

(2012) 04 BOM CK 0146
In the Bombay High Court
Case No : First Appeal No. 303 of 2007

Land Acquisition Officer, P.W.D. Cell, Altinho, Panaji-Goa and
The Executive Engineer, Works Division XV, P.W.D., Ponda-Goa

APPELLANT

Vs

Shri Ram P.S. Tilve

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

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

Citation : (2012) 114 BOMLR 1669

Hon'ble Judges : U. V. Bakre, J;A. P. Lavande, J

Bench : Division Bench

Advocate : V. Rodrigues, for the Appellant; R. G. Ramani, for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—This appeal is directed against the Judgment and Award dated 26/02/2007 passed by the learned District Judge, North Goa, Panaji, (hereinafter referred to as the "Reference Court"), in Land Acquisition Case No. 81/2000. The parties shall be referred in the same manner as they appear in the cause title of the said Land Acquisition Case No.81/2000.

2. Vide Notification bearing no. 22/123/89-RD dated 25/09/1989 issued u/s 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") and published in the Official Gazette dated 24/11/1989, land admeasuring 15045 square metres was acquired from survey holdings no. 73/1, 78/1 and 88/1 of village Curti of Taluka Ponda for construction of bypass to Ponda Town on NH-4 between 121/950 to 126/200. An area of 2560 square metres of paddy land was acquired from survey holding no.73/1; an area of 3500 square metres of land was acquired from survey holding no.78/1, out of which, 3385 square metres was coconut land, whereas, 115 square metres was paddy land and an area of 8985 square metres of coconut land was acquired from survey holding no. 88/1. By award dated 15/3/1992, the Land Acquisition Officer (L.A.O, for short) offered compensation at the rate of Rs.55/- per square metre for bharad/coconut land

and Rs.15/- per square metre for paddy land. Not been satisfied with the offer made by the L.A.O, the applicant who is interested person in so far as the acquired land is concerned, made an application u/s 18 of the Act to the L.A.O for reference and that gave rise to Land Acquisition Case No. 81 of 2000.

3. In the reference application, the applicant claimed the market rate of Rs.1000/- per square metre for the entire acquired land on the ground that the acquired land adjoins the National Highway being N.H. 4-A and that as a result of the acquisition of portion of the land, the whole property cannot be used either for cultivation or for construction.

4. The applicant examined himself as AW.1 and produced the valuation report as Exhibit 15; the sale deed dated 17/10/1988 as Exhibit 16; and a sale deed dated 18/6/1990 as Exhibit 17. The applicant examined the Civil Engineer and approved Valuer by name Shri Ravindra V. Tamba as AW.2, who has proved the Valuation Report at Exhibit 15 and Shri Damodar Tilve, the brother of the applicant as AW.3. The respondents examined a technical Assistant, Sub-division III, W.D. XV, P.W.D, Government of Goa, Ponda namely Shri Shashikant Dessai as R.W.1.

5. Upon consideration of the entire evidence on record, the learned Reference Court has partly allowed the reference and has held that the market rate of the acquired land from survey holdings no.73/1, 88/1 and 78/1 which is coconut land is Rs.78/- per square metre whereas, the market rate of the land which is paddy land is Rs.54/- per sq, metre. The other statutory benefits have also been awarded. The sale deed at Exhibit 17 has been discarded since it is post notification transaction. The valuation report of the expert has been rejected as the same was found to be arbitrary and without any basis.

6. Taking exception to the said Judgment and Award, the respondents have filed the present appeal.

7. Shri V. Rodrigues, learned Additional Government Advocate (A.G.A.) argued on behalf of the respondents whereas, Shri R. G. Ramani, learned Advocate, argued on behalf of the applicants.

8. The learned A.G.A. has submitted that the sale deed dated 18/6/1990 at Exhibit 17 and valuation report prepared and produced by AW.2 have been discarded by the Reference Court and the applicant has not challenged the award and, therefore, the said sale deed and valuation report need not be looked into. He further argued that no sale instance of land comparable with the acquired land was produced by the applicant and that the entire acquired land was agricultural land, but no evidence regarding income from the said land was produced. He submitted that there is no material on record to prove that there was any land left behind the strip of land which has been acquired. He argued that the acquired land was not at all suitable for construction and, therefore, the sale deed at Exhibit 16 which is in respect of a developed plot meant for construction could not have been made the basis for determination of the market

value. He pointed out from the impugned judgment that absolutely no justification has been shown to grant the market value of Rs. 54/- per square metre to the paddy land. According to the A.G.A., the market value offered by the L.A.O is just and reasonable and hence the impugned judgment and award is liable to be set aside.

9. Per contra, Shri R.G. Ramani, on behalf of the applicant, invited our attention to the sale deed which is at Exhibit 16 which is dated 17/10/1988. He pointed out that the date of publication of notification u/s 4(1) of the Act is 24/11/1989, which means that the transaction of the sale deed was made about one year prior to the relevant date for the determination of the market value of the acquired land. He submitted that it is well settled that there is annual increase of 10% in the prices of land and pointed out that this factor has not been considered by the Reference Court. He further argued that though the acquired land was in the setback area, however, there was balance land of the applicant which had to be considered along with the acquired land. He has relied upon the case of State of Goa and Another Vs. Gopal Baburao Gaudo and Others, . Learned Counsel further submitted that though the acquired land is an agricultural land, it falls in a zone where development is possible and the acquired land was not a tenanted land and that it could have been converted for non-agricultural use. He argued that the question of deduction comes when the land cannot be exactly compared with the sale deed instance. He has relied upon: (1)- A. Natesam Pillai Vs. Spl. Tahsildar, Land Acquisition, Tiruchy, ; (2)- Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., ; (3)- Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat, and (4)- Tika Ram and Others Vs. State of U.P. and Others etc. etc., . The learned counsel for the applicant took us through the evidence of the applicant (AW.1) and his witnesses and contended that the acquired land was a plain and levelled land with independent access from the National Highway and water pipeline as well as electrical line was available at the boundary of the acquired land. He further showed that the acquired land was adjacent to the National Highway Panaji-Belgaum and is one kilometre from city bus-stand at Ponda. He also showed from the evidence that Bethora Industrial area was just four kilometres away and school, market, hospital, petrol pump were all within close range. He showed that Hotel Amigos was nearby. According to the learned Counsel, the plot of the sale deed at Exhibit 16 is situated at Curti and very close to the acquired land. He pointed out that adequate deductions have been made on account of developed nature of the sale deed plot. He forcefully contended that the Reference Court ought to have granted more compensation. According to him, therefore, there is no scope for interference with the impugned judgment and award.

10. We have gone through the record and proceedings, in the light of the arguments advanced by the learned counsel for the parties.

11. The short point that falls for our consideration is whether the enhancement

granted by the Reference Court is arbitrary, unreasonable and liable to be set aside.

12. The evidence of the applicant and his witnesses duly reveals that the acquired land is adjoining the National Highway and is just about one kilometre away from the Ponda city bus-stand and at the time of acquisition, it was serviced with all amenities such as power, water, transport, school, hospital, market, petrol pump, etc. There were several houses, bungalows and factories in the vicinity of the acquired land at the time of acquisition and Industrial area at Bethora, Ponda is at a distance of about 4 kilometres. The evidence on record also proves that the acquired land was plain and fertile and there was land beyond the acquired land which was suitable for residential as well as commercial use. In the case of "Gopal Baburao Gaudo" (supra), the Hon'ble Apex Court has held that the long strip of land adjoining the highway cannot be treated as land without value or without any potential for development merely on the ground that law relating to highways prohibited construction on either sides of the highway upto a depth of 40 metres from the centre of the highway. It has been held that potential of such land could be realized by annexing or merging said strip of land with land to its rear and in that event, the strip of land would become "access" to rear side land from main road and would also become frontage of the aggregate land, thereby enhancing potential and value of rear side land, as also creating a potential for its own use. Therefore, merely because the acquired land is a strip of land acquired for the construction of a road, that does not mean that the same has no value. Though the acquired land was agricultural land being partly coconut and partly paddy land, however, it was a free hold land without encumbrances and it was not tenanted land. Therefore, as has been rightly contended by the learned counsel for the applicant, the acquired land along with other part of the property of the applicant could have been converted for non-agricultural use. The finding of the learned Reference Court that the acquired land could be used for residential as well as commercial purpose after obtaining necessary conversion and completing other required formalities cannot be faulted with.

13. In the case of "A. Natesam Pillai" (supra), the Apex Court has held that the potentiality of the acquired land in so far as it relates to use to which it is reasonably capable of being put in immediate or near future, must be given due consideration. It has been further held that since the acquired land abuts the main road and surrounded by schools, Panchayat Union Office, shops and residential buildings around which building activity had already started, deduction due to small size of the exemplar land can easily be set off with corresponding increase in price of acquired land when compared with exemplar land from point of view of potential value. In the case of "Viluben J. Contractor (Dead) by L.Rs" (supra), in paragraph 20 thereof, the Apex Court has stated that the amount of compensation cannot be ascertained with mathematical accuracy and that the comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. It has been

further held that for determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The various positive and negative factors have been stated.

14. By the sale deed at Exhibit 16, a developed plot admeasuring 297.70 square metres, situated at Curti, Ponda, has been sold for the consideration of Rs.65,494/- i.e. at the rate of Rs. 220/- per square metre. In paragraph 21 of the Affidavit filed by the applicant (AW.1) in lieu of his examination-in-chief, he has specifically stated that the lands forming the subject of the sales transaction produced by him have the same potential as that of the acquired land and are also blessed with geographical features as that of the acquired land. Therefore, there is evidence on record to hold that the acquired land is similar to the land of the sale deed at Exhibit 16. He has further stated in the said affidavit that the land of the sale deed dated 17/10/1988 (Exhibit 16) is in the close vicinity of the acquired land. Therefore the criterion of the proximity from situation angle is also fulfilled. The date of publication of notification u/s 4(1) of the Act is 24/11/1989. The sale instance is about one year prior to that and hence can be said to be in close proximity as far as time angle is concerned. In view of the above, the said sale instance has been rightly considered by the learned Reference Court.

15. Since the plot of the said sale deed at Exhibit 16 is a developed plot and since the acquired land was an undeveloped land, deduction of 40% has been made by the Reference Court in the price of the sale deed land. Further, since the sale deed plot is close to Ponda town as compared to the acquired land and further since it was a small plot suitable for construction, as compared to the acquired land which is a vast track of agricultural land, a further deduction of 40% has been made. By making the said deductions, the Reference Court has arrived at the rate of Rs.78/- per square metre in respect of the coconut land. A further deduction of 30% has been made in the said rate of Rs.78/-, in order to arrive at the market rate of the paddy land and accordingly, the market value of the paddy land is fixed by the Reference Court at Rs. 54/- per square metre. No doubt, no reason has been given by the Reference Court as to why a deduction of 30% is made in the value of the bharad land in order to arrive at the value of the paddy land. However, it is a known fact that the paddy land lies at a lower level due to which land filling is required to be done to bring it at road level, if it is to be used for construction. It is well settled that there is an element of guess work inherent in most cases of determination of the market value. The deduction of 30% made as above cannot be termed to be less or without any basis.

16. In the case of "Valliyammal and another" (supra), the Hon"ble Apex Court has held that escalation in land prices is one of the factors which has to be considered. In the case supra, it has been held that 10% per annum escalation in price should be added to the price specified in the comparable sale instance while fixing the market value of the acquired land. As has been rightly argued by the learned counsel for the applicant, though the transaction of the sale deed at

Exhibit 16 is more than an year prior to the date of publication of notification u/s 4 (1) of the Act, however, the learned Reference Court has not given the benefit of annual escalation in the land price. This fact goes against the respondents and can be taken into account in this appeal.

17. Considering all the above factors, the market rate of the acquired land which is coconut land at Rs.78/- per square metre and which is a paddy land at Rs.54/- per square metre cannot be said to be arbitrary, unjust or unreasonable. The evidence of RW.1 does not in any manner prove that the acquired land did not have market value as awarded by the learned Reference Court. The point for determination is therefore answered in the negative.

18. In our considered view, the impugned judgment and award does not warrant any interference. In the result, the appeal is dismissed, however, with no order as to costs.