

(2011) 01 BOM CK 0003

In the Bombay High Court

Case No : First Appeal No. 244 of 2005 with First Appeal No. 245 of 2005

Shri Narayan Uttam Poi Kakode

APPELLANT

Vs

Special Land Acquisition Officer, South Goa, KRCL, Amey
Guest House, Davorlim Road, P.O. Navelim, Salcete, Goa -
403707 and The Chief Engineer, Konkan Railway Corporation
Ltd., 4th Floor Souza Towers, Church Square, Panaji, Goa -
403001

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 23(2), 28

Citation : (2011) 01 BOM CK 0003

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

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

Judgement

F.M. Reis, J.—Both the above appeals have been taken up together for final hearing as both challenge the common judgment and award passed by the Reference Court dated 3/06/2005 in Land Acquisition Case No. 259/1995 and Land Acquisition Case No. 490/1995. The parties shall be referred to in the manner they so appear in the cause title of the impugned judgment.

2. Facts in First Appeal No. 244 of 2005:

A portion of the property of the applicant came to be acquired admeasuring an area of 325 square metres from the property surveyed under no. 22/2(part) of Tiloi Village of Quepem Taluka for the construction of the new broad gauge line for Konkan Railway by notification issued u/s 4 of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act" dated 8/01/1992 and published in the Official Gazette dated 30/01/1992. By an award passed by the Land Acquisition Officer u/s 11 of the said Act, a sum of Rs. 4/- per square metre, besides value for fruit bearing trees, was offered by Land Acquisition Officer. Being dissatisfied with the said amount the applicant sought a reference u/s 18 of the said Act and

claimed compensation at the rate of Rs. 250/- per square metre for the land acquired. By judgment and award dated 3/06/2005, the Reference Court rejected the said reference.

3. Facts in First Appeal No. 245 of 2005:

By notification issued u/s 4 of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act", an area of 1650 square metres from the property surveyed under no. 22/2 came to be acquired by subsequent notification dated 1/08/1994 and published in the Official Gazette dated 5/08/1994 for the said purpose. By an award u/s 11 of the said Act, the sum of Rs. 4/- per square metre was offered by the Land Acquisition Officer besides compensation for the trees. Being dissatisfied with the said amount, the applicants sought a reference u/s 18 of the said Act for enhancement of compensation and claimed a sum of Rs. 250/- per square metre for the land acquired. By judgment and award dated 3/06/2005, the reference filed by the applicant came to be dismissed. Being aggrieved by the said judgment, the applicant has preferred the present appeal.

4. Shri Sudesh Usgaonkar, the learned Counsel appearing for the applicants has assailed the impugned judgment and submitted that the Reference Court has totally misdirected itself in coming to the conclusion that the applicant has failed to establish that the price offered by the Land Acquisition Officer is inadequate. The learned Counsel further submitted that the applicant had produced sale instances including awards passed by the Reference Court in Land Acquisition Case No. 291/1994 and Land Acquisition Case No. 489/1995 which are at Exhibit 25 and the Reference Court has erroneously rejected the said awards mainly on the ground that the sale instances relied upon therein cannot form the basis for the purpose of fixing the market value of the acquired land. The learned Counsel further submitted that the awards passed in the said cases are in respect of the same notification and there was no reason for the Reference Court to discard the said award. The learned Counsel further submitted that the reasons given by the Reference Court to discard the said awards are totally erroneous. The learned Counsel further submitted that the sale instances produced by the applicant are comparable to the land acquired and, as such, the applicant was entitled for enhancement of compensation. The learned Counsel further submitted that on the basis of the oral as well as documentary evidence adduced by the applicant there can be no doubt that the amount offered by the Land Acquisition Officer in the award u/s 11 of the said Act is inadequate. The learned Counsel further submitted that the respondents have failed to adduce any evidence to rebut evidence adduced by the applicant. He, as such, submitted that the appeals preferred by the applicant deserve to be allowed and the amount of compensation in respect of the acquired land deserves to be enhanced to a minimum sum of Rs. 100/- per square metre.

5. On the other hand, Shri A.D. Bhobe, the learned Counsel appearing for the respondents has supported the impugned judgment. Learned Counsel pointed out that the Reference Court has minutely examined the evidence on record and

has come to the conclusion that the sale instances produced by the applicant are not at all comparable to the acquired land. Learned Counsel further submitted that the awards produced by the applicant which are at Exhibit 25 are not final as they are being challenged before this Court. Learned Counsel further submitted that there is no infirmity committed by the Reference Court and, consequently, the appeals deserve to be rejected.

6. Upon hearing learned Counsel and on perusal of the records, the following point for determination arises in the appeal:

POINT FOR DETERMINATION

(i) Whether the Reference Court was justified to reject the references filed by the applicants.

7. In support of his claim for enhancement, the applicant has examined his witness and adduced his evidence. The applicant has produced the sale deed at 3/04/1991 at Exhibit AW1/B in respect of a plot admeasuring 300 square metres from survey no. 85/7 at Balli, where price was Rs. 221.66 per square metre. It is further his contention that the said plot is at a distance of 1.5 kilo metres away from the acquired land. Considering the said distance and in view of the facts that there are other sale instances which are closer to the acquired land, the Reference Court was justified to discard the said sale instance for fixing the market value of the acquired land. Another sale instance which has been produced dated 11/11/1987 which is at Exhibit AW2/D (Cross) where land was sold at the rate of Rs. 221/- per square metre. The Reference Court has considered the said sale instance and come to the conclusion that the price in the sale deed dated 3/04/1991 is escalated. The said finding has been given on the basis of giving an escalation of 10% on the price at which the purchaser therein had purchased the property in the year 1987. I find that the said exercise of the Reference Court is totally erroneous. The Court will have to consider the genuineness of the sale deed on the basis of the evidence adduced by the parties. There can be a rise in price in immovable properties on account of different factors and changes in the surroundings. It is not possible to ascertain the genuineness of the sale deed by giving an escalation of 10% on the price at which the land was purchased. The ground on which the Reference Court has discarded the said sale instance would not be justified. The applicant has also relied upon the awards passed in another proceedings by the learned District Judge in Land Acquisition Case No. 291/1994 and 489/1995 which are at Exhibit 25 filed in Land Acquisition Case No. 490/1995. The judgment is dated 27/04/2001. The land acquired in the said case was in respect of a notification dated 30/07/1991 & 29/08/1994 which was acquired at Balli village for the Konkan Railway and awards were dated 7/12/1993 & 11/09/1995 by the Land Acquisition Officer. By the said judgment at Exhibit 25, the learned District Judge has awarded compensation at the rate of Rs. 30/- per square metre and Rs. 40/- per square metre. The Reference Court has discarded the said awards erroneously on the ground that the sale instances relied upon therein were not

bonafide.

8. During the course of the submissions, it was brought to my notice that the judgment and award passed in the said two cases was challenged before this Court in First Appeal No. 82/2003 and First Appeal No. 83/2003 which came to be disposed of by judgment dated 16/12/2008. It was also brought to my notice that the SLP was preferred before the Hon"ble Supreme Court by respondents herein which came to be dismissed by order dated 20/07/2009.

9. Considering the facts and circumstances of the case, I find no justification not to rely upon the said two awards as the basis for the purpose of fixing market value of the land acquired. On perusal of the evidence of AW1/Narayan Uttam Pai Kakode, he has categorically stated that the subject matter of the land in the said two cases belonging to one Vithal Kamat are at the distance of 30 metres from the acquired land. The evidence further discloses that the nature of the land is similar to the acquired land. As such, the said judgment can form the basis for the purpose of fixing the market value of the acquired land.

10. Shri Sudesh Usgaonkar, learned Counsel for the applicant has submitted that though the compensation fixed therein is at the rate of Rs. 30/- per square metre in respect of the acquisition which took place in the year 1991 and a sum of Rs. 40/- per square metre in respect of notification in the year 1993, the subject matter of the land acquired therein was more than 28,000 square metres, whereas in the present case the land acquired admeasures 325 square metres and 1650 square meters, respectively. The learned Counsel, as such, submitted that the applicant is entitled for a higher compensation considering that the land acquired is much smaller than the one referred to in the subject matter of the said acquisition. No doubt the applicant would be entitled for a higher compensation considering that the subject matter of the land acquired in the said awards was much larger than the subject matter in the present case. However, on perusal of the said judgment passed by this Court, I find that the land acquired therein was adjoining the road. In the present case, the land acquired is not adjoining any public road. On the contrary, AW1/Narayan Uttam Pai Kakode, has stated that the National Highway - 17 which passes through Balli was at a distance of about 20 metres from the property. He has further stated that the property between the nalla on the east of his property and the National Highway was the property of one Kakode and Vithal Kamat, which was the subject matter of the land acquired in the said proceedings. He has also stated that the nalla is about 3 metres width and during the monsoons water remains in the said nalla. He has further stated that to enter his property he has to pass through the said nalla. All these factors suggest that the land acquired in the present case was land locked and was not adjoining any public road. It is well settled that the lands which are adjoining the public road fetch a higher value than the lands which are located in the interior. Shri Bhohe, the learned Counsel appearing for the respondents submits that but for the said dissimilarity the land acquired in the present case is comparable with the land acquired in the awards which are

subject matter of Exhibit 25, which have been accepted by this Court while passing the said judgments.

11. Considering the facts and circumstances in the present case, I find that any appreciation which could be given on account of the dissimilarity in the size of the land acquired is set off from the deduction to be effected on account of the fact that the land acquired herein is land locked and close to a nallah.

12. As such, I find no reason not to consider the said judgment of this Court in fixing the market value of the acquired land. I accordingly fix the market value of the land acquired pursuant to notification dated 30/01/1992 at the rate of Rs. 30/- per square metre having an area 3255 square metres and in respect of an area of 1650 square metres which was the subject matter of the notification dated 5/08/1994 at the rate of Rs. 40/- per square metre. Any amount paid by the respondents would have to be adjudicated whilst making the said payment. Besides the said amount, the applicant would be entitled for statutory benefits in accordance with law. The point for determination is answered accordingly. In view of the above, I pass the following order:

ORDER

(i) Both the appeals are partly allowed.

(ii) The impugned judgment and award dated 3/06/2005 is quashed and set aside.

(iii) The applicant is entitled to a compensation at the rate of Rs. 30/- per square metre in respect of an area of 325 square metres and Rs. 40/- per square metre in respect of an area of 1650 square metres, which are the subject matter of the said acquisition after deducting the amounts paid by the respondents to the applicant.

(iv) Needless to say, the applicant would also be entitled to statutory benefits under the provisions of Section 23(1-A), 23(2) and Section 28 of the said Act in accordance with law.

(iv) Both the appeals stand disposed of accordingly with no order as to costs.