(2014) 12 BOM CK 0090

In the Bombay High Court

Case No : First Appeal No. 241 of 2008

Special Land Acquisition Officer	APPELLANT
Vs	
Prabhakar G.N. Gaunkar	RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4, 4(1)

Citation : (2015) 1 BomCR 849

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Ashwin D. Bhobe and S. Bhobe, Advocate for the Appellant; Nitin Sardessai, Senior Advocate and Deep Shirodkar, Advocate for the Respondent

Judgement

U.V. Bakre, J.—Heard Mr. Bhobe, learned Counsel appearing on behalf of the appellants and Mr. Sardessai, learned Senior Counsel appearing on behalf of the respondents.

2. This appeal is directed against the judgment and award dated 12.05.2004, passed by the learned Additional District Judge (III), South Goa, Margao (Reference Court, for short) in Land Acquisition Case No. 294/1994.

3. The appellants were respondents whereas the respondents were the applicants in the said Land Acquisition Case. The parties shall hereinafter be referred to as per their status in the said Land Acquisition Case.

4. Vide notification issued under Section 4(1) of the Land Acquisition Act, 1894 (L. A. Act, for short) and published in the Official Gazette dated 27.06.1991 and at concerned places through the Mamlatdar of Canacona, on 09.08.1991, the Government acquired land for construction of new broad gauge line for Konkan Railway. That included land admeasuring 15,450 square metres from Survey No. 90/1 of Canacona village. By award dated 11.11.1993, the Land Acquisition Officer (L.A.O., for short) awarded compensation at the rate of Rs. 9/-per square metre to the acquired land which was classified as bharad land. Further

compensation of Rs. 1,15,413.78/-was awarded for trees, which were situated in the acquired land. Not been satisfied with the offer made by the L.A.O., the applicants no. 1 and 2 filed an application before the L.A.O. seeking reference under Section 18 of the L.A. Act and that gave rise to the Land Acquisition Case No. 294/1994. The applicants claimed compensation at the rate of Rs. 100/-per square metre for the acquired land.

5. Issues were framed as per the claim of the applicants. The applicants examined applicant no. 1, Shri Prabhakar G. Gaunkar as AW-1; Shri Balkrishna Naik Gaonkar as AW-2; Shri Mukund S. Velip as AW-3 and Engineer-cum-Valuer, Shri Vikas Desai as AW-4. The respondents did not examine any witnesses in defence.

6. Upon consideration of the entire material on record, the learned Reference Court found that the plot of sale deed dated 20.03.1991, produced by AW-1 as Exhibit AW-1/A was most comparable to the acquired land since it was situated close to the acquired land at a distance of 300 metres therefrom and the date of transaction being close to the date of notification. Since the area of the sale deed plot was only 300 metres and that of the acquired land was 15,450 square metres, deduction of 20%, in the price of the sale deed was made and the market value of the acquired land was fixed at Rs. 40/-per square metre. The applicants were held to be entitled to receive all the statutory benefits under the L. A. Act and also costs of Rs. 1,000/-and Advocate''s fees of Rs. 1,000/-. The respondents are aggrieved by the impugned judgment and order.

7. Mr. Bhobe, learned Counsel appearing on behalf of the respondents submitted that the deduction made on account of the smallness of the sale deed plot was on the lower side being only 20% and in fact, the said deduction ought to have been to the extent of 50%. He submitted that by judgment dated 31.03.2005 passed in the First Appeals No. 15, 45, 46, 47, 108, 146, 155 and 157 of 2000, wherein land was acquired by the Konkan Railway Corporation, this Court fixed the market value of the acquired land at Rs. 19/-per square metre. He further submitted that by judgment dated 15.04.2005 in First Appeal No. 28/2000 in respect of the land acquired for Konkan Railway Corporation, this Court fixed the market value at Rs. 19/-per square metre and Rs. 30/-per square metre. He further submitted that by judgment dated 30.03.2005, passed in First Appeals No. 11/2000, 60/2000, 156/2000 and 23/2001 with Cross Objection No. 21/2001, this Court with regard to the land acquired for Konkan Railway Corporation Limited, fixed the market value at Rs. 19/-per square metre. He produced copies of the said judgments for perusal of this Court. The learned Counsel therefore, urged that in order to maintain parity the present appeal be allowed and the market value be reduced to Rs. 19/-per square metre.

8. On the other hand, Mr. Sardessai, learned Senior Counsel appearing on behalf of the applicants, pointed out that the dates of the notification in respect of the acquired land involved in the First Appeals relied upon by the learned Counsel for the respondents were different from the notification in the present case. He

further submitted that in the present case, the sale deed dated 20.03.1991 which was most comparable to the acquired land was produced and was considered by the learned Reference Court, which was not at all produced in the said First Appeals. He further submitted that neither the judgments of the learned Reference Court in Land Acquisition Cases nor the judgments of this Court in the said First Appeals were produced before the learned Reference Court and there was no evidence at all regarding the comparability of the lands. He therefore, submitted that the judgments in the First Appeals cannot at all be looked into. He read out the judgment of the learned Reference Court and also the evidence of the witnesses and pointed out that the land of the sale deed dated 20.03.1991 was also bharad land and exactly similar to the acquired land and was only 300 metres away and the transaction was only five months before the date of the publication of the notification. He submitted that the deduction of 20% made on account of smallness of the area of the sale deed plot was just and reasonable and in this regard, he relied upon the following judgments:-

(i) Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, and;

(ii) Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, .

Learned Counsel urged that the compensation awarded by the Reference Court is just and reasonable and there is absolutely no scope for interference and therefore, prayed for dismissal of the appeal.

9. I have gone through the original Records and Proceedings and considered the arguments advanced by the learned Counsel for the parties and also the judgments relied upon by the learned Counsel for the applicants.

10. The point that arises for my determination is whether the compensation awarded by the learned Reference Court is just and reasonable.

11. Perusal of the evidence on record reveals that the acquired land was of bharad type containing cashew trees, coconut trees and forest trees. The L.A.O. awarded the compensation at the rate of Rs. 9/-per square metre to the entire acquired land admeasuring 15,450 square metres thereby classifying the same as bharad land. The survey plan produced by AW-1 at Exhibit AW-1/D showed that the entire land bearing survey no. 90/1 was bharad type of land. Hence there could be no doubt that the acquired land was bharad type of land. The learned Reference Court discarded the valuation report prepared by Shri Vikas Desai (AW-4). The learned Reference Court also discarded all the sale instances produced by the applicants except one, which was at Exhibit AW-1/A and dated 20.03.1991. The applicants had relied upon the judgment of the Additional District Judge in Land Acquisition Case no. 153/1995, in which land from Nagorcem -Palolem of Canacona Taluka was acquired for the same purpose vide the same notification and the learned Special L.A.O. had awarded Rs. 9/-per square metre as compensation, as it was bharad type of land. The learned

Additional District Judge enhanced the compensation to Rs. 42/-per square metre. AW-1 had specifically stated that the land concerned in the said award was only about 300 metres away from his property. He had also stated that the acquired land which was the subject matter of the said land was similar to the present case. The said Judgment and Award was at Exhibit AW1/G. Besides the above, the applicants had produced the sale deed dated 20.03.1991, by which the land admeasuring 300 square metres, situated at Nagorcem-Palolem, was sold at the rate of Rs. 50/-per square metre. This sale deed was admitted as Exhibit AW1/A. The evidence on record showed that the nature of the plot of the sale deed was bharad type. The said plot of the sale deed dated 20.03.1991 was only 300 metres away from the acquired land and the date of transaction was only about five months prior to the date of notification under Section 4 of the L. A. Act, in respect of the acquired land. The learned Reference Court, therefore, took the sale deed dated 20.03.1991 as comparable instance for determination of the market value of the acquired land and rightly so. The price of the sale deed plot was at the rate of Rs. 50/ per square metre. By making deduction of 20% on account of the smallness of the area of the sale deed plot and largeness of the area of the acquired land, the Reference Court fixed the market value at Rs. 40/-per square metre.

12. In the First Appeals No. 15, 45, 46, 47, 108, 146, 155 and 157/2000, the acquired lands were all paddy fields and not bharad lands. Besides the above, the notification under Section 4 of the L. A. Act in the said cases was published in the Official Gazette on 12.08.1991. The said lands were situated at Chaudi, Canacona. In the present case, the notification in the Official Gazette dated 31.05.1991, issued under Section 4(1) of the L. A. Act was lastly published on 09.08.1991. The acquired land is from Canacona village of Canacona Taluka and the same is bharad land. In such circumstances, the land which is concerned in the said First Appeals is not comparable with the acquired land of the present case and the notifications under Section 4 of the L.A. Act are also not the same.

13. The lands which were the subject matter of the First Appeals No. 11/2000, 60/2000, 156/2000 and 23/2001 with Cross Objection No. 21/2001, were agricultural tenanted lands and were acquired by the notification dated 24.07.1991, issued under Section 4 of the L.A. Act. Hence, they were not bharad lands. Lastly, in First Appeal No. 28/2000 also, the land was acquired vide notification dated 24.07.1991 and it contained paddy field land as well as bharad land. This Court by judgment dated 15.04.2005 fixed the market value for paddy field land at Rs. 19/-per square metre and the market value in respect of the bharad land at Rs. 30/-per square metre.

14. Be that as it may, the judgments of the learned Reference Court in respective cases as well as the judgments of this Court in the respective First Appeals, now produced before this Court for perusal, were not produced before the learned Reference Court. There is absolutely no evidence on record regarding the similarity of the lands of the said First Appeals and the acquired land. In such

circumstances, the judgments of this Court in the said First Appeals cannot at all be considered.

15. In the case of "Nelson Fernandes and Others Vs. Special Land Acquisition Officer and Others" (supra), the land was acquired for construction of new BG line for Konkan Railways. The acquired land was admeasuring 11,875 square metres. Two sale deeds were considered, out of which one sale deed plot had an area of 257 square metres. The Hon''ble Supreme Court deducted 20% on the ground of smallness of the sale deed plot as compared to the largeness of the acquired land.

In the case of "Atma Singh (Dead) through LR''s and Others Vs. State of Haryana and Another", the Hon''ble Apex Court held thus:

"14. The reasons given for the principle that price fetched for small plots cannot form safe basis for valuation of large tracts of land, according to cases referred to above, are that substantial area is used for development of sites like laying out roads, drains, sewers, water and electricity lines and other civic amenities. Expenses are also incurred in providing these basic amenities. That apart it takes considerable period in carving out the roads, making sewers and drains and waiting for the purchasers. Meanwhile the invested money is blocked up and the return on the investment flows after a considerable period of time. In order to make up for the area of land which is used in providing civic amenities and the waiting period during which the capital of the entrepreneur gets locked up a deduction from 20% onward, depending upon the facts of each case, is made.

15. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a housing colony or Government office or an Institution. The land has been acquired for setting up a sugar factory. The factory would produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by-products in the same process. One of the by-products is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another by-product begasse is now used for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial. Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no scope for earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year. The return from the land acquired for the purpose of housing colony, or offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any

deduction from the price exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration.

16. Having regard to the entire facts and circumstances of the case, we are of the opinion that a deduction of 10% from the market value of the land, which has been arrived at by the High Court would meet the ends of justice. Therefore, the market value of the acquired land for the purpose of payment of compensation to the landowners has to be assessed at Rs.1,08,000/-per acre."

16. In view of the discussion supra, the deduction of 20% made by the learned Reference Court is proper and reasonable. The market value at the rate of Rs. 40/-per square metre fixed by the learned Reference Court is also just and reasonable. No interference with the impugned judgment and order is called for.

17. In the result, the appeal is rejected.

