
(2014) 12 BOM CK 0150

In the Bombay High Court

Case No : First Appeal No. 270 of 2008 and Cross Objection No. 1 of 2009

Special Land Acquisition (MPT)

APPELLANT

Vs

Comunidade of Chicalim

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2015) 2 BomCR 176

Hon'ble Judges : R.M. Borde, J;F.M. Reis, J

Bench : Division Bench

Advocate : M. Salkar, Government Advocate, Advocate for the Appellant; C.A. Ferreira and Ashwin Costa, Advocate for the Respondent

Judgement

F.M. Reis, J.—Heard Mr. M. Salkar, learned Government Advocate appearing for the appellants and Mr. C. A. Ferreira, learned counsel appearing for the respondent.

2. The above appeal challenges the judgment and award dated 25.01.2008 whereby a reference preferred by the respondent was partly allowed and the market value of the land acquired was fixed at the rate of Rs.386/- per square metre besides statutory benefits.

3. Briefly, the facts of the case are that by notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as "the said Act") published in the official gazette dated 31.10.2002, the appellants intended to acquire land for the construction and re-alignment of the road at Km 4.00 and Km. 11.40 (Airport) for NH 17B in Pale and Chicalim Village of Mormugao Taluka. Amongst such land, the portions of the property surveyed under No. 82(part) admeasuring 19300 square metres, 21(part) admeasuring 8525 square metres and 22(part) admeasuring 1825 square metres of Village Chicalim were also intended to be acquired. By an award dated 15.11.2005, the Land Acquisition Officer offered compensation for the land acquired at the rate of Rs.70/- per square metre. Being dissatisfied with the said amount, the respondent preferred a reference

under Section 18 of the said Act for enhancement of compensation and claimed a sum of Rs.2000/- per square metre for the land acquired. The Reference Court by the impugned judgment and award has fixed the compensation for the land surveyed under nos. 82(part) admeasuring 19300 square metres, 21 (part) admesuring 8525 square metres and 22(part) admeasuring 1825 square metres of Village Chicalim at the rate of Rs.386/- per square metre. Being aggrieved by the said judgment, the appellants have preferred the present appeal. After being duly served, the respondent filed cross objection and inter-alia claimed compensation for the land acquired at the rate of Rs.1300/- per square metre.

4. Mr. M. Salkar, learned Government Advocate appearing for the appellants has pointed out that the land which has been acquired is Comunidade land and as such the land cannot be used for any other purpose which factor has not been examined by the Reference Court while fixing the compensation. The learned counsel further pointed out that the land which has been acquired is uncultivable having no potentiality of being used for non agricultural purpose and as such, the Reference Court was not justified to enhance the compensation on the ground that the land had potentiality of being used for non agricultural purpose. The learned counsel further pointed out that sale instance which has been relied upon by the learned Reference Court is not at all comparable to the land acquired and as such the Reference Court was not justified to enhance the compensation. The learned counsel further submits that the respondent has failed to produce any evidence to show the comparability of the land acquired with the sale instance and as such, the question of relying upon the said document would not arise at all. The learned counsel further submits that considering the size of the land in the sale deed at Exhibit 28 and the land acquired, further deductions had to be made on account of development charges and the fact that the land was subject to restrictions under the Code of Comunidade. The learned counsel further submits that being Comunidade land, such land is not freehold land and as such further deductions has to be given on account of such dissimilarity. The learned counsel further pointed out that the land was useless for development as the railway line was passing close to the land belonging to the respondent which imposes restrictions in carrying out construction activities. The learned counsel as such submits that the compensation awarded by Land Acquisition Officer was just and proper and as such, the appeal deserves to be allowed and the impugned judgment be quashed and set aside.

5. On the other hand, Mr. C. A. Ferreira, learned counsel appearing for the respondent has pointed out that the compensation fixed by the Reference Court is on the lower side as according to him the sale deed produced by the respondent at Exhibit 28 discloses that the price of the land was at the rate of Rs.1300/- per square metre. The learned counsel further submits that there was heavy demand for land in the vicinity of the land acquired and as such the deduction could not exceed more than 1/3rd for the land acquired. The learned counsel further submits that the land acquired was close to the road and as such the development charges ought to have been on the lower side. The learned

counsel thereafter has taken us through Exhibit 28 to point out that the land acquired was very much comparable with the sale instance at Exhibit 28 and as such the price for the land is to be fixed at a minimum rate of Rs.800/- per square metre. The learned counsel as such points out that the cross objection be accordingly allowed.

6. We have duly examined the contentions of the learned counsel and we have also gone through the records and on the basis thereof, the following point for determination arises in the present appeal.

POINT FOR DETERMINATION

Whether the Reference Court was justified to fix the compensation for the land acquired at the rate of Rs.386/- per square metre ?

7. On perusal of the records, we find that in support of the claim for enhancement of compensation the respondent has examined the duly constituted power of attorney who has filed his affidavit. He has stated that the acquired land was bharad land suitable for the purpose of construction and that it is situated in S1 Zone. He has also stated that the school, playground, super markets, restaurants etc., are within a radius of 1 km from the acquired land. He has also stated that the land was located in the prime locality and commercial buildings are in the vicinity of the acquired land. He has also stated that an area of 1210 square metres was sold at the rate of Rs.1300/- per square metre by sale deed registered on 29.10.2001. He has further stated that the land acquired was similar to the sale instance. He has also stated that by deed of sale dated 16.07.1986 a plot of land surveyed under no. 113/1 of Village Chicalim was sold at the rate of Rs.277.60 per square metre. The said land is situated at a distance of 2 kms away from Dabolim Airport. He has also stated that another area admeasuring 1000 square metres was sold at the rate of Rs.235/- per square metre in the year 1989. He as such sought for enhancement of the compensation. He has also produced the sale deed dated 29.10.2001 which is at Exhibit 28 as well as the receipts issued by the Comunidade towards the erecting of hoardings in the Comunidade land at Exhibit 29 Colly. He has also produced other sale deed at Exhibit 27 of the year 1989. In the cross examination, he has stated that he does not remember the total area of survey nos. 82, 21 and 22. He has also stated that the property surveyed under no.82 is bounded towards east by a nalla, west by a road from airport to Chicalim junction, north by remaining portion of survey no.82 and south by a road from Zuari to Vasco. He has also stated that he cannot give the exact boundaries of the acquired land from survey nos. 21 and 22. He has also stated that there were no houses/buildings in the acquired land nor in the remaining portion of the property of the respondent and that the land surveyed under nos. 82, 21 and 22 were not developed at the time of the acquisition. He has also admitted that there are restrictions on sale, transfer and development of Comunidade land by the Code of Comunidade and the sanction from the Government is required for sale or transfer of such land. He has further stated that from the airport towards

Chicalim junction there are posh bungalows of the industrialist and others. He has further stated that plot at Exhibit 28 lies between four-lane highway and Chicalim junction. He has also admitted that Exhibit 28 consists of three independent plots and some structures have come up in the plots. He has also admitted that the acquired land is bounded on two sides by roads and other two sides by open space. He denied the suggestion that the acquired land is not similar to any of the comparable plots at Exhibit 27 and Exhibit 28.

8. Next witness examined by the respondent is AW2 Pascoal Barbosa Noronha. He has stated in his affidavit that the acquired land is bharad type of land having minor undulations but suitable for construction purpose. He has also stated that the land located in the development zone and close to Dabolim airport and is at a distance of about 200 metres from Dabolim airport. He has further stated that the land purchased pursuant to the sale deed at Exhibit 28 is from the property surveyed under no.86/1 of Village Chicalim and situated at a distance of about 350 metres away from the acquired land. It has also stated that the land was sold at the rate of Rs.1300/- per square metre in the year 2001 and an escalation has to be given in view of the date of notification under Section 4 of the said Act in the present case. In the cross examination, he has deposed that the land surveyed under nos. 82, 21 and 22 do not form a contiguous stretch of land but they are separated by roads in between. He has also stated that he cannot give the area of survey nos.82, 21, and 22. He has also stated that south central railway line is on the northern side of survey nos. 82 and 21. He has also admitted that the acquisition of land in survey nos.82 and 21 starts from southern boundary of south central railway line and that the southern boundary of land under survey no.82 is earlier NH 17B. He has also stated that earlier NH 17B was also southern boundary of the property surveyed under no.21. He has thereafter stated that the southern boundary of both the survey numbers is a road and he does not know if it is notified as NH 17B. He has also admitted that for the purpose of putting up construction in the land adjacent to the railway line, permission is required to be obtained from the Railway Authorities. He has also stated that the Railway Authorities impose conditions regarding set back to be maintained for constructions adjoining the railway line. He has also stated that he is not aware that for putting up construction of hospital along the railway line, a set back of 17 metres was imposed by the Railway Authorities. He has also stated that he has come across conditions imposing restrictions of 7 metres set back depending upon the nature of the railway line. He has also stated that he is not aware about the classification of road from Verna to Vasco via airport. He has also stated that he cannot give the length and breadth of the acquired lands from survey nos. 82, 21 and 22. He has also admitted that there are restrictions in transfer of Comunidade land and further for development of land beyond 4000 square metres, 15% of such property has to be compulsorily kept open. He has also admitted that the plot at Exhibit 28 is sub-divided plot adjoining each other. He denied the suggestion that the land was not similar to the land at Exhibit 28. He has further stated that while valuing the acquired land, he has not considered

the restrictions on sale or transfer of Comunidade land. He has also admitted that while arriving at the market rate, he has not considered the requirements of leaving of open spaces etc. The appellants have also examined RW1 Mr. A. Bhaskar Rao. He has stated that the land was acquired for construction of four lane road from Verna to Sada which forms part of the property surveyed under nos. 82, 21 and 22. He has further stated that on the northern side there is a railway line. In the cross examination, he has stated that he was not posted in Vasco when the land was acquired. He has further stated that the acquired land is just opposite to the airport. He has further stated that the distance between the land surveyed under no.82 from the centre of the railway track lying on the north is around 12 metres. He has also stated that no road has been constructed in the property surveyed under no.22.

9. The learned Judge while assessing the evidence on record has found that the sale deed at Exhibit 28 is comparable to the land acquired. The learned Judge further found the dissimilarity between the land acquired and sale deed at Exhibit 28 and deducted 33% on account of development charges besides a deduction of 30% being close to the railway line besides 10% as it is Comunidade land. The Reference Court has fixed the compensation at the rate of Rs.386/- per square metre.

10. On perusal of the evidence on record and the impugned judgment, we find that the sale deed at Exhibit 28 is most comparable to the land acquired. The plots which are subject matter of the said sale deed are developed plots with all requisite sanctions. The sale deed also suggests that open spaces and other internal roads were also intended to be constructed in the developed lay out. As far as the land acquired is concerned, AW1 has admitted that the acquired land was not developed land. Apart from that, the land which was subject matter of the sale deed admeasures 1000 and odd square metres whereas the land which was subject matter of the acquisition admeasures more than 30000 square metres. AW2 has also stated that though the land acquired was bharad land it had undulations which would require further expenditure on account of development charges.

11. The Reference Court while assessing the compensation for the land acquired and taking note of the dissimilarities of the land admeasuring more than 30,000 square metres has made a deduction towards the development expenditure to the extent of 33%.

12. The Apex Court in the judgment reported in Subh Ram and Others Vs. Haryana State and Another, has observed at paras 13, 14 and 15 thus :

"13. Therefore, in the hypothetical layout method of determination of market value, as a first step, the areas that will be used up for roads, drains, parks/ playgrounds and community areas, will have to be excluded from the total extent of the acquired land. The standard deduction in this behalf is one-third (33%).

14. But merely deducting the areas required for roads, drains, parks and

community areas, will not convert a large tract of agricultural or undeveloped land into a developed residential layout. For that, considerable financial outlay has to be made. The land will have to be levelled. The land will have to be converted from agricultural use to non-agricultural residential use by paying necessary fees/fine to the Revenue/development authorities. Then the roads will have to be asphalted or concreted. Drains will have to be dug and lined with reinforced cement concrete or stone, for drainage of rain water. Electricity, water, and sewage lines will have to be laid. Deposits will have to be made to the Authorities dealing with electricity, water, sewage removal. The development will also involve the service of surveyors, engineers and developers. All these involve considerable expenditure. Further, as there will be a time gap between the expenditure for development and the actual sale of plots, the cost of development will also have an element of interest on investment. The developer who undertakes the development and invests the monies for development would also expect a reasonable profit when the plots are sold. All these expenditure and factors are standardised into another one-third (33%) deduction towards expenses of development.

15. Thus, if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads etc.) plus one-third (for expenditure of development) in all two thirds (or 67%), as "development cost" from the value of small plot. The percentage of deduction may however vary between 20% to 75% depending on several circumstances (See : Lal Chand vs. Union of India paras 8 and 9 for illustrations of such circumstances)."

13. On going through the said observations, the deduction towards development charges can vary from 20% to 75% depending on the peculiar facts of the case. AW1 himself has admitted that the land acquired was an undeveloped land whereas said sale instance at Exhibit 28 is of three developed plots, the deduction would have to be effected taking note of the said aspect. Another aspect to be examined is that the land acquired was close to the adjoining existing highway and on account of open spaces and other statutory internal roads to be constructed about 30% of the land would be consumed. The cost for the construction of the internal roads and side gutters would also have to be taken note of. Considering all these aspects, we find that the deduction towards development charges ought to have been 40% instead of 33% as deducted by the Reference Court.

14. Another deduction effected by the Reference Court is to the extent of 30% on account of the fact that the railway line was passing close to the acquired land. AW2 Engineer examined by the respondent has also admitted that the railway authorities impose restrictions to maintain set back in respect of the lands which are adjoining to the railway lines. Though the appellants contend that such set back can go to the extent of 17 metres nevertheless, AW2 has admitted that the restrictions can range even to only 7 metres from the railway line. It is also to be

noted that having developed residential locality close to the railway line is also a demerit considering the pollution and other aspects which go along with the fact that the railway line is existing close to a residential lay out. Taking all these aspects, the deduction of 30% fixed by the Reference Court may be on the higher side. In the present case, the sale deed relied upon by the respondent is in respect of a developed residential locality where bungalows have already been constructed near the sale deed plot. This itself shows that the price mentioned in the said sale deed would also include the demerit on account of having a railway line close to the acquired land. No doubt, the railway line is located closer to the acquired land than the sale deed plot relied upon by the respondent. Considering all these aspects and taking note of the fact that we have also made a deduction of 40% on account of development charges, a further deduction of 15% would be just and appropriate in the facts of the case. This amount has been worked out taking into consideration that the set back to be maintained from the highway as well as railway line can also be considered to the extent possible towards the mandatory open spaces for the overall development of the property.

15. Another deduction effected by the Reference Court is to the extent of 10% on account of the fact that the land is Comunidade land. No doubt, the Code of Comunidade imposes restrictions for disposing of Comunidade lands. Specific conditions have to be met by a person to get a grant from the Comunidade. Thereafter, the procedure would have to be followed to get the necessary permission with that regard. In such circumstances, the lands which are belonging to the Comunidade cannot be considered to be free hold land as a specific procedure has to be followed for the purpose of obtaining such grant under the Code of Comunidade subject to meeting all the qualifications stipulated therein. The Division Bench of this Court in the judgment relied upon by Mr. Ferreira, learned counsel appearing for the respondent reported in Smt. Anajani Shrikant Naik and Others Vs. The Deputy Collector (REV) and Land Acquisition Officer and Goa, Daman and Diu Industrial Development Corporation, , has held that the market value of the land vested in the Comunidade can be determined on the basis of comparable sale instance of a free hold land by making appropriate deduction considering the peculiar facts of the case on account of the restrictions of transferability of the acquired land vested in the Comunidade. In such circumstances, the deduction of 10% fixed by the Reference Court cannot be faulted.

16. Considering all the deductions to be effected as pointed out hereinabove, we find that the total deduction on account of the dissimilarities of the land acquired with the sale instance at Exhibit 28 would be an aggregate of 65%. In such circumstances, the Reference Court was not justified to make a deduction to the extent of 73% on account of such dissimilarities which would have to be scaled down to 65% for the reasons stated herein above. The deductions and the dissimilarities have been worked out also taking note of the area of the comparable sale instance and the acquired land.

17. The Reference Court has fixed the compensation at the rate of Rs.386/- per square metre after giving an escalation of 10% per annum considering the date of Section 4 notification and the sale instance. The land at Exhibit 28 was sold at the rate of Rs.1300/- per square metre in October, 2001. Section 4 notification in the present case was published in October, 2002. As such, after such escalation of 10%, the amount works out to Rs.1,430/- per square metre. The total deduction to be effected as pointed out herein above is 65%. After making such deduction, the amount of compensation works out to Rs.500/- per square metre approximately. To that extent, the impugned judgment and award deserves to be modified. Hence, the market value of the land acquired as on the date of Section 4 would be fixed at Rs.500/- per square metre. The point for determination is answered accordingly.

18. In view of the above, we pass the following :

ORDER

- (i) The appeal filed by the appellants stands dismissed.
- (ii) Cross objections filed by the respondent are partly allowed.
- (iii) The compensation for the land acquired is fixed at the rate of Rs. 500/- per square metre besides statutory benefits in accordance with law.
- (iv) The impugned judgment and award dated 25.01.2008 passed by the Reference Court is partly modified and the compensation for the land acquired is fixed at the rate of Rs.500/- per square metre with all statutory benefits in accordance with law.
- (v) The appeal and the cross objections stand disposed of accordingly with no order as to costs.
- (vi) Decree to be drawn accordingly.