(2015) 01 BOM CK 0052

In the Bombay High Court

Case No : Cross Objection No. 15 of 2005 in First Appeal No. 23 of 2005, First Appeal No. 24 of 2005, First Appeal No. 268 of 2005 and Cross Objection No. 16 of 2005 in First Appeal No. 25 of 2005

Managing Director, G.I.D.C. and Others — APPELLANT

Vs

Balkrishna S.S. Kakodkar and Others — RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

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

Citation : (2015) 01 BOM CK 0052

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

Bench : Single Bench

Advocate : H.D. Naik, for the Appellant; R.G. Ramani, Advocates for the Respondent

Final Decision : Disposed off

Judgement

U.V. Bakre, J.—All the above appeals and cross objections shall be disposed of by this common judgment as they are directed against the same common Judgment and Award dated 01.10.2004, passed by the learned District Judge, South Goa (Reference Court, for short) in Land Acquisition Cases No. 171/1999, 172/1999 and 177/1999. Parties shall hereinafter be referred to as per their status in the said Land Acquisition Cases.

2. Facts giving rise to the appeals and cross-objections are as under:

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 12/10/1995 and at concerned places lastly on 03/11/1995, land was acquired for expansion of Phase-III of Industrial Estate at Cacora village of Quepem Taluka. This included an area admeasuring 15450 square metres of land from survey no. 83/3 situated at Cacora and belonging to the original applicant Shri Balkrishna S.S. Kakodkar. By award dated 04.02.1999, the Special Land Acquisition Officer (''L.A.O.'', for short) had awarded compensation at the rate of Rs. 20/- per square metre. Not being satisfied with the offer made by the L.A.O., the original applicant filed Reference Application under Section 18 of the L.A. Act thereby claiming compensation at the rate of Rs. 200/- per square metre which gave rise to the Land Acquisition Case No. 171 of 1999. The said acquisition also included an area of 540 square metres of land from survey no. 82/1 situated at Cacora village belonging to the applicant Smt. Anjani Laxman Sawant Dessai. By the said award dated 04.02.1999, the L.A.O. awarded compensation at the rate of Rs. 16/- per square metre to this acquired land. Not being satisfied with the offer made by the L.A.O., the applicant filed Reference Application under Section 18 of the L.A. Act, thereby claiming compensation at the rate of Rs. 500/- per square metre, which gave rise to the Land Acquisition Case No. 172 of 1999. The said acquisition also included an area of 4500 square metres from survey no. 80/2 situated at Cacora village, belonging to the original applicant Shri Balkrishna S.S. Kakodkar. The L.A.O. had offered compensation at the rate of Rs. 20/- per square metre. Not being satisfied with the said offer, the original applicant made Reference Application under Section 18 of the L.A. Act, thereby claiming compensation at the rate of Rs. 200/- per square metre, which gave rise to the Land Acquisition Case No. 177 of 1999.

3. Accordingly, issues were framed in all the above cases as per the claims made by the respective applicants. In Land Acquisition Case No. 172 of 1999, the applicant examined Laxman Datta Sawant Dessai as AW1 who is attorney of the applicant. AW1 produced sale deed dated 22.10.1983 as exhibit 23/c, by which the applicant had purchased the acquired land. The applicant examined Shri Vikas V. Dessai, an expert witness as AW2. The valuation report of AW2 is at exhibit 27/c. The respondents also examined two witnesses namely Shri S.A. Belwadi as RW1 and Shri Ramnath Babal Gawade as RW2, both being Field Managers of G.I.D.C.. In Land Acquisition Cases No. 171 of 1999 and 177 of 1999, common evidence was led. The applicant examined Shri Shivprasad B.S. Kakodkar as AW1. He produced a sale deed dated 03.11.1993, respectively as exhibit 23/c and exhibit 28/c, in each case. The applicant examined Shri Mahendra S. Kakule, Civil Engineer as AW2. The valuation report of AW2 is at exhibit 27/c in L.A.C. No. 171/1999 and as exhibit 32/c in L.A.C. No. 177/1999. The respondents examined the said witnesses namely Shri S.A. Belwadi as RW1 and Ramnath Babal Gawade as RW2.

4. By the common judgment and award dated 01/10/2004 passed in the said Land Acquisition Cases, the learned Reference Court awarded compensation at the rate of Rs. 50/- per square metre in respect of the land which was subject matter of Land Acquisition Case No. 171 of 1999; Rs. 55/- per square metre for the land which was subject matter of Land Acquisition Case No. 172 of 1999 and Rs. 53/- per square metre for the land which was subject matter of Land Acquisition Case No. 177 of 1999. All statutory benefits have been awarded.

5. The learned Reference Court took into account the fact that by Sale Deed dated 22/10/1983 (exhibit 23/C in the said Land Acquisition Case No. 172/1999),

the applicant of said Land Acquisition Case No. 172 of 1999 i.e. Smt. Anjani Laxman Sawant Dessai had purchased the said plot admeasuring 540 square metres from survey No. 82/2 of Cacora village, which was entirely acquired. The applicant had purchased the said plot for Rs. 10,000/- i.e. at the rate of Rs. 18.51/- per square metre. The learned Reference Court held that this sale deed dated 22.10.1983 must be treated as basis for assessing the market value of the acquired land, in all the cases. The property was purchased by Smt. Anjani Laxman Sawant Dessai on 22/10/1983 whereas the Government acquired the same property by virtue of notification issued under Section 4(1) of the L.A. Act on 03/11/1995. Thus, the property was acquired after about 12 years from the date of its purchase. The learned Reference Court held that it is common knowledge that the prices of land go on increasing every year. Relying upon the case of Krishi Utpadan Mandi Samiti Sahaswan District Badaun through its Secretary Vs. Bipin Kumar and Another, , the Reference Court held that the applicant is entitled for appreciation of market value by 15% annually. The applicants were found to be entitled to increase at the rate of Rs. 2.77 (rounded up to Rs. 3/-) as appreciation for every year. Accordingly, the cumulative increase of Rs. 36/- per square metre was made to the sale deed price of Rs. 18.51 per square metre which made a total of Rs. 54.51 which was rounded up to Rs. 55/- per square metre. In Land Acquisition Case No. 172 of 1999, the compensation was thus fixed at the rate of Rs. 55/- per square metre. Since the acquired land in Land Acquisition Case No. 171 of 1999 had an area of 15450 square metres, deduction of Rs. 5/- was made on the ground of largeness of area of the acquired land as compared to the area of the sale deed and the compensation in respect of acquired land in the said Land Acquisition Case No. 171 of 1999 was fixed at Rs. 50/- per square metre. In Land Acquisition Case No. 177 of 1999 an area of the acquired land was 4500 square metres, which was comparatively smaller than that in Land Acquisition Case No. 171/199. The Reference Court made a deduction of Rs. 2/- per square metre in respect of this acquired land and fixed the market value at Rs. 53/- per square metre in Land Acquisition Case No. 177 of 1999.

6. Aggrieved by the said judgment and award, the respective parties have filed the above appeals and cross-objections respectively. First Appeal No. 23 of 2005 and Cross-objection no. 15 of 2005 are against the judgment and award in Land Acquisition Case No. 177 of 1999. Cross-Objection No. 16 of 2005 has been filed against the said judgment and award in Land Acquisition Case No. 171 of 1999. This Cross-objection No. 16 of 2005 was filed in First Appeal No. 25/2005, which has been dismissed for non-prosecution, by order dated 15.04.2014. First Appeals no. 24 of 2005 and 268 of 2005 are filed against the Judgment dated 01/10/2004 passed by the Reference Court in Land Acquisition Case No. 172 of 1999.

7. Mr. Ramani, learned Counsel, submitted that his client had specifically relied upon a sale deed dated 03.11.1993, which pertained to undeveloped plot ''D'' from survey no. 82/1 of village Cacora, which was adjacent to the acquired land

of his client and both were similar in nature. He submitted that his client had not relied upon the sale deed dated 22.10.1983. He submitted that the price of the said plot was Rs. 134.90/- (Rs. 135/-) per square metre. He urged that the acquired land was in the jurisdiction of Cacora-Curchorem Municipality and was also in Industrial area, due to which an increase of 15% per annum should be made in the price of Rs. 135/- on account of gap of two years between the date of sale deed and the date of publication of notification. He further submitted that some deduction could be made on account of largeness of the acquired land. He therefore urged that the cross objections No. 15/2005 and 16/2005 be allowed and the compensation be enhanced, appropriately.

8. Mr. Usgaonkar, learned Counsel, submitted that the sale deed dated 22.10.1983 was too old to be considered and even if it had to be considered the appreciation in price of land during the intervening 12 years had to be considered and such annual increase ought to have been granted on compounding basis. He pointed out that by sale deed dated 22.10.1983, plot ''I'' from survey no. 82/1 of village Cacora was purchased for Rs. 18.51/- per square metre but by subsequent sale deed dated 03.11.1993, i.e. after about 10 years, plot ''D'' from same survey no. 82/1 was purchased for Rs. 135/- per square metre. He urged that the Reference Court ought to have relied upon the sale deed dated 03.11.1993, though it was not produced by his client. He submitted that the Reference Court was required to determine the market value of the acquired land and to avoid disparity/anomaly and no prejudice would be caused to the Government by maintaining parity in the market value of similar lands acquired under the same notification. He urged that the Reference Court ought to have taken judicial notice of the sale deed dated 03.11.1993 since common judgment was passed in all the above cases. He relied upon the Judgment of the Hon''ble Supreme Court in the case of Anjani Molu Dessai Vs. State of Goa and Another, and in the case of Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., .

9. On the other hand, Mr. H.D. Naik, on behalf of G.I.D.C., submitted that the sale deed dated 22.10.1983, being of the acquired land itself, was the best instance for determination of the market value and hence was rightly considered. He submitted that the evidence of RW1 and RW2 has not at all been considered by the Reference Court. According to him, the acquired land was situated in a village and hence the question of annual increase of prices of land at 15% per annum and that also on compounding basis does not arise. He urged that the sale deed dated 03.11.1993 is of developed subdivided plot and hence if considered, appropriate deductions towards development charges, conversion, etc., will have to be made. He relied upon the Judgment of the Apex Court in the case of "Valliyammal" (supra) for deductions and also on the judgment in the case of Maj. Gen. Kapil Mehra Vs. Union of India (UOI), . Learned Counsel relied upon the Judgment dated 4/10/2013, of this Court, in First Appeal No. 281 of 2007 (Special Land Acquisition Officer Vs. Panta Rama Gaonkar and 7 others), wherein the land acquired under the same notification as in the present case was

involved and this Court had maintained the compensation of Rs. 57/- per square metre as fixed by the Reference Court in respect of paddy field land bearing survey no. 59/12 of Cacora village. He submitted that the compensation is required to be reduced accordingly.

10. I have gone through the record and proceedings in all the above Land Acquisition Cases. I have considered the submissions advanced by the learned Counsel for the parties and also the Judgments relied upon by them.

11. The point that arises for determination is as to what should be the true market value of the acquired land as on the date of publication of notification under Section 4(1) L.A. Act.

12. In Land Acquisition Cases No. 171 of 1999 and 177 of 1999, the applicant had mainly relied upon the Sale Deed dated 03/11/1993 which was at exhibit 23/C in Land Acquisition Case No. 171 of 1999 and exhibit 28/C in Land Acquisition Case No. 177 of 1999, besides the valuation report of AW2. One Maniklal Shripad Shirsat and his wife were owners of the property admeasuring 7752 square metres which was part of a bigger property, bearing survey no. 82/1 of village Cacora. The said part of the property admeasuring 7752 square metres was sub-divided into sub-plots no. A to J. Vide the sale deed dated 03.11.1993, one plot i.e. plot no. ''D'', admeasuring 615 square metres was sold to one Ulhas Shamba Chari at the rate of Rs. 134.90/- per square metre. The sale deed does not mention that the conversion of the land was obtained and sub-division plan was approved. The plan attached to the sale deed does not show any internal roads constructed or drains, etc kept. The evidence of AW1 and AW2, in the said cases established that the acquired land and plot of the land sold vide sale deed dated 03/11/1993 were similar in nature and fit for construction purposes, having all the amenities like electricity, water, telephone, transport etc. Admittedly, an area of 540 square metres of land from the same survey no. 82/1 of village Cacora, was also acquired under the same notification. According to AW1, the sale deed plot touched the boundary of the acquired land. Both AW1 and AW2 specifically stated that the plot of land sold by said sale deed was not a developed plot. This has not been denied. Thus, the plots were made and named only for the purpose of identification without development of the land. However, the learned Reference Court refused to take the said sale deed dated 03/11/1993 as basis for assessing the market value of the acquired land. The applicant of Land Acquisition Cases No. 171/2005 and 177/2005 had not relied upon the sale deed dated 22/10/1983. However, since the sale deed dated 22/10/1983 had came on record in Land Acquisition Case No. 172 of 1999 which was in respect of the acquired land in that case, the Reference Court relied upon the same and fixed the market value of the acquired land in that case at Rs. 55/- per square metre. The Reference Court held that the said sale transaction vide sale deed dated 22/10/1983 (Exhibit 23/C in Land Acquisition Case No. 172 of 1999) must be taken as basis for assessing the market value in Land Acquisition Cases No. 171 of 1999 and 177 of 1999, also.

13. The approach of the Reference Court in not relying upon the sale deed dated 03/11/1993, in Land Acquisition Cases No. 171/1999 and 177/1999, in my considered view, is totally wrong. The best sale instance for determination of market value of the acquired land in Land Acquisition Cases No. 71/1999 and 177/1999 is the one dated 3/11/1993, since it is very proximate to the acquired land, from the angle of distance from the acquired land as well as time from the date of notification under Section 4(1) of the L.A. Act and was similar in nature. A perusal of the sale deed dated 03/11/1993 reveals that the plot admeasuring 615 square metres of the property bearing survey no. 82/1 of village Cacora was sold for Rs. 83,000/- i.e. at the rate of Rs. 134.90/- per square metre which can be rounded up to Rs. 135/- per square metre. As already stated above, the plot of the said sale deed dated 03/11/1993 was undeveloped plot. In the case of "Anjani Molu Dessai" (supra), the Hon''ble Supreme Court has observed that it is well settled that deduction for development cost has to be made only where the value of a small residential/commercial/industrial plot of land in a developed layout is made the basis for arriving at the market value of a nearly large tract of undeveloped agricultural land. It has been held that where the land sold under the relied upon sale deed and the acquired lands are both of similar nature, the question of making any deduction towards development cost to arrive at the cost of "undeveloped land" would not arise. Hence, the question of making any deduction in the price of the sale deed dated 03/11/1993, towards development cost does not arise. The cases of "Valliyammal" (supra) and "Maj. Gen. Kapil Mehra" (supra), insofar as they relate to deductions are not applicable to this case. The last date of publication of notification under Section 4(1) of the L.A. Act is 03/11/1995. The date of the sale transaction is 03/11/1993. There is therefore a gap of two years. In the case of "Valliyammal" (supra), the Hon''ble Supreme Court has reiterated the principle laid down in the case of The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, that if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. In the present case, considering that the acquired land is situated in the municipal as well as industrial area, in Goa, where there is acute scarcity of land, I am of the considered view that annual increase of 15% per annum as granted by the Reference Court is adequate. By giving increase of 15% per year, the said price of Rs. 135/- per square metre becomes Rs. 178.50/-. The acquired land of L.A.C. No. 171/2005 admeasures 15450 square metres and that of L.A.C. No. 177/2005 admeasures 4500 square metres, for which the L.A.O. has awarded compensation at the rate of Rs. 20/- per square metre. Considering that the said acquired lands have bigger area than the area of sale deed plot, some deduction is required to be made. Making a deduction of 25% on this count, the market value of the acquired land which is subject matter of Land Acquisition Cases No. 171/1999 and 177/1999 becomes Rs. 134.50/rounded up to Rs. 135/- per metre.

14. In respect of the acquired land admeasuring 540 square metres, concerned

in Land Acquisition Case No. 172/2005, the L.A.O. has awarded compensation of Rs. 16 per square metre, considering that the same was untenanted paddy land. The applicant of Land Acquisition Case No. 172 of 2005 had relied upon her own sale deed dated 22/10/1983, by which she purchased the said acquired land for Rs. 10,000/- i.e. at the rate of Rs. 18.51/- per square metre. This sale transaction is 12 years prior to the publication of notification under Section 4(1) of the L.A. Act. In the case of "Manipur Tea Co. Pvt. Ltd. vs. Collector of Hailakanda" reported in [(1997) 9 SCC 653], the Hon''ble Supreme Court has observed that the sale statistics related to sale transactions which took place 5 years prior to the date of notification under Section 4(1) of L.A. Act do not form any basis for determination of compensation. In the case of Collector of Panchmahals Vs. Desai Keshavlal Panalal, , the Learned Division bench of the Gujarat High Court has held that the time factor, no doubt, is important and they would be inclined to think that instances of sale having taken place in 1948 and 1949 that is 9 to 10 years ago would not ordinarily serve as good or safe guide for ascertaining the market value in 1958 unless there was evidence to show that prices had remained steady between the said sale and the date of notification. Thus, the learned Reference Court ought not to have considered the sale deed dated 22/10/1983 as safe guide for ascertaining the market value in 1995. Be that as it may, It is pertinent to note that while considering the annual increase in the price of the land at 15%, the learned Reference Court did not consider the said increase on compounding basis but took the said increase cumulatively for 12 years, at Rs. 36/- per square metre and added it to the price of Rs. 18.51/-, which worked out to be 54.51/- (rounded up to Rs. 55/-). In the case of V.M. Salgoacar and Brother Ltd. Vs. Union of India (UOI), , the Hon''ble Supreme Court has held that the annual increase should be made on compounding basis. If the said annual increase at the rate of 15% was made on compounding basis, the market value of Rs. 18.51/- would have become Rs. 98.90/- for the year 1995. But, in my considered view even Rs. 99/- per square metre would not be the true market value of the acquired land in the year 1995. It is seen that the same area of 540 square metres from the same survey holding no. 82/1 of Village Cacora belonging to the applicant, purchased by sale deed dated 22/10/1983, was acquired in Land Acquisition Case No. 172 of 1999. Therefore, there could not be any doubt regarding the similarity in nature of the acquired land in Land Acquisition Case No. 172 of 1999 and land of the sale deed dated 03/11/1993. There is also no dispute that the acquired land from survey no. 82/1 is very close to the acquired lands of Land Acquisition Cases No. 171 of 1999 and 177 of 1999. By the said Sale Deed dated 22/10/1983 plot admeasuring 540 square metres from survey no. 82/1 of Cacora Village was sold for Rs. 10,000/- i.e. at the rate of Rs. 18.51/- per square metre. However, by sale deed dated 03/11/1993 a plot admeasuring 615 square metres from same survey no. 82/1 was sold for Rs. 83,000/- i.e. at the rate of Rs. 134.90/- per square metre. It is seen from the sale deeds that one of the plots namely plot "I" was purchased by the applicant of Land Acquisition Case No. 172 of 1999 in the year 1983 whereas another plot i.e. plot "D" was purchased by Ulhas Chari in the year 1993. Thus, one can understand that the rate which was Rs. 18.51/- per square metre in the year 1983 became Rs. 134.90/- per square metre in the year 1993. Annual increase, therefore, during the intervening period of 12 years was not just 15% per annum but was much more than that. This Court could have remanded the Land Acquisition Case No. 172/1999, by giving leave to produce the sale deed dated 03/11/1993, in this case. In the case of "Anjani Molu Dessai" (supra), three sale deeds were produced by claimants. But all were discarded/excluded. After the exclusion of the said sale deeds, there was no evidence from the side of the claimants for determining the market value of the acquired land. However, the Hon''ble Supreme Court observed that there was no need for remand, as reasonable material was otherwise available for determination of the market value in the form of two sale transactions that were relied upon by the Land Acquisition Collector himself in his award. In the present case also, there is no need to remand the case to the Reference Court for doing the formality of taking the sale deed on record. In the case of K. Periasami Vs. Sub-Tehsildar (Land Acquisition), , the Hon''ble Supreme Court has held that when large extent of land was acquired by a notification under Section 4 of L.A. Act and market value of the lands was determined by different Benches of High Court and higher rate was awarded by High Court in respect of lands covered in other appeals while lower rate was awarded by Court in respect of the land of the appellant, though all the lands were situated in the same area and acquired by the same notification and the appellant''s land had been considered by the Land Acquisition Officer to be in a better advantageous position, in such situation appellant was entitled to parity of market value for the acquired land. Considering the facts and circumstances of the case, I am of the view that the market value of the said acquired land admeasuring 540 square metres should also be fixed at Rs. 135/- per square metre, to maintain parity in all the similar cases. The Judgment dated 4/10/2013, of this Court, in First Appeal No. 281 of 2007 (Special Land Acquisition Officer Vs. Panta Rama Gaonkar and 7 others) is not applicable to the present cases since the said case pertains to the acquired land which was a paddy field. Therefore, I hold that the applicants of all the above cases are entitled to receive compensation at the rate of Rs. 135/- per square metre.

15. In the result,

(a) First Appeal No. 23 of 2005 and First Appeal no. 24 of 2005 are dismissed.

(b) First Appeal No. 268 of 2005, Cross-objection no. 15 of 2005 and Cross-objection no. 16 of 2005 are partly allowed.

(c) The market value of the acquired land in all the above cases is fixed at the rate of Rs. 135/- per square metre. The applicants shall be entitled to all the statutory benefits.

(d) The common judgment and award of the Reference Court in all the above cases stands modified accordingly.

16. Appeals and cross objections stand disposed of accordingly.

