

(2017) 08 BOM CK 0152
In the Bombay High Court
Case No : 86 of 2012

Land Acquisition Officer, Through the Executive Engineer	APPELLANT
Vs	
Mr. George Fernandes alias Jorge Luis Fernandes	RESPONDENT

Date of Decision : 03-08-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41Rule 27](#), [Order 13Rule 1](#), [Order 41Rule 21](#), [Order 13Rule 12](#) -

Citation : (2017) 08 BOM CK 0152

Hon'ble Judges : Nutan D.Sardessai

Bench : SINGLE BENCH

Advocate : A. Gomes Pereira, G. Agni

Final Decision : Dismissed

Judgement

1. This is an appeal by the State challenging the Judgment and Award dated 05/05/2011 passed by the learned Adhoc District Judge-II, F.T.C.-II South Goa in the Land Acquisition Case No.16/2010 enhancing the market value of the acquired land from Rs.98/-per sq.mt. to Rs.2000/- per sq.mt. apart from the consequential benefits, solatium and additional compensation and interest in terms of the Act.
2. Shri A. Gomes Perreira, learned Additional Government Advocate came to be heard on behalf of the appellant / State and Shri G. Agni, learned Advocate on behalf of the respondent.
3. The State assailed the impugned Judgment and Award on the ground that the enhancement of the market value to Rs.2000/- per sq.mt. was arbitrary and without any basis. The acquired land was an agricultural property and had no building potential on the date of the acquisition. The Reference Court could not have relied on the sale instance dated 10/02/2009 which related to a plot in which there was a house structure and being subsequent to the Section 4

Notification. The Reference Court failed to appreciate that the acquired land was affected by the CRZ Notification and could not be brought under any development. The impugned Judgment and Award was thus contrary to law and the evidence on record and therefore was liable to be interfered with in appeal.

4. Shri A. Gomes Perreira, learned Additional Government Advocate briefly alluded to the fact that the Section 4 Notification was issued on 04/11/2008 followed by the site inspection of an area of 9825 sq.mts. and an area of 6122 sq.mts. being ultimately identified for the acquisition for the construction of a bridge from Varca to Talaulim. The affected Survey in respect of the respondent was 45/3 in an area of 267 sq.mts. The sale statistics had been called for from the Office of the Talathi and thereafter the Land Acquisition Officer had fixed the sale instance of the developed lands and not the exemplar in respect of the acquired land while considering those dated 15/10/2008 and 03/10/2008 to fix the compensation. One pertained to a coconut grove where the market rate was Rs.98/- per sq.mt. and there was a paddy field where the market rate was Rs.12/- per sq.mt. and the Land Acquisition Officer awarded the market value @Rs.98/- per sq.mt. The learned Reference Court in the Section 18 reference awarded the compensation @Rs.2000/-per sq.mt. ignoring the boundary being the Sal river and the land being covered by the CRZ notification. He referred to paragraph 9 of the impugned Judgment amongst others and submitted that the Reference Court was not justified in enhancing the compensation to Rs.2000/- per sq.mt.

5. Shri A. Gomes Pereira, learned Additional Government Advocate also adverted to the application moved by him in terms of Order XLI Rule 27 C.P.C. to bring additional documents on record on the premise that the acquired land bearing Survey No.45/3 was delineated in CRZ Notification. The acquired area fell in the No Development Zone and, therefore, by no stretch of the imagination could the learned Reference Court rely on the Sale Deed and process the evidence ignoring this aspect. The State was not in possession of the plan showing the land delineating the Development Zone in respect of the applicant's properties and could not produce it before the learned Reference Court. The appellant had obtained the same from the Director of Settlement and Land Records, Panaji and records showing the area in the plan as No Development Zone. The said document was essential as an annexure to be taken on record to enable this Court to go to the root of the matter and, therefore, he prayed to rely on this document or otherwise grave prejudice would be caused to the State. It was amply supported by the Affidavit of the Officer of the appellant reiterating the contents on the oath. It was accompanied by a copy of a letter made by the Superintendent of Survey and Land Records, Panaji-Goa and land records to the Assistant General alongwith the copy of the plan. He relied in *Billa Jagan Mohan Reddy and Another v/s. Billa Sanjeeva Reddy and others* [1994 (4) SCC 659] to substantiate his contention that he could rely on such a document and submitted that it was most essential for the fair determination of the appeal.

6. In *Billa Jagan Mohan Reddy (supra)*, the Hon'ble Apex Court held that the Appellate Court could receive additional evidence in terms of Order XLI Rule 21 C.P.C. if it is considered to be needed in the interest of justice. The appellants were the first party in the reference proceedings under Section 30 of the Act relating to the acquisition of the land in Chintagattu village acquired due to the submersion of Pochampadu Project. Since the appellants claimed 1/4th share which was objected to by the 2nd party/respondents, the Collector made a reference under Section 30 and it was pending decision. The Appellants claim was based on the entries in the record of rights and the revenue records to show a pre-existing title. They sought to prove it by filing copies of the family holdings for different years and other documents and which was sought to be produced by an application for the condonation of delay in their production under Order XIII Rule 12(sic) of CPC. The Subordinate Judge dismissed the application and on revision too the High Court dismissed the petition giving rise to the appeal by special leave.

7. In *Billa Jagan Mohan Reddy (supra)*, the Hon'ble Apex Court considered Order XIII, Rule 1 CPC relating to the production of documentary evidence to be produced at or before the settlement of issues and observed that it was clear from its bare reading that the parties or their Counsel are required to produce all the documentary evidence on which they intend to rely on to establish their right alongwith the pleadings or before the settlement of the issues. If they are not in the party's possession or custody, it shall be filed by the party alongwith an application to condone the delay in filing them, the explanation for delay was not as rigorous as one filed under Section 5 of the Limitation Act. When the documents are sought to be produced before the trial Court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal, if any, and their relevance and effect they may have be considered in deciding the issues arising in the controversy. In these circumstances, it was held that the trial Court was not justified in refusing to condone the delay and to receive the documents and the High Court too also committed the same error in not considering the effect in this behalf in the right perspective and allowed the appeal.

8. I would first deal with the application moved at the instance of the appellant for the production of documents as per the contention of Shri A. Gomes Pereira, learned Additional Government Advocate for the appellant and as it had a material bearing on the outcome of the appeal and which was submitted to the contrary by Shri G. Agni, learned Advocate for the respondent. It was the case of the appellant that the learned Reference Court had failed to appreciate that the subject matter of the property under acquisition was affected by the CRZ Notification, that it fell within the "No Development Zone" and therefore the learned Reference Court could not rely upon the Sale Deeds produced in evidence for determining the market value of the acquired land. They were not in possession of the plan showing the line delineating the No Development Zone for the subject property and which therefore could not be produced before the

learned Reference Court. They had obtained the document from the Directorate of Settlement and Land Records, Panaji, with the plan showing the land delineating the No Development Zone in the said property and which was therefore necessary to be taken on record. Grave prejudice and irreparable loss would be caused to the appellant if the application was not allowed. The application was accompanied by the letter of the Superintendent of Survey and Land Records dated 25/03/2015 delineating the No Development Zone for the adjoining creek marked on the Survey Plan and the plan in question.

9. The respondent had vehemently opposed the application on the premise that the plan did not show how much was the area in the No Development Zone and more particularly it was incumbent on the appellant to show what was the line of No Development Zone in 2008 and earlier. Besides, on their own showing, an area beyond the said No Development Zone was a creek and not a river and therefore, it did not have the same tidal action as a river. The respondent was sought to be prejudiced on the basis of the said plan. There was also no material on record to show whether the respondent who was the affected party was given a hearing prior to mapping of the area as a No Development Zone. Therefore on all these counts, the plan could not be allowed to be produced in evidence. At the outset, there was no material produced on record at the instance of the appellant to show that any prior hearing was given to the respondent before demarcate the area of the Survey No.45/3 as a No Development Zone. Besides, there was no singular dispute that the area beyond this portion marked as No Development Zone was a creek and not a river and that it was not subject to the said tidal action as a river. Moreover, the acquisition took place pursuant to the Section 4 Notification of November,2008 when initially an area of 9825 sq.mts. was sought to be acquired and the area finally acquired was 6122 sq.mts. for the construction of the bridge from Varca to Talaulim and an area from the Survey No.45/3 being restricted to 267sq.mts. alone.

10. The appellant had otherwise not set out since when the subject property was affected by the CRZ Notification and/or that it fell in the No Development Zone and therefore not lacking any potential for development. The appellants claimed that they were not in possession of the plan in question as to enable them to produce it before the learned Reference Court who also did not spell out when the said plan was prepared identifying the property as No Development Zone. What all has been produced on record is the letter addressed by the Superintendent of Survey and Land Records dated 25/03/2015 to the Office of the Assistant Engineer stating that the creek-side portion of the aforesaid land existing between the bank of the creek and the line delineating the No Development Zone was falling within the No Development Zone. The appellant had not been able to show how this plan drawn in 2015 could relate back to the acquired area from the Survey holding No.45/3 in the year of its acquisition in 2005. The appellant for all purposes and facts had failed to show that these documents would have a material bearing on the outcome of the appeal and ultimately the determination of the fair compensation granted in the

respondent's favour. No case whatsoever was made out by the appellant to allow the same to be produced in evidence and therefore the application for producing such additional document on record is disallowed.

11. The respondent as the original applicant before the Reference Court had examined himself on oath claiming right to the acquired area of 267 sq.mts. forming a part of the property surveyed under Survey No.45/3 and stated that the L.A.O. arbitrarily determined and valued the property proposed to be acquired @Rs.98/- per sq.mt. which rate was illusory and had no relevance to the sales statistics. The acquired land was a prime land which was suitable for construction. The property bearing Survey No.45/3 had a part of it owned and possessed by him and part thereof which had been acquired had a compound wall around it estimated to cost Rs.85000/- approximately. Besides, there were fruit bearing trees in the acquired land with a minimum estimated cost of Rs.25,000/- each for the coconut trees, Rs.20,000/- each for the two cashew trees and an equal amount for the mango tree and Rs.5000/- for the acacia tree. He had relied on the valuation report prepared by the Engineer apart from his affidavit, the Sale Deed dated 10/02/2009 and another dated 21/04/1984 as also the Survey Records and Survey Plan of Survey No. 45/3 to substantiate his case.

12. The original applicant during his cross examination revealed that the property bearing Survey No. 45/3 was lying on the left hand side of the road proceeding from Margao to Cavelossim totally admeasuring 11600 sq.mts. The entire Survey No.45/3 was not owned by him but had been sub-divided and sold between six different persons by the original owner who also owned a part of it. He owned an area of 4900 sq.mts. of which 2600 sq.mts. was the subject matter of the present acquisition. He had purchased the said area for the total consideration of Rs.3,00,000/- and thereafter had constructed a residential house in the portion purchased by him. An area of 100 sq.mts. had become useless on account of the acquisition. Nonetheless, he revealed that the sale instance land dated 10/02/2009 was situated at a distance of 550 mts. away from his property which in turn was one kilometre away from Margao-Cavelossim road. He also admitted that the Sale Deed property was bounded on the south by an internal public road and there was a house and some coconut trees in the said property but could not say if the house and coconut trees were in existence at the time of the Sale Deed. Despite his cross-examination at length, there was no reference to the property owned by him being covered by the No Development Zone or that he could not carry out any construction in the said property. Rather he had categorically maintained that CRZ was not applicable to his property at the time of construction done by him in the year 1984.

13. The original applicant/respondent had examined the Surveyor/ approved Valuer who had drawn the Valuation Report identifying the acquired area being a freehold land accessible by a tar road and spelt about the amenities such as church, Bank, school and the Panchayat Ghar being located within a

circumference of 1km and that it was a residential locality which was accessible by a tar road. He had considered all these factors and arrived at the market value of the acquired land @Rs.3600/- per sq.mt. as on 18/04/2008. The learned Reference Court had assessed the evidence of the the respondent, found that he had established that the land was having potential for construction and relying not only on the Sale Deed but also the Report of the Expert found that he had withstood the cross-examination and supported the Report drawn by him after carrying out the site inspection of the acquired land at the instance of the respondent. The learned Reference Court on applying the comparison method and coupled with the evidence of the Expert arrived at the valuation of the acquired land @Rs.2000/- per sq.mt. It is only now in the course of the appeal that the State has tried to buttress a plea that the learned Reference Court had ignored the river Sal being the boundary of the acquired land and covered by the CRZ Notification and further that it fell within the No Development Zone as to disentitle the respondent of any enhanced compensation much less @Rs.2000/- per sq.mt.

14. It has been earlier held that there was no justification for the appellant's case to push in the plan drawn in 2015 and show that the acquired land fell in the No Development Zone area. At the cost of repetition, the respondents had clearly shown that he had purchased the land in 1984 when the CRZ law was not applicable. The respondent had otherwise established from the material on record that he had purchased a plot from the sub-divided property of the original owner and carried out construction therein. It was also established on the basis of the material on record that the plot was located in the residential area which was accessible by road and on that basis and relying on the sale instances apart from the Expert Report the learned Reference Court was satisfied that the land possessed building potential and awarded the compensation. The appellants have not been able to justify their case for interference with the impugned Judgment and Award on any premise and, therefore, the appeal must fail. In the result, i pass following : ORDER

The appeal is dismissed with costs to the respondents.