos. 17/2001 and 21/2001 are restored to the file of the Reference Court.

(iv) The applicants shall be at liberty to produce on record the award dated 13th March, 1995 passed by the Land Acquisition Officer in the Land Acquisition Case No. LQN/DC-Q/5-94 in accordance with law.

(v) The Reference Court is directed to decide the said two references filed by the applicants afresh after hearing both the parties in accordance with law on or before 31st December, 2010.

(vi) Both the appeals and cross objections are disposed of accordingly with no orders as to costs. The parties are directed to appear before the Reference Court on 16th October, 2010 at 10.00 a.m., and abide with further direction of the Reference Court.