
(1996) 01 BOM CK 0038
In the Bombay High Court
Case No : First Appeal No. 52 of 1988

Government of Goa

APPELLANT

Vs

Jagannath Vamon Khalap (since deceased by his L.Rs.)

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Evidence Act, 1872 — Section 3, 45, 61

Land Acquisition Act, 1894 — Section 18, 23, 24, 4(1), 54

Citation : (1996) 2 BomCR 714

Hon'ble Judges : M.S. Rane, J

Bench : Single Bench

Advocate : S.G. Dessai and S.D. Padiyar, for the Appellant; S.S. Kantak, for the Respondent

Final Decision : Allowed

Judgement

M.S. Rane, J.—This is an appeal u/s 54 of the Land Acquisition Act of 1894 (hereinafter referred to as the said Act). The appellant No. 1 is the State of Goa and appellant No. 2 are M/s. Kadamba Transport Corporation Ltd. The land which is the subject matter of this appeal was acquired by the first appellant i.e. State of Goa. The respondents herein are the Claimants whose land was acquired. In this appeal the appellants have challenged the judgment and decree of the District Court enhancing the compensation awarded by the Land Acquisition in respect of the acquired land belonging to the respondents/Claimants.

2. We will briefly advert to the factual aspects.

3. The Notification u/s 4(1) under the Land Acquisition Act is dated 19th January, 1982 which was published in the Official Gazette dated 28.1.1982 where under the land belonging to the Claimants forming part of Survey No. 355/12 admeasuring 950 sq. metres and survey No. 350(part) admeasuring 2375 sq. metres totalling 3325 sq. metres was proposed to be acquired. The Land Acquisition Officer who conducted the inquiry under the said Act by his Award dated 31st August, 1984 has awarded a sum of Rs. 10/- per sq. metre as marked

value of the land.

4. The Claimants being dissatisfied with the compensation awarded by the Land Acquisition Officer sought Reference u/s 18 of the said Act before the District Judge at Panaji. The Reference Case came to be registered as L.A. Case No. 34/1985 on the file of the District Judge. The Claimants claimed the compensation at the rate of Rs. 200/- per sq. metre in their Reference. The Reference Court by its judgement and decree dated 5th March, 1988 awarded the compensation to the Claimants at the enhanced rate of Rs. 70/- per sq. metre. As stated, the appellants have been questioning the said judgment and decree of the Reference Court awarding compensation at the enhanced rate to the Claimants in this appeal. The Claimants/respondents have also filed cross-objections in this appeal. We propose to dispose of the appeal as well as the cross-objections herein below.

5. The land in question is situated at Socorro village in Bardez Taluka. The acquisition was for the appellant No. 2 for construction of their Central Workshop. It may be stated that the appellant No. 2 is a Transport Corporation - a statutory body.

6. Before the Reference Court both the parties adduced evidence, oral as well as documentary. As far as Claimants are concerned they examined Tukaram Dattaram Sirsat, AW. 1 as a constituted Attorney of the Claimants. In his evidence he has stated the general topographical situation and location of the acquired land. He also produced documentary evidence, one Sale Deed dated 7.6.82 in respect of the plot of land in the near vicinity. A.W. 1 claimed the compensation at the rate of Rs. 250/- per sq. metre. In the cross-examination of this witness certain details with regard to the sale transaction as also such facts with regard to the potentiality of the acquired plot has been elicited. The second witness examined on behalf of the Claimants is Ghanshyam Nagarshejar as an expert witness. He has produced a report made by him in respect of the acquired plot which is Exh. AW 2/A on record. The report made by him is dated 16th April, 1987 and the learned District Judge has discarded the evidence of the said expert which as we will point out later on was the right course in the circumstances. We will elaborate this in due course. This witness has given certain topographical aspects of the acquired plot vis-a-vis the National Highway and roads in that vicinity. There is a variance in his version with regard to the distances from the National Highway and the other roads in as much as the evidence on record which will be adverted to later shows that this witness is not accurate and also not correct in these aspects.

7. The third witness examined is one Dattaprasad Kamat AW.3 who claims to be a dealer in Real Estate being a developer and builder. His evidence has also been discarded by the Reference Court. This witness has stated the value of the acquired plot in the year 1982 to be around Rs. 200/- to Rs. 250/- per sq. metre and the present market value that is when he gave his evidence would be around Rs. 350/- per sq. metre. It needs to be stated that except his bare assertion

there is nothing on record made available by this witness to substantiate the rate he has mentioned earlier.

8. On behalf of the appellants two witnesses were examined. One is Nitin Sant, RW. 1 the holder of Masters Degree in Structural Engineering of Bombay University and who was associated with the appellant No. 2 as Consultant and who had also acted as a Consultant in the development of a Central Depot of the appellant No. 2 on the acquired land. He has produced a plan in respect of the topographical situation and location of the acquired land indicating the road alignments including that of the National Highway which is on record. Further more he has also given the distances of the situation and location of the acquired plot from the National Highway No. 17. According to him the acquired plot was at a distance of 1.00 to 1.25 kms. from the Highway. He has further stated that in the year 1982 when he visited the acquired property there was no development in and around the plot of land and in the near vicinity. He has justified the compensation as awarded by the Land Acquisition Officer at the rate of Rs. 10/- per sq. metre in respect of the acquired land.

9. The second witness examined is one Gurudas Pandurang Naik RW. 2, Junior Engineer working in the office of the appellant No. 2. His evidence shows that he visited the acquired plot in the year 1983 when the construction of the Central Workshop had already commenced. He has also stated that the acquired plot is at a distance of about 1 km. from the National Highway and the plot of land was barren and undeveloped when he visited it in 1983. This witness produced a certified copy of two Sale Deeds being Exh. RW/A and Exh. RW2/B, both executed in September, 1985, where under two plots of land being the subject matter of the respective Sale Deeds were sold at the rate of Rs. 10/- per sq. metre. According to this witness the plots sold were at a distance of 200 metres from the acquired plot. There is nothing much elicited in his cross-examination.

10. From the judgment impugned in this appeal it is noticed that the Reference Court took into consideration all the Sale Deeds relied upon by the parties herein as also the evidence of the Claimant i.e. AW. 1. It is further noticed that one more piece of document was made available before the Reference Court and that is Auction Notice issued by the Panjim Planning and Development Authority, in short P.D.A. which has been marked as AW1/B. We have perused the original notice as produced which is a Xerox copy. The same is undated. It mentions the terms and conditions for auction of plots framed by the P.D.A. in respect of various types of plots. According to AW1. 1 the said Notification was issued in the year 1985 which is undisputedly post Notification.

11. On perusal of the impugned judgment it is noticed that the learned Judge has placed reliance upon the said Auction Notice Exh. AW. 1/B as also the sale instances relied upon by the Claimants as well as by the Appellants. The learned Judge as it is noticed from the Judgment has adopted a method of averaging the prices as reflected in the said Auction Notice and three Sale Deeds while fixing the compensation at the rate of Rs. 70/- per sq. metre.

12. Mr. Dessai, learned Counsel appearing for the appellants submitted that the Reference Court has considered and relied upon the evidence which was not legally admissible. In as much as he further asserts that the documentary evidence made available by and on behalf of the Claimants in the nature of Auction Notice and two sale instances were not relevant and germane and also appropriate comparison in fixing the valuation of the acquired plot. He said that the Auction Notice as stated by AW. 1 himself was issued in the year 1985 which is much after Section 4(1) Notification and same cannot be accepted as a comparable one to the acquired plot. Further it is pointed out that the plots of land under the said Auction Notice were developed plots and much smaller in area as compared to the acquired plots. Referring to the sale instances produced by the Claimants it was submitted that the genuineness and bona fides of the sale instances have not been established. In as much as neither the vendees or the vendors or for that matter the attesting witnesses thereto have been examined to show that the transactions as reflected in the Sale Deeds were genuine and bona fide transactions between the willing buyers and willing sellers and that the sale was not a manipulated one. Further there is no evidence made available with regard to the potential values of the lands under the Sale Deeds and whether the same could be treated as comparable to the acquired plot.

13. The learned Counsel also commented that the whole method adopted by the Reference Court in determining the market value of the land at the rate of Rs. 70/- per sq. metre was improper. In particular the process of averaging prices of the land was not permissible. Reference was made to certain decisions of the Supreme Court.

14. The learned counsel Mr. Kantak, representing the respondents on the other hand, submitted that the evidence made available on record with regard to the potentialities of the acquired plot and such other allied factors have to be taken into consideration in determining the market value of the land. He points out that the evidence clearly bears out that there is speedy development in and around the vicinity of the acquired plot. Therefore this factor would also justify the compensation as has been awarded by the Reference Court.

15. We have scrutinised the evidence made available before the Reference Court and which has been adverted to earlier. The sale instances produced by the Claimants have not been proved as required under the law. To accept any sale transaction as and by way comparable to the acquired land, certain factors will have to be placed before the Court for judging its comparability vis-a-vis the acquired plot. It should be in close proximity of the date of Notification. The similar or dissimilar factors between the two plots of land also make considerable difference. The transaction has to be proved as genuine and bonafide between the willing buyer and the willing seller and that the sale in question is not got up or manipulated. With the said principles in the background the apex Court in a catena of decisions has emphasized that mere production and reliance upon Sale Deeds or copies thereof will not provide any useful guidelines and necessary

evidence has to be placed before the Court for ascertaining the comparability thereof. Admittedly this has not been done in the present case by the Claimants. Therefore the instances of sale transactions which the Claimants have relied upon and which the Reference Court has taken into consideration have to be excluded from consideration. In our view the Reference Court was therefore in clear error in considering the evidence in this regard. The submissions advanced by and on behalf of the appellants in this regard are therefore well founded and merited.

16. The next piece of evidence relied upon by the Reference Court as pointed out earlier, is the Auction Notice. In our view the acceptance and reliance thereupon by the Reference Court was also equally erroneous. Apart from the fact that the authenticity of the said Auction Notice was not established, the same is of the year 1985 i.e. much after the date of Section 4(1) Notification. The plots mentioned in the said notice are comparatively smaller in area and developed plots situated in the close vicinity of the Highway and in a developed area. Therefore by any standard the same were not comparable to the plot under acquisition. It was indeed improper on the part of the Reference Court to rely upon the said evidence as a basis for arriving at the market value of the land.

17. The Reference Court has not placed reliance upon the evidence of the Expert and in our view he was justified to do so. The expert who has been examined as AW. 2 by and on behalf of the Claimants, in the first instance claims to hold a degree in Agricultural Engineering. His evidence does not show what are the expertise and experience as such in the matter of valuation of the land. The particulars are wanting in this regard. Apart therefrom he has prepared his Report just little before he gave evidence i.e. 1987 much after the date of publication of Section 4(1) Notification. Therefore it cannot be said that the evidence of the said Expert or for that matter the Report prepared by him would represent the correct state of affairs and position as existed on the date of Notification. In our view the Report of the said Expert lacks objectivity as also the professional skill expected of. We also find apparent inconsistencies and variance in the evidence of the said Expert with regard to certain data which one would have expected to be represented accurately. For instance, the distance of the acquired plot from the National Highway. His evidence appears to be of an interested and partisan person rather than of an Expert.

18. Now therefore what is left over was the potentiality of the acquired plot. It is not disputed that as on the date of Notification the acquired plot was undeveloped and was used only for agricultural purpose. There is no evidence made available by the Claimants which could be accepted as credible evidence to show that in the year 1982 just at the time of Section 4(1) Notification there was any development in that vicinity. On the other hand, the evidence shows that it is after the acquisition of the said land that the appellant No. 2 has commenced the construction of their Depot in that vicinity. The evidence also shows that the acquired plot is at a distance of 1.00 to 1.25 km. from the National Highway.

19. The learned Judge, it is noticed, has proceeded to arrive at the market value of the acquired plot by resorting to a method known as averaging process. This method has been disapproved and deprecated by the apex Court in various decisions and we will only refer to one and that is in the case of M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, . The average method even otherwise cannot be considered either rational or logical as such, for the simple reason that the property being the subject matter of various sale instances may differ in variety of ways in its potentiality and may not possess similar advantages or disadvantages. Therefore such method apart from the fact that the same is not permissible and acceptable even otherwise will not provide as a useful guideline in arriving at the market value of the property in question.

20. We may mention one factor which has been brought to our notice by the learned Counsel for the appellants which will be germane in the context of the disposal of this appeal. It is stated that under the very Notification plots of land belonging to various other claimants were acquired along with the land of the claimants and compensation as was awarded by the Land Acquisition Officer in the case herein was confirmed by the Reference Court in a Reference made at the instance and on behalf of various owners/claimants in those matters. For that matter one of the judgments rendered by the Reference Court in Land Acquisition Case No. 76/1985 dated 31st March, 1993 has been produced for perusal of this Court wherefrom it is noticed that the compensation which was awarded by the Land Acquisition Officer was maintained.

21. Therefore considering the totality of the circumstances and the position of the law as adverted to hereinabove and the nature of evidence made available in this case, we are of the view that the Reference Court was in error and not justified in enhancing the compensation as has been done in the impugned judgment. Consequently the said judgment and decree has to be set aside. We also do not find any merit in the cross objections filed by the Claimants in this appeal.

22. Hence the following Order:

The appeal is allowed and the judgment of the Reference Court in Land Acquisition Case No. 34/1984 dated 5th March, 1988 impugned in this appeal is set aside.

23. We clarify that the Claimants would be entitled to get the benefits under the amended provisions of Section 23(1-A) of the Land Acquisition Act on the basis that the possession of the land was taken from them on 30th March, 1984. No order as to costs.