(2011) 08 BOM CK 0088

In the Bombay High Court

Case No : First Appeal No. 98 of 2005

Francisco Barreto, (since deceased rep. by LR''s,) Mrs. Albertina Barreto e Pereira and Others — APPELLANT

Vs

Deputy Collector and L.A.O. and The Margao Municipal Council — RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 18, 4

Citation : (2012) 1 ALLMR 37

Hon'ble Judges : S.A. Bobde, J;F.M. Reis, J

Bench : Division Bench

Advocate : J.E. Coelho Pereira and V. Korgaonkar, for the Appellant; S.D. Padiyar, for the Respondent

Final Decision : Allowed

Judgement

F.M. Reis, J.—The above appeal challenges the judgment and award dated 4/10/2004, passed by the learned Additional District Judge, South Goa at Margao in Land Acquisition Case No. 485/1995.

2. Pursuant to a notification u/s 4 of the Land Acquisition Act, 1894, herein after referred to as "the said Act" dated 9/08/1982, the Government acquired land for parking lot at Malbhat Margao admeasuring an area of 9558 square metres from the property surveyed under No. 252 of PT sheet No. 183 and an area of 80 square metres out of the property surveyed under No. 251/1,4 & 5. By an award passed u/s 11 of the said Act, the Land Acquisition Officer offered compensation at the rate of Rs. 60/- per square metre for the land acquired. Being dissatisfied with the said amount, the Appellants preferred a reference u/s 18 of the said Act for enhancement of compensation and claimed a sum of Rs. 1,500/- per square metre for the land acquired. By judgment and award dated 4/10/2004, the learned Reference Court partly allowed the said reference and fixed the compensation for the land acquired at the rate of Rs. 75/- per square metre.

Being aggrieved by the said judgment, refusing the enhancement of compensation claimed, the Appellants/claimants preferred the present appeal.

3. Shri J.E. Coelho Pereira, the learned Senior Counsel appearing for the Appellant has assailed the impugned judgment and pointed out that the Reference Court has totally misdirected itself in fixing the compensation of a mere sum of Rs. 75/- per square metre for the land acquired. The learned Counsel further submitted that the land acquired is situated in a commercial city of Margao and, as such, had high potentiality of being used for commercial and residential purposes. The learned Counsel further submitted that the prices of land at Margao have increased tremendously and there was No. reason for the Reference Court to fix such a meagre sum of Rs. 75/- per square metre for the land acquired. The learned Counsel further submitted that even assuming the Sale Deed plot was in respect of only an area of 980 square metres, nevertheless, the same could be the basis for fixing the market value of the acquired land after giving adequate deductions on account of dissimilarities between the land acquired and the Sale Deed plot. The learned Counsel further submitted that the land in the said sale deed plot was at a distance of about 20 metres from the acquired land and was comparable to the land acquired. The learned Counsel further submitted that merely because the Sale Deed plot was having a smaller area and the land acquired was much larger by itself was not a ground to make such high deduction. The learned Counsel had further submitted that the valuer examined by the Appellant has deposed that the market value of the acquired land was much higher than the one awarded by the Reference Court. The learned Counsel, as such, submitted that the above appeal be allowed and the market value of the acquired land be enhanced to a minimum rate of at least Rs. 250/- per square metre as on the relevant date.

4. On the other hand, Shri Padiyar, the learned Counsel appearing for Respondent No. 2 has supported the impugned judgment. The learned Counsel has submitted that the Reference Court has rightly considered the evidence on record and has come to the conclusion that the market value of the acquired land as on the relevant date was Rs. 75/- per square metre. The learned Counsel further submitted that the land acquired cannot be considered to be comparable to the said Sale Instance as the records reveal that the said Sale Deed plot was a developed plot which cannot form the basis for the purpose of fixing the market value of the acquired land. The learned Counsel further submitted that on perusal of the evidence on record, the Appellants have failed to establish that they are entitled for any higher compensation as claimed by them in the above appeal. The learned Counsel has taken us through the impugned judgment as well as the evidence on record and pointed out that No. case is made out by the Appellants to establish that they are entitled for any higher compensation than the one awarded by the Reference Court. The learned Counsel, as such, submitted that the appeal deserves to be rejected.

5. Having heard the learned Counsel and on perusal of the record, the following

point for determination arises in the present appeal:

POINT FOR DETERMINATION:

Whether the Reference Court was justified to fix the compensation of the land acquired at the rate of Rs. 75/- per square metre.

6. In support of their claim for enhancement, the Appellants have examined AW1 Shri Oscar De Santa Rita Vaz, as attorney for the deceased Appellant Shri Francisco Barreto. He has produced the Sale Deed dated 19/07/1978 which was duly registered before the Sub-Registrar between Shri Venktesh Govind Kamat Azrenkar and Ors. and M/s. The Azrenkar Hotels Pvt. Ltd., wherein the price mentioned was Rs. 121.95 per square metre. He has also produced the valuation report. He has further stated that the compensation paid to the Appellant is totally insignificant and negligible considering the price prevailing in the locality. He has further stated that the land of the Appellant is located in the central commercial zone and there were residential houses in the acquired property. He has further stated that the nature of the acquired land and the sale deed plot is of a similar nature and has same facilities and is located at a distance of about 30 metres away from Margao railway station. He has further stated that according to him the market value of the land acquired is Rs. 1,500/- per square metre. In the cross-examination, he has stated that the adjoining building was constructed by the Municipality only after the land was acquired. He has further stated that there is another access towards the eastern side and that in order to proceed to the road there was a culvert in order to cross the nullah on the western side. The said nullah was two metres in width. He further stated that he is not aware who has constructed the said culvert. He has further stated that earlier there was only a literate stone culvert used as a pathway and only for plying two wheelers. He has further admitted that at the time of acquisition the access to the property of the Appellant was only through the said culvert of literate stone. He has further stated that the acquired land was undeveloped due to want of proper access, but there were several structures therein. He has further admitted that the said structures are mostly on the northern side and that some of the persons are still occupying the said residential structures. He has further admitted that there are names of 26 persons which figure in the award as persons interested. He has further stated that it may be true that the persons whose names figure in para 26 of the award are still occupying the structure and they have not been rehabilitated by the Municipal Council till date. He has further admitted that Sulab toilet was constructed at the said place since there were No. facilities to the persons residing in the said vicinity or in view of the future development. He has also admitted that the surrounding of the land or the locality is dirty and not of hygienic condition. He has also produced valuation report of Shri Krishna Prabhudessai, who has valued the land at the rate of Rs. 1,500/- per square metre. Next witness examined is Shri Neil Pereira, who is the nephew of the original claimant/Appellant who has produced the copy of the valuation report. The said witness was duly cross-examined. The next witness

examined was Shri Krishna P. Prabhu Dessai, who has confirmed his report and filed his affidavit in evidence. The said valuer has been duly cross-examined. In the cross-examination, he has admitted that he has not prepared plan or sketch showing the location of the land vis-a-vis the sale Deed plot and other amenities. He has admitted that at the time of his inspection 12 structures were occupied. He has further admitted that he had requested the typist to change the date of the report and that the report showed the earlier date itself. He has further admitted that any person residing in the property belonging to different persons under any capacity or right is an encumbrance on the said property to the extent of the said area used by the said persons. He has further admitted that earlier there were tenants in the Sale Deed plot, but at the time of inspection, construction activities were going on by demolishing the said structures.

7. The learned Judge while passing the impugned judgment found that the Sale Deed dated 19/07/1978 at Exhibit 27 was in respect of the land situated at a distance of 20 metres away from the acquired land and it was sold at the rate of Rs. 121/- per square metre. By the said Sale Deed the vendors therein sold the plot of land from the property known as "Malbata" partly occupied by a building consisting of seven compartments or shops of tenants. The learned Judge further found that the said Sale Deed plot is having roads from two sides and the area is only 984 square metres and that there were seven tenants occupying the structures located therein and that the land along with the said structures admittedly having tenants was sold pursuant to the said Sale deed. The learned Judge further found that the acquired land is more than 9000 square metres whereas the Sale Deed plot was only 984 square metres. The other dissimilarity found by the learned Judge was that the acquired land was full of dirt and that the land acquired was surrounded by nullah and was undeveloped for want of proper access. The learned Judge also found that the acquired land was not in a hygienic condition. The learned Judge further perused the valuation report and considering the evidence on record found that there was serious doubt with regard to the preparation of the said report showing the date as 20/10/1985. The learned Judge further found that the report was prepared in the month of August 2003 when it was shown to AW1 and the same was prepared after a gap of nearly 20 years and the same cannot be considered. The learned Judge has also perused the report and found that the consideration therein cannot be accepted. The learned Judge, as such, found that the Sale Deed at Exhibit 27 was only piece of evidence which could be considered for the purpose of determining the market value of the acquired land. After giving an appreciation of 10% for the period from the date of Sale Deed and the date of notification, the amount has been stated to be Rs. 150/- per square metre. On account of largeness of land and the condition of the acquired land, the learned Judge has effected a deduction of 50% due to such dissimilarity and fixed the compensation at the rate of Rs. 75/- per square metre.

8. From the overall evidence on record, we find that the Reference Court was justified to discard the valuation report for cogent reasons as stated in the

impugned judgment. Considering the material adduced by the Appellants, the only piece of evidence which would assist the Court to determine the market value of the acquired land is a sale instance at Exhibit 27. The Appellants have failed to produce any other comparable sale instance in the vicinity of the acquired land to assist the Court to fix the market value of the acquired land. By the said Sale Deed the land was sold at the rate of Rs. 121/- per square metre. The land was situated at a distance of about 20 metres from the acquired land. Considering the largeness of the acquired land which admeasures nearly ten time of the area of the said Sale Deed plot, a deduction of 15 % would be just and appropriate on account of the said dissimilarity. Apart form that, the evidence on record suggests that the acquired land was situated in an unhygienic locality and the surroundings were dirty and there were persons occupying some structures in the vicinity and the Respondent No. 2 had to resort to a rehabilitation scheme and build a sulabh toilet. As such, the deduction of 15% on such count would be just and appropriate. The other dissimilarity of the acquired land vis-a-vis the Sale Deed plot is that the acquired land does not have the motor able access. AW1 himself has admitted that there was only a footpath access by which only two wheelers could pass. Besides that there was a nullah over which there was a concrete slab. On account of such dissimilarity, a further deduction of 15% will be just and proper. The said deductions have been fixed considering the fact that the land acquired is situated in Malbhat in the commercial city of Margao where the land had potentiality to be used for construction purpose, but however, the land acquired in the present case was situated in a locality where the acquired land had the aforesaid demerits and the deductions on all such counts would have to be effected.

9. The Apex Court in the judgment reported in 2008 (17) SCC 436 in the case of CESC Limited v. Sandhya Rani Barik, has held at paras 16,20 and 21 thus:

16. The case of the Appellant was that the plot which was acquired for their use was wholly landlocked. This forms a very important factual issue which is important while determining the compensation.

20. The difference in the land acquired and the land sold might take on various aspects. One plot of land might be larger, another small, one plot of land might have a large frontage and another might have none. There might be differences in land development and location. There might be special features which have to be taken note of and reasonably considered in the matter of assessing compensation.

21. Where a very large plot of land has been acquired and the comparison is sought to be made with a comparatively smaller piece of land which has been sold or otherwise dealt with, then in that event, a percentage of the price is to be knocked off because of the largeness itself of the acquired land. Accordingly, the High Court made the deductions. The High Court also dealt with the question of land locking and held that it was a special feature which had to be taken note of.

10. Considering the said judgment of the Apex Court, we find that a deduction of 45% on account of different dissimilarities referred to above would be just and appropriate. The Reference Court was not justified to effect a deduction of 50% without specifying the deductions on account of each factor. The price in the said Sale Deed at Exhibit 27 is Rs. 121/- per square metre. The Sale Deed is of July 1978 and the Section 4 notification in the present case is of August 1982. Considering the escalation of 10% per annum as fixed by the Reference Court, the amount works out to Rs. 170/- per square metre. As such, after effecting such deduction of 45%, the amount works out to Rs. 94/- per square metre. To that extent, the impugned judgment deserves to be modified. The point for determination is answered accordingly.

11. In view of above, we pass the following order:

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgment and award dated 4/10/2004 is modified and the Appellants are held entitled for compensation at the rate of Rs. 94/- per square metre for the land acquired.

(iii) Needless to say, the Appellants would be entitled for statutory benefits in accordance with law.

(iv) The appeal stands disposed accordingly with No. order as to costs.

