

(2012) 05 BOM CK 0089
In the Bombay High Court
Case No : First Appeal No. 181 of 2007

Land Acquisition Officer, PWD (Cell) Panaji Goa and The
Executive Engineer, Work Division VI (R-S), PWD Fatorda,
Margao Goa

APPELLANT

Vs

Filomena Thereza Leitao and Fuzer Philip Fortes, Both

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 4

Citation : (2012) 05 BOM CK 0089

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Pankaj Vernekar, Addl. Government, for the Appellant; Amira Razak, Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

F. M. Reis, J.—Heard Shri Pankaj Vernekar, learned Additional Government Advocate appearing for the appellants and Ms. Amira Razak, learned Counsel appearing for the respondent. The above appeal challenges the judgment and award dated 25.08.2006 passed in Land Acquisition Case No. 54/2003 whereby a reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") filed by the respondents was partly allowed and the compensation for the land acquired was fixed at the rate of Rs.75/-per square metre. Pursuant to a notification u/s 4 of the said Act, an area of 390 square metres situated at Orlim Village of Salcete Taluka was acquired by the appellants for construction of road in Village Panchayat Varca, Salcete Taluka, vide notification published on 12.07.2000. The Land Acquisition Officer by an award passed u/s 11 of the said Act offered the compensation for the land acquired at the rate of Rs.27/-per square metre. Being dissatisfied with the said amount, the respondent sought a reference u/s 18 of the said Act for enhancement of the compensation and claimed a sum of Rs.600/-per square metre for the land acquired. The Reference Court after framing the issues and recording of evidence by judgment and award

dated 25.08.2006 fixed the compensation for the land acquired at the rate of Rs.75/-per square metre. Being aggrieved by the said judgment and award, the appellants have preferred the present appeal.

2. Shri P. Vernekar, learned Addl. Government Advocate appearing for the appellants has assailed the impugned judgment essentially on the ground that the respondents have not led any evidence to substantiate their claim of enhancement of compensation. The learned Addl. Government Advocate has pointed out that though the Reference Court whilst fixing the compensation for the land acquired has come to the conclusion that the land acquired had amenities such as water, electricity etc. there is no evidence adduced by the respondents to substantiate such claim. The learned Counsel further pointed out that such contentions are only found in the evidence of the expert which the learned Judge has discarded whilst passing the impugned judgment. The learned Counsel has taken me through the impugned judgment as well as the evidence on record and pointed out that in a portion of the land acquired there was an existing footpath, and as such the Reference Court was not justified to fix the compensation at the rate of Rs.75/-per square metre. The learned Counsel further pointed out that in view of the fact that there was an existing footpath at the place where the land was acquired such land had no potentiality of being used for development purpose. The learned Counsel as such submits that the impugned judgment cannot be sustained and deserves to be quashed and set aside.

3. On the other hand, Ms. A. Razak, learned Counsel appearing for the respondents has supported the impugned judgment and pointed out that the Reference Court after assessing the material on record has fixed the compensation on the basis of sale deed produced by the respondents in respect of the land sold in the year 1999 at the rate of Rs.438/-per square metre. The learned Counsel further pointed out that the sale instance was of the year 1999 and notification in the present case was in the year 2000 and considering the escalation of 10%, the amount works out to Rs.500/-per square metre approximately. The learned Counsel further pointed out that though land having potentiality of being used for development purpose is sold in the vicinity of the land acquired at a distance of about one kilometre from the land acquired at the rate of Rs.500/-per square metre after effecting deduction of nearly 85%, the Reference Court has fixed the compensation at the rate of Rs.75/-per square metre. The learned Counsel further pointed out that taking note of the location of the land acquired and the sale instance produced by the respondents, there is no justification for any interference by this Court in the impugned judgment. The learned Counsel as such submits that the above appeal deserves to be dismissed.

4. Having heard the learned Counsels and on perusal of records, the following point for my determination arises in the present appeal :

POINT FOR DETERMINATION

Whether the Reference Court was justified to fix the compensation for the land acquired at the rate of Rs.75/-per square metre ?

5. In support of their claim of enhancement of compensation, the respondents have examined Smt. Filomena Thereza Leitao as AW1 who has stated in her affidavit in evidence that the Government has acquired a portion of the property surveyed under no.47/11(part) having an area of 390 square metres and that according to the said witness, the actual market value of the said land is Rs.600/-per square metre. She has further stated that the Land Acquisition Officer has not considered the potentiality of the land acquired. The said witness has further stated that the land acquired was suitable for housing and other projects and the land is well situated in a developed belt. She has further produced a valuation report of an expert as well as a sale deed which was taken on record and marked as Exhibit C-29. In the cross examination, she has stated that before acquiring land her mundkars were passing through a small passage which was in existence. She has further stated that the distance between her property and the sale deed plot is at a distance of about less than one kilometre. She has further stated that the property mentioned in the sale deed is her property and it was sold from the property surveyed under No. 101/7. Next witness examined is Mrs. Maria D. L. Miranda who has prepared the valuation report. She has produced the valuation report which is at Exhibit C-31. In her cross examination, she has stated that the houses are not touching the acquired land and little further one house exists touching the road. She has further stated that the acquired land is located about 800 metres from the main Margao-Cavelossim road. She has further stated that she has fixed the compensation at the rate of Rs.590/-per square metre in the year 2000. The Reference Court whilst passing the impugned judgment has relied upon the said sale deed and fixed the compensation at the rate of Rs.75/-per square metre.

6. On perusal of the evidence on record, the same discloses that the sale deed at Exhibit C-29 is at a distance of less than one kilometre from the acquired land. The price which works out on the basis of the sale deed is around Rs.500/-per square metre approximately after giving escalation of 10% in view of the time gap from the date of Section 4 notification and the date of the sale deed. Apart from that, considering the evidence of AW2 and the report submitted by her, it is evident that the land acquired had infrastructures of being used for the purpose of development. But however, the said land no doubt had demerits as pointed out by learned Addl. Government Advocate appearing for the appellants. The demerits are essentially that the land acquired was at a distance of about 800 metres from the main road besides there are mundkarial houses and part of the land acquired was already used as a means of footpath access by the persons occupying the land belonging to the respondents. Considering the said demerits, the deduction of 85% carried out by the Reference Court for the purpose of fixing the market value for the land acquired is justified. Considering the well settled principles of law with regard to the deduction of amount for the purpose of development charges and/or dissimilarities of the land acquired vis-a-vis sale

instance, I find that the deduction of 85% made by the Reference Court cannot be said to be erroneous. The Reference Court has taken note of the fact that the land acquired is located in Orlim Village and had potentiality of being used for non agricultural purpose. Merely because part of the acquired land was being used for the purpose of footpath access by itself does not disentitle the rightful owner to claim compensation for the land acquired. No doubt, this factor has to be considered whilst fixing the compensation for the land acquired. In the present case, the Reference Court has deducted an aggregate of 85% on account of such dissimilarity and I find that the amount of compensation fixed by the Reference Court at the rate of Rs.75/-per square metre for the land acquired cannot be said to be unjust or exorbitant. The Reference Court has fixed the compensation on the basis of material on record and there is no case made out by the appellants which calls for interference by this Court in the impugned judgment passed by the Reference Court. The point for determination is answered accordingly. In view of the above, I find no merit in the above appeal which stands accordingly dismissed.