
(2015) 01 BOM CK 0061

In the Bombay High Court

Case No : First Appeal No. 50 of 2010 and First Appeal No. 67 of 2011

Jose Almeida

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

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

Citation : (2015) 3 ABR 294

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

Bench : Single Bench

Advocate : M.B. Costa, Senior Advocate and Karishma Betquekar, for the Appellant; Dattaprasad Lawande, Government Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

U.V. Bakre, J.—Heard learned Counsel for the parties.

2. Both the above appeals arise out of the judgment and award dated 14.01.2010 passed by the learned District Judge-2, FTC-II, Margao (Reference Court, for short), in Land Acquisition Case No. 50/2008. The appellants of First Appeal No. 50/2010, who are respondents in First Appeal No. 67/2011 were the applicants in the said Land Acquisition Case No. 50/2008, whereas the respondent in First Appeal No. 50/2010 who is the appellant no. 2 in First Appeal No. 67/2011 was the respondent in the said Land Acquisition Case. The parties shall hereinafter be referred to as per their status in the said Land Acquisition Case.

3. Vide notification issued under Section 4(1) of the Land Acquisition Act, 1894 (L. A. Act for short), published in the Official Gazette dated 13.12.2004 and in two newspapers (Sunaparant and Herald), both dated 18.12.2004, the Government acquired land for improvement and widening of the road from old survey office to T.V.S. showroom in the length of 1.00 km. in Margao city. This

included an area of 70 square metres of land from Chalta No. 1 of P. T. Sheet No. 135, 16 square metres of land from Chalta No. 5 of P. T. Sheet No. 135 and 9 square metres of land from Chalta No. 1 of P. T. Sheet No. 154, all of City Survey, Margao (total area of 95 square metres). By award dated 15.11.2007, the respondent awarded compensation to the entire acquired land at the rate of Rs. 70/-per square metre. Not being satisfied with the offer made by the respondent, the applicants made an application for reference under Section 18 of the L. A. Act, which gave rise to the above Land Acquisition Case.

4. In the reference application, the applicants stated as follows:-

The measurements of the acquired land have not been properly taken and the area acquired from the property of the applicants is more than what is mentioned in the award. The compensation awarded has been fixed at Rs. 70/-per square metre, which is grossly low and the market value of the land in the locality is minimum Rs. 10,000/-per square metre as on the date of notification and facilities like tar road, transport, telephone, electricity and water were available at the site as on the date of notification. The acquired land could be used for construction of buildings and is falling in the settlement zone and commercial zone and is abutted by the main road. The acquired land is in the neighbourhood of schools, colleges, residential colonies, shopping centre, chapel, church etc.

5. The learned Reference Court framed the issue as to whether the market value of the acquired land was Rs. 4,000/-per square metre? The applicants examined Shri Jose Almeida, the applicant no. 1 as AW-1. AW-1 produced two sale deeds, one dated 10.07.2003 at Exhibit-15 and the other dated 14.10.2003 at Exhibit-16. He also produced the survey Form-B in respect of Chalta Nos. 1 and 5 of P. T. Sheet No. 135 as Exhibit 17 and Form-B of Chalta No. 1 of P. T. Sheet No. 154 as Exhibit-18. The survey plans have been produced as Exhibit-19 colly. The applicants then examined Shri Laxmikant D. Naik Karmali, a Civil Engineer, as AW-2. The respondent did not examine any witness.

6. The learned Reference Court upon consideration of the entire evidence on record held that the plots of both the sale deeds are comparable with the acquired land. It appears that he mainly relied upon the sale deed dated 14.10.2003 at Exhibit-16, wherein the value of the land was Rs. 2,000/-per square metre. Since the acquired land was part of the bigger property, whereas the sale deed was of a smaller plot, the learned Reference Court held that 10% should be deducted from the price of the sale deed. He relied upon the case of "State of Goa Vs. Olga da Costa", [1998 (1) G.L.J. 324] and held that further deduction of 40% towards development charges should be made. Upon total deduction of 50%, the learned Reference Court held that the value of the acquired land would be Rs. 1,000/-. Considering that the acquired land was within the road widening area, the learned Reference Court held that the applicants are entitled to 50% of the market value of the similar land used for construction purposes and the same would be Rs. 500/-. Ultimately, the

compensation of the acquired land was enhanced to Rs. 500/-per square metre. All statutory benefits have been given to the applicants.

7. Aggrieved with the amount of compensation and alleging that total compensation ought to have been fixed at Rs. 2,000/-per square metre, the applicants filed the First Appeal No. 50/2010. Aggrieved with the impugned judgment and order and alleging that there was no evidence for enhancement of compensation and praying that the impugned judgment be quashed and set aside, the respondent and the State of Goa through Executive Engineer filed the First Appeal No. 67/2011.

8. Mr. Costa, learned Senior Counsel appearing on behalf of the applicants, submitted that though the applicants had claimed total compensation of Rs. 4,000/-, now in this appeal they are restricting their claim to Rs. 2,000/-per square metre, which is just and reasonable compensation. He submitted that AW-1, the applicant no. 1 as well as AW-2 are both Civil Engineers and they have corroborated each other. He further urged that the applicants had relied upon two sale deeds, one dated 10.07.2003 and the other dated 14.10.2003, the plots of which were only at a distance of about 100 to 110 metres from the acquired land. He submitted that evidence of AW-1 and AW-2 prove that the acquired land was similar to the sale deed plots. He submitted that the evidence of both the witnesses prove that the land of the applicants was flat and no further development was required and the same could have been directly utilised for construction. He submitted that the applicants are not pressing for claim of any extra area. He submitted that though strips of land abutting the main road were acquired, they were parts of bigger property and therefore, could have been utilised for Floor Area Ratio (F.A.R.). He therefore, urged that there was no basis for deduction of 50% and that also twice. He also pointed out that though the dates of the sale deeds were about one year prior to the date of notification under Section 4(1) of the L. A. Act, no increase in the price has been considered by the learned Reference Court and there is no justification for the same. He therefore, urged that the compensation at the rate of Rs. 2,000/-per square metre should be awarded. He relied upon the following judgments:-

- (i) State of Goa and Another Vs. Gopal Baburao Gaudo and Others, and
- (ii) C.R. Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer and Another, .

9. On the other hand, Mr. Lawande, learned Government Advocate submitted that the plots of both the sale deeds were sub-divided plots which were fully developed and which did not fall within the road widening area. He pointed out that the acquired land was small strips of land admittedly, falling within the road widening area. He further urged that the acquired land is a part of the bigger property, whereas the sale deeds are in respect of smaller plots. He submitted that the plots of the sale deeds were not at all comparable and therefore, could not have been considered for determination of the market value. He submitted

that there was no scope for enhancement of the compensation towards the acquired land. He relied upon the definition of F.A.R. given in Clause 39 of Part 1 and definition of "Effective Plot Area" given in Clause 29 of Part I of the Planning and development Authority (Development Plan Regulations 2000) and urged that the acquired land was covered by road widening area and could not be used towards F.A.R. He submitted that the judgments relied upon by the learned Senior Counsel are not applicable. He therefore, urged that for lack of evidence, the reference ought to be rejected. The learned Government Advocate relied upon the judgment of the Hon"ble Apex Court in the case of Land Acquisition Officer and Sub-Collector, Gadwal Vs. Smt. Sreelatha Bhoopal and another, .

10. I have gone through the record and proceedings of the Land Acquisition Case No. 50/2008. I have considered the arguments advanced by the learned Counsel for the parties and the judgments relied upon by them.

11. The point that arises for my determination is as to, what should be the just and reasonable compensation for the acquired land as on date of publication of notification under Section 4(1) of the L. A. Act ?

12. AW-1 has stated that the applicants are the owners of the plots bearing Chalta No. 1 of P. T. Sheet No. 135 admeasuring 2647 square metres; Chalta No. 5 of P. T. Sheet No. 135 admeasuring 523 square metres; and Chalta No. 1 of P. T. Sheet No. 154 admeasuring 2797 square metres. He has deposed that plots bearing Chalta Nos. 1 and 5 of P. T. Sheet No. 135 are adjoining each other whereas, the plot bearing Chalta No. 1 of P.T. Sheet No. 154 is on opposite side i.e. the other side of the road. The survey records in Form-B produced by AW-1 at Exhibit 17 and 18 duly prove that the areas of the said chalta numbers are same as stated by AW-1. The survey plans also establish the position of the said plots. In the circumstances above, it is established that the acquired lands though, are small strips of land, they are, however, parts of bigger property. No doubt, the acquired lands are abutting the main road and were acquired for widening of the said road. However, that does not mean that the acquired land did not have any value or potential.

13. As per Clause 39 of the Development Plan Regulations 2000, F.A.R. means the ratio obtained by dividing the floor area by the effective plot area, multiplied by 100. Clause 29 of the said Regulations provides that "Effective Plot Area" means the area derived after deducting, from the plot area the following areas:

- (a) area of proposed right of way of the road/roads.
- (b) areas reserved for any public purpose, excluding any area earmarked for easement right/traditional access.
- (c) area not permitted for development. (Zones A1, A2, R and P)
- (d) mundkar areas as per the provisions of the Mundkar Act.

14. Be that as it may, in the cross examination of AW-1, the learned Counsel for

the respondent had put a suggestion to him and he has admitted as follows:

"It is true that permission for any construction within this prescribed width is not allowed. The three properties fall in the local commercial zone and also in settlement zone. It is true that the applicable F.A.R. for buildings in local commercial zone is 1.5 and for central commercial it is 2 and for settlement zone it is 1. It is true that the plans produced by me at Exhibit 19 indicate the correct width of the three properties abutting the said road. It is true that the said road is a busy road as several buildings have come up on either side of the said road and beyond."

15. AW-2, who is a Civil Engineer has specifically stated in his cross examination that though the acquired land is in the road widening area, however, the same area could be used for increasing the F.A.R., while building in the remaining land. The same has not been denied by the respondents.

16. In the case of "Gopal Baburao Gaudo" (supra), the Hon"ble Supreme Court has observed thus:

"3. The petitioner alleges that the acquired land measuring 2715 square meters, was a narrow strip which fell within the 40 meters margin from the centre of the highway where constructions were prohibited. It is contended that as the acquired land could not be used for construction, the land had to be considered as not having any development potential, and that therefore it could not be compared with the land (which was the subject matter of LAC No. 48/1995) for which compensation had been determined having regard to its potential for development. It was also contended that being a narrow strip it was also not of much use even for agriculture purposes.

4. A long strip of land measuring more than two-third of an acre lying alongside and adjoining the highway 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. All that was required to create or realise potential of such land was to annex or merge the said strip of land with the land to its rear. In that event, the strip of land will become the "access" to the rear-side land from the main road and will also become the frontage of the aggregate land, thereby enhancing the potential and value of the rear-side land, as also creating a potential for its own use.

5. The contention that a land adjoining the highway should be treated as having no development potential (and therefore as land without much value except as ordinary agricultural land), while considering the lands to its rear which are farther away from the road, or other adjoining lands of the same extent, but having more depth (so as to extend beyond the 40 meters margin) as having potential for development, is illogical and cannot be accepted.

6. We may demonstrate the absurdity of such a contention with reference to an

illustration. Let us take the example of a residential plot of land measuring 60" x 100". Let us assume that the Municipal Bye-laws require a front (road side) set-back of 20" for construction of houses in a plot of that size. Therefore, the owner would leave a twenty feet wide front strip in the said plot free of any construction while putting up the construction in the plot. Obviously, he cannot thereafter construct in that front strip. Let us further assume that the front strip is acquired for road widening. Can the acquiring authority deny compensation to that strip on the ground that the said 20" strip acquired for road widening could not in any event be used for any construction purpose and therefore, was not of any value? Obviously not."

17. In the circumstances of the present case, where the acquired land is part of bigger property, the judgment of the Hon"ble Apex Court in the case of "Gopal Baburao Gaudo" (supra) is applicable to the acquired land. Therefore, it cannot be said that the acquired land has no value at all. From the above, it is clear beyond doubt that though the acquired land was falling in the road widening area, it had value and could be compared with the land having potential for development, in the manner as explained by the Hon"ble Supreme Court in the case of "Gopal Baburao Gaudo" (supra).

18. In the case of "C. R. Nagaraja Shetty" (supra), the Hon"ble Supreme Court has observed thus:

"12. That leaves us with the other question of deduction ordered by the High Court. The High Court has directed the deduction of Rs. 25/- per square foot. Unfortunately, the High Court has not discussed the reason for this deduction of Rs. 25/- per square foot nor has the High Court relied on any piece of evidence for that purpose.

13. It is true that where the lands are acquired for public purpose like setting up of industries or setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges, however, it has to be established by positive evidence that such development charges are justified. The evidence must come for the need of development contemplated and the possible expenditure for such development. We do not find any such discussion in the order of the High Court.

14. As if this is not sufficient, when we see the judgment of the Principal Civil Judge (Sr. Division), Bangalore, Rural District, Bangalore in Reference proceedings, we find that there is no deduction ordered for the so-called development charges. We are, therefore, not in a position to understand as to from where such development charges sprang up.

15. The Learned Counsel appearing on behalf of the respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for widening of the National Highway. There would, therefore, be no question of any such development or any

costs therefor."

19. The evidence of AW-1 as well as AW-2 establish that the acquired land is situated in the municipal area of well developed city of Margao. It is established that all amenities such as electricity, water, telephone and transport were available to it and facilities such as schools, colleges, chapel, church, residential colonies, commercial establishments, shops and hospitals were within the radius of 700 metres. The acquired land which was part of the bigger property was accessible by the main road. AW-1 has specifically stated that the plots of the two sale deeds at Exhibit-16 and 17 were similar in nature to the acquired land and were about 100 to 110 metres away from the same. AW-1 has added that sale deed plots are abutting the internal road and are at a distance of about 100 metres from the main road. In his cross examination, AW-1 stated that he has a residential house in the Chalta Nos. 1 and 5 and that in Chalta No. 1 of P. T. Sheet No. 154, a multi-storeyed building has been constructed. There is no dispute that the acquired land was in settlement zone at the time of acquisition. The respondent did not examine any witness. In the circumstances above, the finding of the learned Reference Court that the plots of the sale deeds and the acquired land are similar in nature, cannot be faulted.

20. However, insofar as the acquired land admeasuring 09 square metres from Chalta No. 1 of P. T. Sheet No. 154, is concerned, it can neither be used for F.A.R. nor for any other purpose because admittedly, it lies between the existing road and a multi-storeyed building, which means that it has already been used as frontage or access to the said multi-storeyed building. The Reference Court has not at all considered this aspect. In the circumstances above, I am of the view that the learned Reference Court ought not to have enhanced the market value of the acquired land from Chalta No. 1 of P. T. Sheet No. 154. Therefore, in my considered view, the compensation of Rs. 70/- per square metre, awarded by the respondent is just and reasonable, for the acquired land admeasuring 09 square metres from chalta No. 1 of P. T. Sheet No. 154.

21. Admittedly, the acquired lands from Chalta Nos. 1 and 5 of P. T. Sheet No. 135 are adjoining one another and though were abutting the road, were parts of the bigger property lying at the rear side which was in settlement zone and which could be used for construction of a building. Therefore, the said acquired land admeasuring 86 square metres had its own value and potential and could be utilised for development of the land lying at the rear side. There can be no dispute that the said acquired land alongwith the property lying behind was of the same nature as that of the plots of the two sale deeds. However, the only difference was that the plots of the sale deeds were fully developed plots and approved sub-divided plots, whereas, there was no full development in respect of the acquired land of the applicants. No conversion of land from agricultural to non-agricultural purpose was obtained in respect of the acquired land. It is also true that the plots of the sale deeds were small in size as compared to the size of the entire property of the applicants. But the acquired lands are small in size.

The sale deed dated 14.10.2003 is the closest in time as compared to the notification under Section 4(1) of the L.A. Act and it is also close to the acquired land as compared to the other sale deed. By this sale deed dated 14.10.2003, land admeasuring 284 square metres situated in Chalta No. 88 of P. T. Sheet No. 153 at Margao within the municipal area was sold at Rs. 5,68,000/- i.e. at the rate of Rs. 2,000/- per square metre. It is true that the evidence on record reveals that the acquired land alongwith the remaining property of the applicants was a flat land though having some slope. Therefore, there was no need of cutting or filling of the land. However, that does not mean that no expenses would be incurred, for development in order to bring the same at par with the plot of the sale deed. Expenses had to be incurred for conversion of the land from agricultural to non-agricultural purpose and for infrastructure like drainage, internal tar roads, water pipeline electricity, etc. Hence, deduction is bound to be made.

22. The sale deed is dated 14.10.2003 whereas, the date of publication of the notification under Section 4 of the L.A. Act is 16/18.12.2004. There is therefore, a gap of about one year. It is a settled fact that prices of land go on increasing every year. In a developed city like Margao such increase in price would certainly be 10% per annum. The Reference Court has not at all considered this aspect. By giving an increase of 10% to the price of Rs. 2,000/-, the price of the land in the locality of the acquired land, as on date of the notification, becomes Rs. 2,200/-. In order to bring the said acquired land of the applicants at par with the plot of the sale deed at Exhibit 16, in my considered view, deduction of 50% was required to be made. That deduction will bring down the price to Rs. 1,100/-per square metre. Since, the acquired land was within the road widening area, further deduction has to be made, since the acquired land itself could not be used for construction, but could be only used in the manner as explained in the case of "Gopal Baburao Gaudo" (supra). In my considered view, deduction of 10% would be just and reasonable, on this count. That would bring down the market value of the said acquired lands to Rs. 1,000/-per square metre. I therefore, hold that the market value of the acquired land admeasuring 86 square metres, from Chalta Nos. 1 and 5 of P. T. Sheet No. 135 of city survey of Margao is Rs. 1,000/-per square metre.

23. In the result, both the appeals are partly allowed:

(a) The impugned judgment and award, insofar as enhancement of compensation from Rs. 70/-to Rs. 500/-per square metre in respect of the land admeasuring 09 square metres from Chalta No. 1 of P. T. Sheet No. 154 is quashed and set aside and the compensation for the said land is maintained at Rs. 70/-per square metre as awarded by the Special Land Acquisition officer.

(b) The market value of the acquired land admeasuring 86 square metres from Chalta Nos. 1 and 5 of P. T. Sheet No. 135 is fixed at Rs. 1,000/-per square metre.

- (c) The applicants shall be entitled to all statutory benefits under the L. A. Act.
 - (d) The impugned judgment and award stands modified to the extent as above.
24. Both the appeals are disposed of accordingly.