

(2010) 01 BOM CK 0040
In the Bombay High Court
Case No : First Appeal No. 51 of 2000

Ms. Sundarabai G. Dhume, represented by Dr. Yeshwant Govind Dhume and Others APPELLANT

Vs

Deputy Collector (L.A.) and Land Acquisition Officer and Block Development Officer RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 4(1)

Citation : (2010) 2 BomCR 734

Hon'ble Judges : U.D. Salvi, J

Bench : Single Bench

Advocate : S.D. Lotlikar, for the Appellant; G. Shirodkar, Government Advocate, for the Respondent

Judgement

U.D. Salvi, J.—This is an appeal preferred against the judgment and award dated 7.12.1999 passed by the Additional District Judge, North Goa, Panaji in Land Acquisition Case No. 50/1995.

2. Facts leading to the present appeal are as under:

Acquisition of Bharad land admeasuring 8000 square metres of land out of Survey No. 63/4 admeasuring about 10250 square metres situate at village Naroa, Tal. Bicholim, District North Goa belonging to the appellant for the purposes of village playground was proposed by the State Government by virtue of notification published u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in the Government gazette dated 5.11.1992. The respondent No. 1 L.A.O. declared the Award fixing the market value of the land @ Rs. 8/- per square meters on 31.8.1994. Possession of the land acquired was taken on 6.1.1995. The appellants had claimed market value of the acquired land @ Rs. 300/- per square metre. A reference was, therefore, made u/s 18 of the said Act to the District Court, North Goa at Panaji pursuant to the application filed by the appellants dated 14.2.1995.

3. After considering the evidence of the appellants' witnesses namely AW1 Dr. Dhume, AW2 S.N. Bhobe Architect and Valuer and AW3 Mahadeo Salkar Vendor of the land in village Naroa and the submissions of the rival parties, the Reference Court found no substance in the plea for enhancement of the compensation in respect of the acquired land and rejected the reference vide impugned judgment and award dated 7.12.1999.

4. The Learned Reference Court observed that the appellants' valuer AW2 Bhobe had not given any reason as to why he had enhanced the rate of Rs. 40/- per square meter given in one sale instance in respect of a landed property situate at one Kms" distance from the acquired land to Rs. 140/- per square meter; and had further doubted the testimony of the valuer regarding his alleged visit to the acquired land; and had finally commented that the valuer had not done valuation with any expertise as required of him. As regards such rejection of the valuer's testimony, learned Senior Advocate Lotlikar for the appellants has no grievance to make. According to him, the approach adopted by the learned Reference Court was entirely negative and contrary to the well settled principles in the matter of fixation of appropriate market rate and in the process the learned Reference Court had completely overlooked the merits and de-merits of the aforesaid sale instance. The details of which had surfaced in the evidence of AW1 Dhume and AW2 Salkar ? Vendor in the said sale instance dated 1.4.1991.

5. Learned Senior Advocate Lotlikar for the appellants pointed out from the evidence of AW1 Dhume that the proposal for using the said landed property for hotel business, considering scenic beauty of the locality and proximity to the Mayem lake and other tourist spots, was in offing, but the proposal could not take shape for the reason of its acquisition for proposed village playground. He further submitted that the acquired land was a levelled piece of land abutting a road and situate next to village Panchayat office building and when compared to the landed property in the sale instance dated 1.4.1991, there was no difficulty in finding more positive factors than the negative ones in the acquired property. At the minimum, he submitted that the acquired land ought to have fetched market value of Rs. 40/- per square metre. He further submitted that the sale deed plot though a small piece of land was sold @ Rs. 40/- per square metre about a year prior to the date of publication of notification u/s 4 of the said Act and, therefore, considering both the deductions on account of the cost of development and lay out, and enhancement of the land price over passage of time, the market value of the acquired land ought to be the same as the one given for the sale deed plot. He marveled at the rationality of adopting the rate of Rs. 8/- per square metre given for the purposes of acquisition of landed property acquired for the purpose of Konkan Rail-way as the adequate market value for the land acquired in the present case.

6. Certainly computation of the market value of the acquired land is to be done either with the assistance of a valuer or with reference to market value of the comparable lands in the vicinity as disclosed from bonafide sale instances during

the period in or about the time of the acquisition.

7. In this context, learned Advocate Guru Shirodkar for the Government submitted that the learned Reference Court from the evidence adduced before it, had noticed that nobody ventured to establish a hotel at village Naroa since the year 1992 till the date of evidence (14.12.1998) and there is no evidence to prove comparable attributes of the lands sold (Exh.AW1/I) with those of the acquired property.

8. Keeping aside the valuer's opinion, one can very well see from the evidence of AW2 Subhashchandra Bhobe ? the Valuer that the acquired land had remained undeveloped in as much as no colleges, hospitals, hotels or restaurants had come up in the proximity of the acquired land and main village location of village Naroa is at a distance of about 1 Km. therefrom and distance of about 2.5 Kms. is required to be traversed for approaching hotel, school, temple, doctor situate at village Aturle. AW1 Yeshwant Dhume conceded to the fact of the property remaining undeveloped with expression that from the year 1992 nobody had ventured to establish a hotel at village Naroa. However, no cogent reason is apparent from the impugned judgment for shutting eyes to sale instances from village Naroa. While making fleeting reference to one such sale instance evident from the sale deed Exh.AW1/I, the learned Reference Court adverted to the thought on the issue of comparability between the sale instances and land acquired laid bare in the judgments of this Bench : 1998 (2) GLT 474 Dy. Collector (Dev) & L.A.O. Versus Vithal Bhiku Patekar and unreported judgment dated 1.1.1997 in First Civil Appeal No. 13/1995 Antonio Caitan Fernandes since deceased through his L.Rs. Versus Deputy Collector and S.D.O., Panaji. However, the Reference Court shied away from discussing such comparable attributes.

9. It is true that the plot of land admeasuring 500 square metres sold under sale deed Exh.AW1/I is situate at a distance of about 1 Km. from the acquired land. However, a fact cannot be ignored that it is situate in the same village. The Hon'ble Apex Court in Viluben Jhalejar Contractor (D) by LRs. Versus State of Gujarat reported in AIR 2005 SCW 2107 (cited by learned Govt. Advocate Shirodkar for the State) on the similar issue exhorted the Courts below to look for sale instances in the neighbourhood at or about the date of notification u/s 4(1) or otherwise other sale instances as well as other relevant evidences and to identify comparable instances having regard to the proximity from time angle as well as proximity from situation angle, and to make suitable adjustment having regard to the various positive and negative factors vis-a-vis the land under acquisition for determining the market value of such landvide para Nos. 19, 20 and 21 of the judgment. Evidence of AW1 Yeshwant Dhume and AW3 Mahadeo Salkar revealed positive and negative factors between the lands sold under sale deed Exh.Aw1/I and the acquired land as under:

Sr. No. Land acquired Land sold under sale deed 1) Huge large plot admeasuring 8000 square metres - negative factor Small plot admeasuring 500 square metres ? positive factor. 2) Levelled land Levelled land 3) Away from habitation ?

negative factor Amongst habitation ? positive factor 4) No trees No trees 5) Abutting road going from Bicholim to Naroa ferry Main road from Mayem to Naroa passes ? positive factor 6) No amenities like tap water, no well No amenities like tap water, no well 7) Electric line passing by the road Electric supply in the nearby habitation.

10. The Hon''ble Apex Court in Viluben Jhalejar Contractor's case (supra) further observed as under:

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.

11. Considering the aforesaid facts and circumstances as well as the standards for determining the market value as laid down by the Hon''ble Apex Court, 50 % of the rate on which the aforesaid landed property in village Naroa was sold can be taken as the basis for computation of the market value of the acquired land. The said land was sold on 1/4/1991. About a year thereafter notification u/s 4 for acquisition of the land in question was published. 15% rise in the value of the acquired land can be assumed on the day of publication of such notification. Thus, a fair and reasonable market value of the acquired land works out as under:

50 % of Rs. 40/- per square metre = Rs. 20/- per square metre. 15 % rise in the market value of Rs. 20 works out to Rs. 23/-.

12. Section 23 of the Land Acquisition Act, 1894 requires the Court to take into consideration firstly the market value of the land at the date of publication of notification u/s 4(1) of the Act in determining the amount of compensation to be awarded for the land acquired. In the instant case, the sale instance taken into consideration for computing the market value of the acquired land has not been shown to be bogus or malafide transaction of sale and, therefore, there can be no better yardstick for determining the market value of the acquired land. In the result, the market value of the acquired land can be fixed at Rs. 23/- per square.

13. The appeal, therefore, partly succeeds. The appellant shall be entitled to the rate of acquired land at Rs. 23/- per square metre along with the solatium and interest thereon as accruable on the market value of the acquired land as per Section 23 of the Act. No order as to costs.