(2009) 07 BOM CK 0231

In the Bombay High Court

Case No : First Appeal No. 123 of 2000

Shri Yeshwant V.S. Verenkar since deceased through his legal representatives (Smt. Bhimoroti Yeshwant Shet Verenkar (since deceased) through legal representatives and Others)	APPELLANT
Vs	
Land Acquisition Officer, PWD (Cell) and Ex-Engineer, W.D. XV, P.W.D.	RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4

Citation : (2009) 07 BOM CK 0231

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : R.G. Ramani, for the Appellant; S. Vahuidulla, A.G.A., for the Respondent

Judgement

A.P. Lavande, J.—By this appeal, the appellants take exception to the Judgment and Order dated 24.02.2000 passed by the Addl. District Judge, North Goa, Panaji, in Land Acquisition Case No. 136/97, rejecting the reference u/s 18 of the Land Acquisition Act (''The Act'' for short).

2. The Government of Goa issued Notification under 4 of the Act, acquiring lands for the public purposes, namely, the construction of a bypass to Ponda Town. The Notification was published on 14.11.1989. The land admeasuring 2378 square metres belonging to the appellant was part of the acquired land out of which an area of 930 square metres was paddy field and the remaining area of 1448 square metres was coconut grove. The appellants claimed Rs. 300/- per sq. metre in respect of the acquired land. The Land Acquisition Officer passed the Award dated 15.03.1992 fixing the compensation at the rate of Rs. 55/- per sq. metre in respect of the coconut grove and Rs. 15/- per square metres in respect of the paddy field. The Land Acquisition Officer also awarded compensation in respect of the trees existing in the acquired land. Being aggrieved, the respondents sought reference and claimed Rs. 300/- per square metre in respect

of the acquired land and also claimed higher compensation in respect of the trees.

3. In Land Acquisition Case No. 136/1997, the original claimant, Yeshwant Verenkar examined 3 witnesses, namely Vidhyadhar Yeshwant Verenkar Pw 1, Clemente Coelho Pw 2 and Vikas Dessai Pw 3 and placed reliance upon the Sale Deed dated 05.04.1989 executed by one Pandurang Verenkar, brother of the original claimant who expired during the pendency of the reference. The appellants also produced another Sale Deed dated 18.06.1990 in respect of 315 square metres, which was sold at the rate of Rs. 285/- by Pandurang Verenkar. The appellants also relied upon the Valuation Report which was tendered through the Valuer Shri Vikas Dessai Pw 3. The reference Court upon appreciation of the evidence led by the claimants/appellants held that the claimant had not made out any case for enhancement of the compensation and consequently dismissed the reference.

4. Mr. Ramani, learned Counsel for the appellants submitted that the reference Court has not given any reason for not relying upon the Sale Deed dated 5.04.1989 which has been duly proved. He further submitted that the said sale deed was in respect of part of very Survey No. 78 and therefore ought to have been considered by the reference Court for the purpose of fixing the market rate of the acquired land. According to the learned Counsel the said sale deed was the best evidence available to fix the market rate of the acquired land since the sale deed land was at a distance of 50 metres from the acquired land. Mr. Ramani, further submitted that the reference Court ought to have taken into consideration the sale deed dated 05.04.1989 and ought to have enhanced the compensation by making suitable deductions since the sale deed plot was admeasuring 354 square metres whereas the land acquired was 2378 square metres. He also placed reliance upon the Judgment delivered by the Division Bench of this Court in First Appeal No. 57/2000 in which this Court enhanced compensation at the rate of Rs. 200/- per square metre in respect of land admeasuring 3725 square metres belonging to Premanand S. Verenkar which was situated in the close vicinity of the acquired land and which was acquired by Notification dated 14.02.1991 published on 2.11.1991. Mr. Ramani, fairly submitted that the appellants are not pressing the claim for higher compensation in respect of the trees.

5. Per contra, Mr. Vahuidulla learned Addl. Government Advocate submitted that appellants had not led any evidence to prove that the sale deed land and the acquired land were similar. He further submitted that the claimant had not led any evidence that he wanted to change the acquired land which was agricultural land into non-agricultural land so as to make it fit for construction purpose. He submitted that the sale deed land cannot be said to be comparable to the acquired land, as such, the reference Court was perfectly justified in rejecting the reference. Mr. Vahuidulla further submitted that the sale deed plot was a developed plot which was converted into non-agricultural use and therefore no reliance can be placed on the said sale deed to fix the market rate of the

acquired land.

6. I have considered the submissions made by the learned Counsel for the parties and perused the records.

7. The evidence of Vidhyadhar Verenkar Pw1 and that of Vikas Dessai Pw3 clearly establishes that near the acquired land facilities such as electricity, tap water, telephone etc., were available; besides civic amenities such as Primary School, Church, Police Station, High Schools, College, Government Offices were available within a distance of about 1.5 kms. from the acquired land. The evidence also establishes that there was a motorable access to the acquired land and the Ponda market, Municipal Council, Banks were within a distance of 1.5 kms. The reference Court itself has given a finding in para 13 that the above mentioned facilities were available near the acquired land.

8. The questions which arises for consideration are whether the reference Court was justified in not placing reliance upon the sale deed dated 5.04.1989 and whether the appellants are entitled to higher compensation. The said sale deed has been duly proved by Clemente Coelho Pw 2 who had purchased an area of 354 square metres. bearing survey No. 78 at the rate of Rs. 160/- per square metre. No doubt, the said plot was a developed plot which was purchased by Clemente Coelho for construction of the house in which he constructed the house. The reference Court did not place reliance upon the said sale deed, firstly on the ground that the sale deed was in respect of plot of 354 square metres whereas the acquired land was 2378 square metres. The second ground on which no reliance has been placed by the reference Court is that no evidence was led by the appellants as to what would be the amount of mud required to fill up the paddy portion which was admittedly one metre below the level of the land. At this stage it is pertinent to note that the reference Court accepted the version of the appellants that the acquired land was in settlement zone.

9. When a claimant relies upon a sale deed in respect of his claim for enhancement the sale deed must be in respect of comparable land. In a case where a party relies upon a sale deed in respect of the part of the property the same cannot be totally ignored. No doubt in the present case an area of 1448 square metres was a coconut grove and an area of 930 square metres was paddy field and the sale deed was in respect of a developed plot. But this could not be sufficient to discard the sale deed in toto having regard to the fact that sale deed was in respect of the part of the land bearing same survey number belonging to one of the co-owners of the property. Therefore, I find that the approach of the reference Court in not placing reliance upon the sale deed dated 5.04.1989 is unsustainable.

10. In my considered opinion the said sale deed deserves to be considered for the purpose of fixing the market rate of the acquired land, by making appropriate deductions. At this stage it is appropriate to refer to the judgment of the Apex Court in the case of Viluben Jhalejar Contractor (D) by LRs. Vs. State of

Gujarat, . In paragraph Nos. 20 and 21 the Apex Court has observed, thus:

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are 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 road, 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. Applying the principles laid down by the Apex Court in the above Judgment if the acquired land is compared to the sale deed land the negative factors are that the acquired land is comparatively bigger in area as compared to sale deed land. Secondly, paddy field portion is admittedly one metre below the level and as such requires filling. Thirdly, the sale deed land was a developed plot whereas the acquired land was admittedly agricultural land. Therefore it would be appropriate to make appropriate deductions for the purpose of fixing market rate of the acquired land after placing reliance upon sale deed dated 5.04.1989. In respect of an area of 1448 square metres, which was coconut grove in case the said land was to be developed the appellants would not have been able to sell the entire land to one purchaser for the purpose of construction and as such he had to sell the land after sub-dividing into plots for which he would have to leave some land by way of drainage, internal roads etc. Moreover, since the property was agricultural before developing it the appellants had to seek conversion of the land to non agricultural purpose. In my opinion, the appropriate deduction would be 35%. Therefore the market rate of the acquired land as on the date of Section 4 Notification comes to Rs. 104/- per square metre. It is pertinent to note that the sale deed land was acquired few months before publication of Section 4 Notification.

12. In respect of land admeasuring 930 square metres which was a paddy field the appellants has not led any evidence to establish the expenditure that would have to be incurred for filling up the land. Surely the appellants could have led evidence in that regard but this by itself would not be sufficient to reject the reference in respect of the said portion of land. It would be just and proper to make appropriate further deduction which, in my opinion, would be 15%. Therefore, the total deductions are 50% and, therefore the market rate of the paddy field portion comes to Rs. 80/- per square metre. I, therefore, hold that the appellants are entitled to compensation at the rate of Rs. 104/- per square metre in respect of 1448 square metres of land and at the rate of Rs. 80/- per square metre in respect of an area of 930 square metres of land. Needless to

mention, that the appellants are also entitled to all the statutory benefits under the Act.

13. The appeal is partly allowed with no order as to costs.

