
(2015) 02 BOM CK 0149
In the Bombay High Court
Case No : First Appeal No. 109 of 2010

Executive Engineer Works Division VII (NH)	APPELLANT
Vs	
Ravindra S. Kenkre and Others	RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 4 (1), 4(1)

Citation : (2015) 6 ALLMR 208 : (2015) 3 BomCR 630

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

Bench : Single Bench

Advocate : S. Mordekar, Additional Government Advocate, for the Appellant;
R.G. Ramani, Advocates for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.

1. Heard Ms. Mordekar, learned Additional Government Advocate for the appellant and Mr. Ramani, learned counsel for the respondent.
2. By this appeal, the judgment and award dated 30/03/2010 passed by the learned Ad-hoc District Judge, FTC, Panaji in Land Acquisition Case No. 10 of 2009, has been challenged. The appellant was the respondent in the said case whereas respondent was the applicant. Parties shall hereinafter be referred to as per their status in the said case.
3. Vide notification issued under Section 4(1) of the Land Acquisition Act, 1894 (L.A. Act, for short) and published in the Official Gazette dated 12/11/2002, land was acquired from eight different villages for Ribandar bypass from kilometers 143.00 to 153.200 kilometres on National highway 4-A. This included an area of 290 square metres of land from Chalta no. 24 (Part) of P.T. Sheet no. 22 of Panaji city and an area of 450 square metres from Chalta no. 25 (Part) of same P.T. Sheet no. 22 of Panaji city. By award dated 16/02/2008, the Land Acquisition Officer (L. A. O., for short) awarded compensation at the rate of Rs. 150/- per

square metre to the acquired land. Not being satisfied with the compensation offered by the L. A. O., the applicant filed application under Section 18 of the L.A. Act before the L. A. O. which gave rise to the said Land Acquisition Case No. 10 of 2009.

4. In the said reference application, the applicant stated that the acquired land is close to Panaji-Old Goa road which is part of the national highway. He stated that Kadamba bus stand, petrol pump and school are close to the acquired land and there were residential houses including bungalows in the vicinity of the acquired land, at the time of publication of notification under Section 4 of the L. A., Act. The applicant further stated that the facilities of electricity and water supply were available in the acquired land and that the acquired land was sub-divided plot falling under settlement zone. The applicant thus claimed that the market value of the acquired land was Rs. 5,000/- per square metre. The applicant had also claimed compensation of Rs. 10,000/- for a tree that was situated in the acquired land.

5. Accordingly, the issue was framed as per the claim of the applicant. The applicant examined himself as AW-1. He produced a will dated 25/06/1997 as exhibit 9, Survey Form B in respect of Chalta nos. 19 to 25 of P.T. Sheet no. 22 of Panaji city as exhibit 10, a sale deed dated 26/08/2002 as exhibit 11, another sale deed dated 26/08/2002 as exhibit 12 and third sale deed dated 25/09/2002 as exhibit 13. The applicant then examined an expert witness namely Shri. Subhashchandra Bhohe as AW-2. He produced his valuation report as exhibit 18. The respondent did not produce any evidence in defence.

6. Upon consideration of the entire material on record, the learned Reference Court found that no evidence was led by the applicant in respect of the market value of the tree. Therefore compensation awarded by the L.A.O. for the tree was maintained and the same was not enhanced. The learned Reference Court took into account the sale deed dated 25/09/2002 since the date of the same was nearest to the date of publication of Section 4 notification and it was also nearer to the acquired land as compared to the plots of the other sale deeds. Since the acquired land was a strip of land abutting a road and since it came within the road widening area, 20% deduction was made from the price of the sale deed plot and the market value of the acquired land was fixed at Rs. 580/- per square metre. All statutory benefits have also been awarded to the applicant. The applicant is satisfied with the award. However, aggrieved with the impugned judgment and award, the respondent has filed the present appeal.

7. Ms. Mordekar, learned Additional Government Advocate submitted that the acquired land was narrow strip of land and therefore did not have much value. She pointed out that the acquired land was falling within the road widening area due to which nothing could have been constructed on the same and the same did not have any building potentialities. She also urged that the plot sold by the sale deed dated 25/09/2002 was not at all a comparable sale instance. In any case according to the learned Additional Government Advocate deduction only of 20%

was too less. She therefore urged that impugned judgment and award be quashed and set aside.

8. On the other hand, Mr. Ramani, learned counsel for the developed sub-divided plots which were lying in the settlement zone. He pointed out that the sub-division of the plots was approved in the year 1986 and all facilities and amenities were available to the acquired land. He submitted that there was no question of making any deduction at all from the price of the sale deed plot. He urged that the impugned judgment and award does not warrant any interference. Therefore, he prayed that the appeal be dismissed.

9. I have gone through the entire material on record. I have considered the arguments advanced by the learned counsel for the parties.

10. The point that arises for the determination is whether the market value fixed by the learned Reference Court is not just and reasonable and the same requires to be interfered with.

11. Though the land was acquired for extension of the existing road, however the said acquired land was part of developed plots bearing Chalta nos. 24 and 25 of P.T. Sheet no. 22 of city of Panaji. In his affidavit in evidence, AW-1 has specifically stated that the acquired parcels of land were part of sub-divided plots approved in the year 1986 and abutting the then existing Panaji-Old Goa road via Chimbél. The said fact as stated by AW-1 has not been denied. Even AW-2, the expert witness, has stated in his affidavit in evidence that the acquired parcels of land are parts of sub-divided plots approved in the year 1986 and they are levelled plots having plain bharad type of land. The evidence on record establishes that the acquired land is about 2.5 kilometres away from Kadamba bus stand and Patto plaza and about 800 metres away from Ribandar Church and Shri. Sai Baba Temple. There are various projects like Milrock Complex, Balbharati High School, Souza Complex, Government Employees Colony, Navelcar Elite, Navelcar Hill City etc., which were already in existence in close proximity of the acquired land at the time of acquisition. The evidence on record proves that the acquired land was situated in Municipal area and very close to Ribandar market and Panaji city. It is true that the acquired lands were strips of land abutting the earlier existing road. But they were parts of sub-divided plots. Keeping in mind the principles laid down by the Hon'ble Supreme Court in the case of State of Goa and Another Vs. Gopal Baburao Gaudo and Others, , it cannot be said that the acquired land had no potential at all.

12. The evidence of AW-1 reveals that all the sale deeds produced on record, by him pertained to the plots from land which was sub-divided. The plot of the sale deed dated 25/09/2002 was only about 650 metres away from the acquired land and was towards Old Goa side. The date of the said sale deed is nearer to the date of publication of notification under Section 4(1) of the L.A., Act, as compared to the other sale deed produced by AW-1. The nature of land was similar to the nature of the acquired land. Hence, this sale deed was rightly

considered by the Reference Court. The said plot admeasuring 334 square metres was sold at the rate of Rs. 725/- per square metre. The acquired land in the present case is towards Panaji side and in fact is situated in the Municipal area. Since the plot of the sale deed is not a narrow strip of land and is a plot wherein construction could be made without any further requirement of land and since the acquired land is a narrow strip of land, the learned Reference Court made deduction of 20% in the price of the sale deed plot, which in my considered view, is just and reasonable. The said deduction brought down the value to Rs. 580/- pr square metre.

13. In First Appeal No. 110 of 2010 (State of Goa and another Vs. Mrs. Millicent Felicia Pinto Sa and seven others), land admeasuring 300 square metres from Chalta no. 16 of P.T. Sheet No. 16 of city of Panaji was acquired vide the same notification published under Section 4 (1) of the L.A. Act in the Official Gazette dated 12/11/2002, for the same purpose, was concerned. By judgment dated 30th January, 2015, the Reference Court had fixed the market value of the acquired land at Rs. 660/- per square metre and this Court had maintained the same. In that case also deduction of 20% was made in the price of the sale deed and it was held to be just and reasonable. In the said case, the acquired land was a levelled land however the remaining major portion of the property of the applicant was valley where no development was possible.

14. In view of the above, the impugned judgment and order cannot be termed as unreasonable. The same is in accordance with the settled principles of law based on the correct appreciation of the evidence on record. No interference with the same is called for.

15. In the result, the appeal is rejected.