

(2010) 09 BOM CK 0043

In the Bombay High Court

Case No : First Appeal No's. 7, 8, 9 and 10 of 2003

Satyabhama Narayan Korgaonkar (Smt.)

APPELLANT

Vs

Special Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2010) 6 BomCR 273 : (2011) 1 MhLj 618

Hon'ble Judges : Lavande A.P, J

Bench : Single Bench

Advocate : Shivan Desai, for the Appellant; G. Shirodkar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Lavande A.P, J.—All these four appeals are disposed of by common judgment since the facts and the question of law involved are identical in all the four appeals.

2. Vide Notification published u/s 4 of the Land Acquisition Act (The Act" for short) which was published in the Official Gazette on 2/1/1992, lands of several persons were acquired for public purpose. Lands of the Appellants were part of the acquired land. The details of the lands acquired are as under:

First Appeal No. Land Acquisition Case No. Survey Nos. Area

F.A. No. 7 of 2003 LAC No. 62/1998 196/12 & 205/16 940 sq. metres

F.A. No. 8 of 2003 LAC No. 59/1998 196/8 & 205/13 (part) 650 sq. metres

F.A. No. 9 of 2003 LAC No. 58/1998 196/10, 205/15 and 205/27 (part) 1500 sq. metres

F.A. No. 10 of 2003 LAC No. 52/1998 197/5 (part) 275 sq. metres

3. The Appellants claimed Rs. 80/- per sq.metre in respect of the acquired lands.

The Land Acquisition Officer made the award on 1/7/1993 and granted compensation at the rate of Rs. 10/- per sq.metre. Aggrieved by the inadequacy of the compensation, the Appellants sought reference under 18 of the said Act and claimed compensation at the rate of Rs. 80/- per sq.metre in respect of the acquired lands.

4. In Land Acquisition Case Nos. 62/ 1998, 59/1988, 58/1998 and 52/1998 before the Additional District Judge at Mapusa, the parties examined themselves and Mahadev Tuenkar, AW 2 in support of their claim. The Respondent examined one witness, Mr. T.A. Achuttan, Assistant Engineer, Irrigation Department. The Reference Court rejected the references primarily on the ground that the lands belonging to the Appellants were tenanted agricultural lands and since the Appellants did not lead any evidence regarding agricultural yield, the Reference Court held that no case was made out for grant of enhanced compensation.

5. Mr. Desai, learned Counsel appearing for the Appellants in all the four appeals submitted that the Reference Court ought not to have rejected the references. He further submitted that the Reference Court ought to have enhanced the compensation on the basis of building potential of the acquired land and ought to have placed reliance upon the sale-deeds produced in support of their case. He, therefore, submitted that the impugned orders rejecting the reference are liable to be quashed and set aside.

6. Per Contra, Shri G. Shirodkar learned Government Advocate for the Respondents submitted that the acquired lands were admittedly agricultural tenanted lands and, as such, were having building potential. He further submitted that the Appellants did not lead any evidence regarding the income received from agricultural produce from the acquired lands and, as such, the Appellant had not made out any case for enhanced compensation. Placing reliance upon the case of (Janki N. Morajkar v. Special Land Acquisition Officer) 2005 (2) GLR 287, Mr. Shirodkar submitted that the issue involved in the present appeals is squarely covered against the Appellant.

7. I have considered the rival submissions and perused the record. In view of the submissions made and the findings given by the Reference Court, the following point arises for determination in the appeal.

i) Whether the Reference Court was justified in rejecting the references? If not, what compensation the Appellants are entitled to?

8. Perusal of the record discloses that the Appellants have admitted that the acquired lands were tenanted agricultural lands. This being the position, in my considered opinion, the judgment in the case of Smt. Janaki N. Morajkar, would squarely apply. In the said case the Division Bench of this Court to which one of us (A.P. Lavande, J) was a party, after considering the provisions of the Agricultural Tenancy Act, 1964 and Goa Land Use (Regulations) Act, 1991 held that in view of the provisions of the said Acts, the market value of agricultural tenanted lands cannot be assessed on the basis of the building potential. The

Division Bench further held that in case of tenanted agricultural lands, compensation can be decided on the basis of agricultural yield. Admittedly, in the present case, the Appellants have not lead any evidence regarding the agricultural income received from the acquired lands. Therefore, the sale deeds upon which reliance has been placed by the Appellants in respect of developed plots would be of no help to the Appellants. In my considered opinion, the ratio laid down in the case of Smt. Janaki N. Morajkar (*supra*), is squarely applicable in the present case. Therefore, the Reference Court was justified in rejecting the References sought for by the Appellants.

9. In view of the above discussion, I do not find any, merit in the appeals preferred by the Appellants. Consequently, the appeals are dismissed. However, the parties are directed to bear their own costs.