

(2009) 10 BOM CK 0053
In the Bombay High Court
Case No : First Appeal No. 159 of 2005

Prabhakar Dayanand Keni

APPELLANT

Vs

Special Land Acquisition Officer and The Chief Engineer,
Konkan Railway Corporation Ltd.

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4

Citation : (2009) 10 BOM CK 0053

Hon'ble Judges : U.D. Salvi, J; S.B. Deshmukh, J

Bench : Division Bench

Advocate : Sudesh Usgonkar, for the Appellant; A.D. Bhobe, for the Respondent

Final Decision : Dismissed

Judgement

U.D. Salvi, J.—This is an appeal challenging the dismissal of the L.A.C. No. 262/1995 arising out of the Reference made on the application of the appellant u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) to the learned Third Additional District Judge, South Goa, Margao questioning the quantum of the compensation due in respect of the acquisition of 13500 square metres of land bearing Survey No. 91(part) at village Balli, Quepem, District South Goa belonging to the appellant.

2. This acquisition of land was proposed for the construction of new broad gauge line of Konkan Railway over the vast stretch of land admeasuring 43980 square metres including the said land at village Balli vide preliminary notification u/s 4 of the said Act bearing No. 22/255/91-RD dated 25.11.91 and published in the official gazette dated 12.12.91. The Special Land Acquisition Officer, the respondent No. 1 herein, awarded Rs. 4/- per square metre for the land and compensation of Rs. 7,38,792.09 for the trees standing thereon vide award dated 6.5.1994. Upon the claim made for the enhancement in the quantum of compensation thus awarded vide application of the appellant seeking the compensation @ Rs. 250/- per square metres for the land and Rs. 5,000/-for

each coconut and mango tree, Rs. 2,000/-for each cashew tree and Rs. 1500/- for the bhirand tree and Rs. 5,000/-for other jungle trees, the respondent No. 1 S.L.A.O. made reference to the District and Sessions Court, Margao, Goa u/s 18 of the said Act for adjudication of the said claim made for enhancement of compensation.

3. The appellant/ claimant examined himself and his valuer A.W.2, Vikas Dessai. To complement their testimonies, he placed in evidence a valuation report, copies of the six sale deeds and copies of the three awards. None was examined on behalf of the respondents. The respondents placed reliance on sale deed dated 11.11.1987-Exh.16 and award dated 4.8.1989-Exh.14.

4. Perusal of the impugned judgment and award reveals that the learned Referral Court did consider the rival submissions of the parties and the documents on record. The evidence of A.W. 2 Vikas Dessai, the valuer, failed to inspire confidence in the mind of the learned Referral Court for the following reasons:

(i) Delay of about 5 and half years for making of the report dated 12.11.1997 Exh.A.W.1/D after the alleged inspection of the land on 10.2.1992.

(ii) Lack of its (Valuer's Report) reflection in the application moved by the appellant for enhancement of the claim of compensation despite disclosure of market value of the land and trees allegedly made by A.W.2 Vikas Dessai to the appellant immediately after the said inspection.

(iii) Admission of the fact by A.W.2 Vikas Dessai that he was not an agricultural expert.

(iv) Failure of A.W.2 Vikas Dessai to mention girth and or the state of health of the trees in the acquired land.

(v) Non-production of any records regarding the alleged yield of fruits/income from the trees.

5. Objectivity of the valuer, Vikas Dessai also falls in question when the myth of comparability of the sale deed lands quoted by him in his valuation report with the acquired land stands exposed in the evidence. Learned Advocate Sudesh Usgaonkar for the appellant did not make any comment in respect of these material aspects taken into consideration by the learned Referral Court for rejecting the evidence of A.W.2 Vikas Dessai, the valuer. Learned Advocate Usgaonkar for the appellant had argued similar issue in F.A. No. 153/2005 decided by this Court and wishes to adopt the same line of argument which he had made in the said appeal, in the present appeal. Having considered the arguments of the learned Advocate Sudesh Usgaonkar in the said appeal, particularly regarding the upward trend in market dynamics, we observed that the learned Referral Court had followed the dictates of the Apex Court in the case of Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, , the Land Acquisition Officer and Mandal Revenue Officer v. V. Narasaiah and had considered intrinsic value of the sale instances on the basis of the evidence

tendered before it ; and this can be seen from the evidence of A.W. 2 Vikas Dessai, the valuer who had testified that the land prices were rising @ Rs. 10 to 15 % every year. In this context, the rejection of the valuer's evidence by the learned Referral Court cannot be termed as erroneous.

6. Two of these sale deeds namely sale deed dated 20.5.1996 Exh.AW1/C and sale deed dated 21.5.1996 Exh. AW1/I admittedly post notification sale deeds concerning the plots of lands admeasuring 332 and 490 square metres respectively out of the Survey No. 117/4 at village Balli were rejected by the learned Referral Court following the guidelines in respect of post notification sale instances revealed in the judgment of the Apex Court in Karan Singh and others etc. Vs. Union of India, for two good reasons (i) Availability of the evidence of land sale instances prior to the notification and (ii) failure to prove that there was no upward rise in the price of land after the notification. The learned Referral Court observed that there was upward rise in the price of land after the acquisition of land in area for Konkan Railway and village Balli was earmarked as a place for Konkan Railway Station. Relying on the finding of the Apex Court in The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, , the learned Referral Court could see gross discrepancy between the standard appreciation of value of land @ Rs. 10 % p.a. every year and the projected appreciation of value of the land to the extent of 65 % per year in post notification period.

7. As regards the sale deed dated 3.4.1991 Exh.AW1/E in respect of plot of land of 300 square metres of Survey No. 85/7 at Village Balli, the learned Referral Court suspected its bonafides taking into consideration the transaction of purchase of the said land along with additional area of 700 square metres from the said Survey Number by its Vendor Narendra Faldessai @ Rs. 10/- per square metre in 1987. The learned Referral Court took into consideration the standard annual increase of 10 % p.a. on the compounding basis every year and noticed that the value of the said land on 3.4.1991 would have been around Rs. 14/- per square metre and not Rs. 221.66 per square metre as shown in the sale deed dated 3.4.1991.

8. Another sale deed dated 30.9.1991 Exh. A.W.1/H was for same reasons found to be suspicious being executed by the appellant and his wife just before the notification in the present case. Sale deeds dated 7.3.1991 Exh. AW1/F and dated 6.1.1989 Exh.AW1/G did not find favour with the learned Referral Court for the reason of far away distance from the sale deed plots from the acquired land. The sale deed plots were situate close to national highway No. 17 while the acquired land was deep inside the Balli village. The Referral Court further discovered from the testimony of A.W.2 Vikas Dessai that the Vendors in the sale deed dated 6.1.1989 Exh. AW1/G had purchased the property along with additional piece of land totally admeasuring 20900 square metres for the price of Rs. 62,700/- under sale deed dated 20.8.1987 from Mr. Mahadeo Govind Naik and others i.e. @ Rs.3/- per square metre; and thus piece of land therefrom

admeasuring 2000 square metres was sold by the Vendors to their own Company in which they were Directors under sale deed dated 6.1.1989 @ Rs. 100/- per square metre.

9. The learned Referral Court, it appears took into consideration the awards ? Exh.AW1/A and Exh.14 passed by the Land Acquisition Officer. Award Exh.AW1/A quotes the value of mixed garden land with standing fruit bearing coconut and mango trees at Survey No. 117/4 and Survey No. 113/1 at Rs. 20/- per square metre in the year 1985. Award dated 4.8.1989 Exh.14 similarly quotes the rate of Rs. 20/- per square metre for the area of 1000 square metres of Survey No. 91/1 situate at village Balli some 150 metres away from the acquired land. The learned Referral Court took this market value of the land as on 27.11.1986 ? the date of publication of the notification u/s 4 of the said Act in the said case wherein the Award Exh.14 was passed, as a guiding measure and computed there from the market value of the acquired land as on 12.12.1991 on application of standard 10 % annual increase on compounding basis from 27.11.1986. The market value of the land thus, computed stood at Rs. 32/- per square metre. There is no controversy as regards mathematical computation of the market value of the land but the appellant disputes the adjustment of value of the trees with the value of the land arrived at by the Land Acquisition Officer while arriving at the figure of compensation due and payable to the appellant/ claimant by the learned referral Court.

10. The learned Referral Court with reference to the judgment of the Apex Court in State of Haryana Vs. Gurcharan Singh and another etc., avoided to fall in error of determining the market value of the land twice over ? one on the basis of the value of the land and again on the basis of yield got from the fruit bearing trees, particularly keeping in mind the fact that the Special Land Acquisition Officer had awarded compensation @ Rs. 20/- per square metre for the land without granting separate amounts towards the fruit value and wood value of the trees in the acquired land. Thus, the learned Referral Court by amalgamating the yield value of the trees (@ Rs. 43/- per square metre) with the value of the bare land (@ Rs. 4/- per square metre) had rationalised the amounts of compensation due and payable to the appellant/ claimant in terms of Section 23 of the said Act which requires the authorities involved in the process of determination of the market value of the acquired land to take into consideration two factors, firstly the value of the land and secondly the value of the trees standing thereon. Thankfully, for the appellant, the learned Referral Court, did not take into consideration the payment of Rs. 1,47,792/- paid to him towards wood value of the trees standing on the acquired land, which if taken into consideration, would have swollen the figure of total compensation paid to the appellant. The learned Referral Court thus, reached the conclusion that the appellant/claimant was paid compensation towards the acquisition of his land @ Rs. 47/per square metres.

11. It appears that the learned Referral Court did not discuss anything about the Award dated 20.05.1996 Exh.AW1/B passed by the S.L.A.O. in respect of the

acquisition of the land under the same notification published in the official gazette dated 12.12.1991. The S.L.A.O. valued the land at Rs. 1,94,115/- and trees standing thereon at Rs. 13,85,323/- and evaluated the total market value of the land including the trees, admeasuring 43980 square metres, at Rs. 15,79,438/-. Thus, the total market value per square metre works out to Rs. 35.91/-. This does not make appreciable difference with the total market value of the acquired land as computed by the learned Referral Court. Even taking into consideration the market value of the mixed garden land situate some 300 metres away from the acquired land and sold at Rs. 45/- square metres under Sale Deed dated 30/09/1991 - Exh.AW1/H as a guiding measure, one would find that the appellant/claimant was certainly paid compensation exceeding what was due and payable to him.

12. No error, was, therefore, committed by the learned Referral Court in reaching the conclusion that the appellant/claimant was paid in excess of what was due to him as compensation towards acquisition of his land, and was not entitled to anything more. In the result, the impugned order of rejection of the reference application does not call for any interference. The appeal, therefore, deserves to be dismissed with no order as to costs.