(2010) 12 BOM CK 0066

In the Bombay High Court

Case No : First Appeal No. 160 of 2003

Land Acquisition Officer and The Executive Engineer Works Div.II, P.W.D. — APPELLANT

Vs

Zuari Real Estate Co. Pvt. Ltd. — RESPONDENT

Date of Decision : 01-12-2010

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

Citation : (2010) 12 BOM CK 0066

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

Bench : Single Bench

Advocate : G. Shirodkar, for the Appellant; Sudin Usgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard.

2. This appeal is directed against judgment dated 31-1-2003 of the learned reference Court by which the compensation payable has been enhanced from Rs. 60/-to Rs. 155/-per sq. meter, with consequential statutory benefits.

3. Some facts may be stated to dispose off the present appeal.

4. By virtue of notification issued u/s 4(1) of the Land Acquisition Act, 1884, and published on Gazette dated 27-7-1992, the Government acquired 585 sq. meters of land from survey No. 81 of Village Calapur in Tiswadi taluka for the purpose of improvement and black topping of the road leading from Vasuda Housing Colony and crematorium in Village Panchayat of Santa Cruz. The said property belongs to the applicant i.e. Respondent herein.

5. The Land Acquisition Officer by award dated 4-10-1995 awarded Rs. 60/-to the applicant by way of compensation. Before the learned reference Court, the applicant examined three witnesses. None were examined by the Respondent.

6. The applicant had produced two sale deeds in support of their case for

enhancement. Exh. 10 was a sale deed dated 19-8-1988 by which a plot of land admeasuring 434 sq. meters was sold at the rate of Rs. 350/-per sq. meter. Exh. 9 was a sale deed dated 21-12-1989 by which a plot of land admeasuring 404 sq. meters was sold at the rate of Rs. 390/-per sq. meter. There is no dispute that the acquired property was a part of a large property belonging to the applicant having mundkarial houses and was located in a settlement zone. The acquired property was located at a distance of about 400 meters from the highway, namely, the road which goes from Panaji-Santa Cruz to Bambolim and further on. Civic amenities like a church, village market, playground, post office, Panchayat Office, Health Centre, etc. were situated within a radius of 1.5 kms. from the acquired land, and, there was water and electricity in and around the acquired property. Domingo Housing Co-operative Society, Vahida Apartments, Popular Housing Society were already there within a radius of 400 meters and Goa Medical College was at a distance of 1 km. from the acquired land. The evidence on record shows that the plots of the sale deeds were also located at a distance of about 500 meters from the said road referred to herein above, though, an attempt was made to demonstrate that the acquired plots were not located at a distance of 500 meters not from the main road but from some interior road. The learned reference Court noted that both the sale deed plots were located at a distance of about 1 km. from the acquired land, and, therefore the evidence on record indicate that the price of sub-divided developed plots situated in the same locality varied from Rs. 350/-to Rs. 390/-per sq. meter in the years 1988-1989. The learned reference Court also noted that the acquired plot was undeveloped land and further noted that there could be no dispute that developed plots which possessed all infrastructural amenities always got ready buyers and fetched higher price as compared to the undeveloped plots, and the learned reference Court therefore deducted 40% of the price for development, and this the learned reference Court did based on a decision of this Court in the case of State of Goa v. Olga D''Costa 1988 GLT 324. After taking a deduction of 40%, the learned reference Court observed that the market value of undeveloped land would vary from Rs. 210/-to Rs. 234/-per sq. meter for the said two years. Then, the learned reference Court noted that the acquired land was a sloppy land and was situated in the interior part of Calapur village whereas the land of the sale deeds was a levelled land and was situated closer to the highway, and for this dissimilarity between the acquired land and the land of sale deeds, the learned reference Court took a deduction of 35% and worked the price payable at Rs. 146/-per sq. meter. Considering that the sale deeds were prior to the date of acquisition, the learned reference Court enhanced the price by Rs. 9/-per sq. meter from Rs. 146/-to Rs. 155/-and held that Rs. 155/-per sq. meter would be the compensation payable to the applicant i.e. the Respondent herein. Thus, it can be seen from the judgment of the learned reference Court that the learned reference Court has taken a total deduction of 75%. It also can be seen that appreciation has been granted at a rate which would work out at less than 10%, as conceded by the learned Counsel.

7. Shri G. Shirodkar, learned Government Advocate on behalf of the Government submits that the learned reference Court ought to have taken a deduction of 67% towards development charges and this submission is based on the judgment of the Apex Court reported in Subh Ram and Others Vs. Haryana State and Another, . Learned Government Advocate further submits that having taken 67% of deduction towards development, it was expected for the learned reference Court to take a further deduction towards dissimilarities between the acquired land which was a sloppy land and the land of the plots of the sale deeds which was flat land.

8. Shri Sudin Usgaonkar, learned Counsel on behalf of the Respondent submits that the judgment of Subh Ram and Ors. v. State of Haryana and Anr.(supra) would not be applicable to the facts of this case as what was involved in that case was a large tract of land. Learned Counsel further submits that if the acquired land was a sloppy land so also the land of the sale deeds, as reflected in the evidence of the witnesses of the applicant, and there was no evidence produced by the Respondent to show to the contrary. Learned Counsel further submits that the case of Subh Ram and Ors. v. State of Haryana and another(supra) was not at all available to the Government at a time when the present appeal was filed and the same was filed on the basis that no enhancement could be granted because what was acquired was an undeveloped sloppy strip of land and that the learned reference Court had not considered that the acquired land was also in the interior, which factors according to Shri Usgaonkar were in fact considered by the learned reference Court and appropriate deductions were taken, and, therefore learned Counsel submits that there was no case made out for further deductions.

9. In the case of Subh Ram and Ors. v. State of Haryana and another(supra) the Apex Court has stated that in the hypothetical layout method of determination of market value, as a first step, the areas that will be used up for roads, drains, parks/playgrounds and community areas, will have to be excluded from the total extent of the acquired land. The standard deduction in this behalf is one-third(33%). The Apex Court has also stated that towards the expenses of development another one-third(33%) will be required to be taken. The Apex Court has also stated that if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads, etc.) plus one-third (for expenditure of development), in all two-thirds(or 67%), as "development cost" from the value of small plot. The percentage of deduction may however vary between 20% to 75; depending on several circumstances. The Apex Court has also held that where the value of acquired agricultural land is determined with reference to the sale price of a neighbouring land, no deduction need be made towards "development cost".

10. As already noted in the case at hand, the learned reference Court has taken a total deduction of 75%. The evidence on record shows that the acquired

property as well as the plots of the sale deeds were located almost equidistant from the highway i.e. the main road going from Santa Cruz to Bambolim, the acquired land being at a distance of about 400 meters therefrom and the plots of the sale deeds about 500 meters therefrom. The evidence on record also shows that the land of the acquired property was sloppy and similarly the land of the plots of the sale deeds was also sloppy and as such there was no much dissimilarity between both to call for further deduction. The learned reference Court has taken a total deduction of 75% from the price of sale deeds and therefore the Government could not have hoped for anything more. The appreciation given towards increase in price from the year 1988-1989 to the year 1992 is also less than 10% as stated by the learned Counsel.

11. Considering the facts of the case, the impugned award calls for no interference. Appeal is therefore hereby dismissed with no order as to costs.

