

(2010) 08 BOM CK 0186
In the Bombay High Court
Case No : First Appeal No. 185 of 2007

Mr. Gladstone S.C. Almeida, (Expired) (Deleted) and Others	APPELLANT
Vs	
Special Land Acquisition Officer and Deputy Conservator of Forests, Wild Life Division	RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Land Acquisition Act, 1894 — Section 11, 18, 4(1)

Citation : (2010) 08 BOM CK 0186

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : Mahesh Amonkar, for the Appellant; G. Shirodkar, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

A.S. Oka, J.—We have heard the Learned Counsel appearing for the Appellants and the learned Additional Government Advocate for the Respondents. The challenge in this First Appeal is to the Judgment and Award dated 1st February 2007 passed by the District Court in Land Acquisition Case No. 258 of 2000.

2. The lands surveyed under survey Nos. 1/0, 2/0, 6/0, 7/0, 8/0 and 20/0 situated in Dongurim village of Sanguem Taluka admeasuring 7,47,360/- square metres were notified for acquisition by a Notification u/s 4(1) of the Land Acquisition Act 1894 (hereinafter referred to as the said Act) on 27th September, 1982. The purpose for acquisition was for setting up of Wild Life Sanctuary. By the Award u/s 11 of the said Act, the market value at the rate of Rs. 2/- per square metre was offered. The amount of Rs. 1,29,613/- was paid for trees and Rs. 10,348/- was paid for two houses. In the Reference u/s 18 of the said Act, the Appellants claimed market value at Rs. 10/- per square metre. In the reference, apart from claiming market value at the rate of Rs. 10/- per square metre in respect of the land, the appellants claimed compensation of Rs. 6,54,000/-, Rs. 82,51,100/-,

Rs. 8,85,228/-, Rs. 34,39,700/- and Rs. 4,07,600/- for teak wood trees, kindal and matti trees, fruit bearing trees, non-fruit bearing trees and two residential houses respectively.

3. The Appellants adduced oral evidence and produced documents. The Reference was answered against them on the ground that the Appellants failed to discharge the burden of proving that the market value offered by the Land Acquisition Officer for the lands trees and the two houses was inadequate.

4. After arguing the appeal for some time, the learned Counsel appearing for the Appellants has tendered across the bar an application under Order XLI Rule 27 of the CPC for producing of additional documentary evidence. There is a prayer for permitting the appellants to produce additional documentary evidence and also to adduce additional oral evidence.

5. Along with the application, the appellants have annexed large number of documents in support of their claim of market value of the trees on the acquired land. In the application it is stated that the only land of the appellants has been acquired. It is stated that the 5th Appellant had given up his job in the Gulf and had come down to Goa and had developed the bamboo plantation in a scientific manner on the acquired land and was earning his livelihood. It is further stated that during the course of the trial the Forest Department did not furnish requisite documents for determining the fair market value of the acquired land and now, the appellants have now secured some of the relevant documents for the purpose of determining fair market value of the acquired land.

6. The Learned Additional Government Advocate has opposed the application by submitting that the appellants had an ample opportunity to adduce evidence.

7. A perusal of the record shows that a vast land held by the Appellants has been acquired. Even in the Award of the Land Acquisition Officer it is stated that there are large number of trees on the acquired land. The reference has been rejected on the ground that the appellants have failed to discharge the burden of proving that the amount offered under the award of the Land Acquisition Officer for trees and two houses was inadequate.

8. Considering the aforesaid facts, we are of the view that in the interests of justice that an opportunity deserves to be granted to the Appellants to lead further evidence by producing additional documents. An opportunity deserves to be granted to produce oral evidence.

9. Hence, we dispose of the appeal by passing the following order:

a) The application filed by the appellants is allowed.

b) The impugned Judgment and Award dated 1st February, 2007 is quashed and set aside and the L.A.C No. 158 of 2000 is restored to the file of the District Court.

c) The parties are directed to appear before the learned Principal District Judge,

South Goa, Margao on 13th September, 2010 at 10.30 a.m.

- d) After remand, the appellants will be entitled to lead oral and documentary evidence, in addition to the evidence which is already on record. The Respondents will be entitled to lead evidence in rebuttal.
- e) The Reference Court will decide the reference afresh after considering the documentary as well as the oral evidence adduced after remand, in addition to the evidence which is already on record.
- f) The Reference Court will decide the reference afresh as expeditiously as possible and preferably before the end of April 2011.
- g) All the contentions of the parties on merits are kept open.
- h) The appeal is partly allowed in the above terms, with no order as to costs.
- i) The record of the case be forthwith transferred to the District Court, South Goa, Margao.