
(2014) 12 BOM CK 0096
In the Bombay High Court
Case No : First Appeal No. 09 of 2010

Land Acquisition Officer

APPELLANT

Vs

Joao Francisco Euclides Barreto

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

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

Citation : (2014) 12 BOM CK 0096

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

Bench : Single Bench

Advocate : Neha Kholkar, Additional Government Advocate, Advocate for the Appellant; A.F. Diniz, Advocate for the Respondent

Judgement

U.V. Bakre, J.—Heard Ms. Kholkar, learned Additional Government Advocate for the appellants and Mr. Diniz, learned Counsel for the respondent.

2. This appeal is directed against the Judgment and Order dated 30/04/2009 passed by the learned District Judge-I, South Goa, Margao (Reference Court, for short) in Land Acquisition Case No. 25/2007. The respondent was the applicant and the appellants were the respondents. 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 20/11/2003, the Government acquired land for construction and B/T of road at Pulwado, Mandowado, Pequeno Pedda to Domximod and Bhirondi, in Village Panchayat of Benaulim, Salcete-Goa. This acquisition included a portion of land admeasuring 1650 square metres from Survey No. 65/1 situated at Benaulim village, belonging to the applicant. By award dated 29/09/2006, the Land Acquisition Officer (L.A.O., for short) awarded compensation for the acquired land at the rate of Rs. 60/-per square metre. Not being satisfied with the offer made by the L.A.O., the applicant filed the Reference Application under Section 18 of the L. A. Act, before the L.A.O., which gave rise to the said Land Acquisition Case No. 25

of 2007.

4. In the reference application, the applicant claimed compensation at the rate of Rs. 1800/-per square metre for the acquired land. He stated that the acquired land was situated about 3 kilometres away from Margao city and in locality which was fast developing and populated. He stated that facilities like tar road, transport, telephone, electricity and water were available at the site as on the date of notification. He stated that the acquired land was a flat land, falling in the settlement zone and was abutting the main road and, therefore, could be utilized for construction of buildings. He also stated that there were schools, church, electricity department, shop, post office, banks, houses, buildings, residential colonies, shopping centre, etc. in the vicinity of the acquired land.

5. Accordingly, issues were framed by the learned Reference Court. The applicant examined himself as AW1 and produced various documents. He produced the Form No. I & XIV of survey no. 65/1, as Exhibit C/24, which showed that the total area of the said survey holding was 24925 square metres. The survey plan at Exhibit C/25 showed that there were houses and trees in this land. He produced the sale deed dated 7/03/2003 as Exhibit C/26, by which a developed plot no. 12 admeasuring 551 square metres, situated in village Benaullim was sold for Rs. 4,40,800, i.e. at the rate of Rs. 800/-per square metre. The Award of the L.A.O. was produced as Exhibit C/27. A certified true copy of the Judgment and Award dated 27/01/2009, passed by the Reference Court in Land Acquisition Case No. 24/2007, was also produced by the applicant, as Exhibit 19/C. The respondents did not examine any witness.

6. Upon consideration of the entire evidence on record, the learned Reference Court partly allowed the reference and fixed the compensation for the acquired land at the rate of Rs. 400/-per square metre. The sale deed dated 07/03/2003 at Exhibit 23 was not accepted by the Reference Court. However, the learned Reference Court took into account the Judgment and Award passed by the Reference Court in Land Acquisition Case No. 24/2007.

7. Ms. Kholkar, learned Additional Government Advocate for for the respondents submitted that the land of the Judgment and award dated 27/01/2009 in Land Acquisition Case No. 24 of 2007 produced at Exhibit-19/C was not similar to the acquired land. The learned Additional Government Advocate submitted that the market value has been fixed at the rate of Rs. 400/-per square metre without any basis and, therefore, the impugned judgment and order is bound to be quashed and set aside.

8. On the other hand, Mr. Diniz, learned Counsel for the respondent submitted that the applicant (AW1) has specifically deposed that the acquired land and the land which was subject matter of Land Acquisition Case No. 24 of 2007 were similar in nature and that the acquired land was only at a distance of about 300 metres from the land which was subject matter of the said Land Acquisition Case No. 24/2007. He produced a copy of the judgment dated 28/11/2014, passed by

this Court, in First Appeal No. 123/2009, by which the Judgment of the Reference Court in Land Acquisition case No. 24/2007 has been maintained. He therefore urged that there is no scope for any interference with the impugned Judgment and Order.

9. I have perused the original records and proceedings. I have considered the arguments advanced by the learned Counsel for the parties and I have also considered the judgment dated 28/11/2014 passed by this Court in First Appeal No. 123 of 2009.

10. The point that arises for determination is whether the compensation awarded by the Reference Court for the acquired land is just and reasonable or it is required to be reduced and my answer to the same is that the compensation awarded is just and reasonable.

11. A perusal of affidavit-in-evidence filed by the applicant (AW1) shows that in paragraph 13 thereof, the applicant relied upon the judgment and order dated 27/01/2009 passed by the Reference Court in Land Acquisition Case No. 24 of 2007. AW1 specifically stated that the acquired land of Land Acquisition Case No. 24 of 2007 was similar in nature to her land which has been acquired and that the same is situated only at a distance of about 300 metres. A perusal of the cross-examination of AW1 reveals that the similarity of the acquired land of the Land Acquisition Case No. 24/2007 and the present acquired land and the distance of 300 metres between the two is not denied at all. In such circumstances, the learned Reference Court had rightly relied upon its own Judgment and Award earlier passed in the said Land Acquisition Case No. 24 of 2007.

12. In said Land Acquisition Case No. 24 of 2007, land admeasuring 805 square metre from survey no. 176/1 of village Benaullim was acquired for the same purpose under the same notification issued under Section 4(1) of the Act, as in the present case. The L.A.O. in the said case had awarded compensation at the rate of Rs. 60/-per square metre and the learned Reference Court enhanced the compensation to Rs. 400/-per square metre. A sale deed dated 10/06/1999 was produced in the said Land Acquisition Case No. 24/2007, which pertained to land from same survey no. 176/1 and based on the same, the compensation was fixed at Rs. 400/-per square metre. The said judgment and order dated 27/01/2009 passed by the Reference Court in the said Land Acquisition Case No. 24 of 2007 was challenged by the respondents before this Court and in First Appeal No. 123 of 2009, this Court by Judgment dated 28/11/2014, maintained the compensation of Rs. 400/-per square metre fixed by the learned Reference Court.

13. In view of the above, in my view nothing meritorious is there in the present appeal and the compensation awarded by the learned Reference Court is just and reasonable and no interference with the same is called for.

14. Appeal stands dismissed.