(2010) 10 BOM CK 0258

In the Bombay High Court

Case No : First Appeal No. 65 of 2005

Dy. Collector (S.D.O.) Sub-Divisional Officer and The Executive Engineer, P.W.D.(II) (R and B)	APPELLANT
Vs	
Fatima Flora Fermine Fortes e Gomes, Legal heir of late Andre Avelino Gomes	RESPONDENT

Date of Decision : 06-10-2010

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

Citation : (2010) 10 BOM CK 0258

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

Bench : Single Bench

Advocate : G. Shirodkar, Additional Government Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard Shri G. Shirodkar, learned Additional Government Advocate on behalf of the Appellants. The Respondent has chosen to remain absent.

2. This appeal is directed against judgment dated 16-11-2004 of the learned reference Court, Margao, by which compensation payable has been enhanced from Rs. 7/-to Rs. 79.86 per sq. meter.

3. Some facts are required to be stated to dispose of the present appeal.

4. By notification issued u/s 4(1) of the Land Acquisition Act, 1894, and published on Gazette dated 31-5-1991, the Government acquired various lands for the purpose of construction of a road from Arcaband to Murida Pequeno linking Duncolim and Seraulim in the villages of Nuvem and Seraulim.

5. This case pertains to applicant''s land admeasuring 450 sq. meters from survey No. 136/3 and 175 sq. meters from 136/6 situated in Murida Pequeno. Both were adjacent to one another.

6. By award dated 23-8-1994, the L.A.O. awarded compensation of Rs. 7/-per

sq. meter in respect of 175 sq. meters of survey No. 136/6 and Rs. 2/-per sq. meters in respect of 450 sq. meters of survey No. 136/3. No enhancement has been granted to the applicant in respect of 175 sq. meters of survey No. 136/6 as the learned reference Court has come to the conclusion that it was a nullah of a width of about 2 meters which was entirely acquired by the Government.

7. The applicant had examined herself and also two experts and had produced a number of sale deeds from the very village Nuvem as well as the adjoining villages. The learned reference Court referring to survey No. 136/3 came to the conclusion that the survey No. 136/3 was not bound by any road on any of its sides, and this inspite of the fact that the applicant had stated that there was an approach road to both the survey numbers running from north to south at the time of acquisition, a road which otherwise can be seen from the plan of acquisition, as well as the plan prepared by the applicant''s engineer at Exh.27. Nevertheless, the learned reference Court proceeded to choose sale deed-Exh.20 dated 7-6-1988 because in the opinion of the learned reference Court that was a sale deed in respect of a plot which had no access.

8. Shri G. Shirodkar, learned Additional Government Advocate has submitted that the plot of sale deed-Exh.20 dated 7-6-1988 had an access. This learned Additional Government Advocate points out referring to the applicant''s admission in cross-examination wherein the applicant admitted that in Exh.20 there was a house which was constructed and which had an access. If, the sale plot of Exh.20 had a motorable access as admitted by the applicant so did the applicant''s property also had an access from north to south, as already stated.

9. Shri Shirodkar, learned Additional Government Advocate next submits that the applicant''s property had a mundkarial house. Applicant''s property has been shown at Exh.27 where one house can be seen but otherwise it is a vast property which certainly could be developed for the construction of houses, and more so when it was located in village Nuvem surrounding which land was much in demand. The existence of the said solitary mundkarial house cannot be said to be a disadvantage for a further deduction to be made to the compensation awarded by the learned trial Court.

10. From the impugned award of the learned reference Court, it can be seen that the applicant had produced several sale deeds, namely Exh.17, dated 3-10-1988 by which 429.30 sq. meters were sold at the rate of Rs. 150/-in Nuvem village, Exh.18 dated 25-2-1989 by which another plot admeasuring 488 sq. meters was sold at the rate of Rs. 204/-per sq. meter, Exh.19-sale deed dated 4-12-1990 by which another plot in Nuvem village admeasuring 525 sq. meters was sold at the rate of Rs. 152/-per sq. meter which was accessible from the National Highway, Exh.20-sale deed dated 7-6-1988 by which a land in Utorda village admeasuring 7075 sq. meters was sold at the rate of Rs. 150/-per sq. meter, Exh.21-sale deed dated 1-12-1988 by which a plot admeasuring 300 sq. meters also situated at Utorda was sold at the rate of Rs. 150/-per sq. meter, Exh.22-sale deed dated 17-6-1991 of a plot admeasuring 789 sq. meters situated in Majorda was sold at

the rate of Rs. 301/-.

11. The learned reference Court after referring to the said sale deeds came to the conclusion that the sale deed dated 7-6-1988 was similar and comparable to the acquired land. Although the learned reference Court proceeded on the basis that the acquired land was not connected by a road, the fact remains that the acquired property was well connected by the road and so also the plot of sale deed-Exh.20. The learned reference Court thereafter proceeded to take a deduction of 50% as the acquired land was not a developed plot, and took another deduction of 20% because it had a nullah on the southern side and in all, the learned reference Court took a deduction of 70% in arriving at the value of Rs. 60/-per sq. meter; thereafter considering that Exh.20 was of the year 1988, the learned reference Court gave appreciation at the rate of 10% and fixed compensation payable at Rs. 79.86 per sq. meter. In other words, the learned reference Court has worked out the compensation payable after taking a deduction of 70% and fixed the compensation payable and in such a situation there was nothing left for the Government to complain about.

12. There is no doubt that a strip of land of the applicant''s property was acquired and the learned reference Court after taking note of the decision in the case of State of West Bengal Vs. Bibhuti Bhusan Chatterjee and Others, concluded that when a strip of land is acquired, it should be valued as part of the applicant''s plot. Now, the Apex Court in State of Goa and Anr. v. Gopal Baburao Gaudo and Ors. 2009 DGLS 1160 has observed that when a long strip of land measuring more than two-third of an acre lying alongside and adjoining the highway is acquired it cannot be treated as a land without value or without any potential for development, merely on the ground that the law relating to highways prohibited construction on either side of the highway, upto a depth of 40 meters from the centre of the highway.

13. Be that as it may, in my view, the learned reference Court has proceeded to award compensation to applicant''s undeveloped land on the basis of a developed plot, by taking a deduction of 70%, which was situated in the same village. No fault can be found with the learned reference Court in considering the said strip acquired by the Government and valuing the same as part of the entire property after taking appropriate deductions. In fact, it appears that the learned reference Court took a deduction on a higher side, considering that the applicant''s property was not accessible, but the applicant has made no grievance about the same. The Respondents(Appellants, herein) can have none to make. The learned reference Court has correctly followed the principles and arrived at the compensation payable to the Respondents/Applicants.

14. In the circumstances, therefore, I find there is no merit in this appeal, and consequently the same is hereby dismissed.