
(2014) 11 BOM CK 0003
In the Bombay High Court
Case No : First Appeal No. 123 of 2009

Land Acquisition Officer

APPELLANT

Vs

Maria Jose Correia De Mendes e Cruz

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

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

Citation : (2014) 11 BOM CK 0003

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

Bench : Single Bench

Advocate : M. Salkar, Government Advocate, Advocate for the Appellant; R. Pereira, Advocate for the Respondent

Judgement

U.V. Bakre, J.

1. Heard Mr. Salkar, learned Government Advocate for the appellant and Ms. Pereira, learned Counsel for the respondent.

2. This appeal is directed against the judgment and order dated 27/01/2009 passed by the learned District Judge-I, South Goa, Margao (Reference Court, for short) in Land Acquisition Case No. 24/2007. Land was acquired for construction and B/T of road at Pulwado, Mandowado, Pequeno Pedda to Domximod and Birondi, in Village Panchayat of Benaulim, Salcete, vide notification issued under Section 4(1) of the Land Acquisition Act, 1894 (L.A. Act, for short) and published in official gazette dated 06/01/2005. This acquisition included a portion of land admeasuring 805 square metres from the land belonging to the applicant and bearing Survey No. 176/1 of village Benaulim. 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 an application under Section 18 of the L.A. Act, before the L.A.O. claiming compensation for the acquired land at the rate of Rs. 500/- per square metre. The L.A.O. made reference before the District Judge, South Goa, which came to be registered as Land Acquisition case

No. 24/2002.

3. The Reference Court framed the issues in terms of the claim of the applicant. The applicant examined herself as A.W.1 and a Valuer-cum-Civil Engineer by name Shri S.N. Kamat as A.W.2 who produced valuation report at Exhibit 19. The applicant had produced the sale deed dated 10/06/1999 as Exhibit 18 by which the land from the same survey holding was sold by the applicant.

4. On consideration of the entire evidence on record, the learned Reference Court held that the said sale deed dated 10/06/1999 was proper for determination of the market value of the acquired land and accordingly, fixed the same at Rs. 400/- per square metre. All statutory benefits under the L.A. Act have also been granted to the applicant. The respondent is aggrieved by the judgment and award of the Reference Court.

5. Mr. Salkar, learned Government Advocate submitted that there was evidence on record to establish that the acquired land was initially a footpath on which road has been constructed. He further submitted that there was no evidence on record to establish the similarity of the acquired land with the land of the sale deed produced by the applicant. He further submitted that the property of the applicant was occupied by mundkarial structures besides the said footpath and, therefore, appropriate deduction ought to have been made on the said ground. He, therefore, submitted that exorbitant compensation has been awarded. Learned Government Advocate, thus, urged that the judgment and award be set aside or compensation be reduced accordingly.

6. On the other hand, Ms. Pereira, learned Counsel for the respondent submitted that the evidence on record was not at all sufficient to prove that previously there was any footpath in the acquired land. She pointed out that the sale deed produced by the applicant pertained to the land from the same Survey No. 176/1 and, therefore, similarity with the acquired land was obvious. She further submitted that the said transaction vide sale deed dated 10/06/1999 was in spite of the fact that there were mundkarial structures in the property. She, therefore, submitted that the compensation awarded by the learned Reference Court is just and reasonable and no interference with the impugned judgment and award is called for.

7. I have gone through the records and proceedings and considered the submissions advanced by the learned Counsel for the parties.

8. The only point for determination is whether the market value awarded by the Reference Court 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.

9. Upon perusal of the cross-examination of A.W.1, it cannot be said to have been established that there was previously existing footpath being used by mundkars to approach their mundkarial structures and that the same was in the acquired land. AW2 had inspected the land of the application 17.12.2003. No

suggestion has been put to AW2 that there was a footpath at the same place which was sought to be acquired. A perusal of the award of the L.A.O. shows that there is no mention of any footpath in the land, which is acquired. In such circumstances, the finding of the learned Reference Court that the existence of footpath in the acquired land is not proved, is proper and cannot be called as erroneous. A perusal of the evidence of A.W.2, the Valuer shows that it is in the same line as that of A.W.1. Both have relied upon the sale deed dated 10/06/1999 which is produced by A.W.1 as Exhibit 18. By this sale deed, land admeasuring 510 square metres from the same Survey No. 176/1 was sold by the applicant to one Joao Rodrigues for total consideration of Rs. 2,00,000/- i.e. at the rate of 400/- per square metre. Since the acquired land and plot of sale deed dated 10/06/1999 were part of the same land, it could be said without hesitation that both were similar in nature. In the circumstances above, the learned Reference Court rightly took into consideration the said sale instance for assessment of the market value of the acquired land. The Reference Court ought to have considered annual increase in prices of land and ought to have taken into account that the sale deed transaction was about four years prior to the date of publication of notification under section 4(1) of the L.A. Act. But the same has not been considered. In the circumstances above, the compensation of Rs. 400/- per square metre as awarded by the learned Reference Court cannot at all be termed as unreasonable or unjust. I hold that the compensation awarded by the Reference Court is proper, just and reasonable and calls for no interference with the impugned judgment and award.

10. In the result, there is no merit in the appeal and the same stands dismissed.