(2011) 09 BOM CK 0039

In the Bombay High Court

Case No : First Appeal No. 109 of 2002

Special Land Acquisition Officer (N) and Another — APPELLANT

Vs

Dr. Francis Xavier D''Souza — RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

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

Citation : (2012) 1 ALLMR 316

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

Bench : Single Bench

Advocate : S. Bandodkar, Additional Government, for the Appellant; J. Godinho, for the Respondent

Judgement

A.P. Lavande, J.—By this appeal, the appellants take exception to the Judgment and Award dated 11.12.2001 passed by the learned Additional District Judge, Mapusa in Land Acquisition Case No. 15/1996 by which reference u/s 18 of the Land Acquisition Act, 1894 (''the Act'' for short) has been partly allowed. Vide notification issued u/s 4(1) of the Act published in the official gazette dated 21.11.1991, the Government of Goa acquired the lands of several persons for public purpose. Land admeasuring an area of 8822 square metres from the survey nos. 258/4 and 11 (part) situated at Maina Sodiem Siolim belonging to the respondent was part of the acquired land. The respondent claimed compensation at the rate of Rs. 250/-per square metre. The Land Acquisition Officer passed an award dated 15.7.1993 and fixed the compensation at the rate of Rs. 20/-per square metre for the acquired land.

2. Aggrieved by the inadequacy of the compensation granted, the respondent sought reference u/s 18 of the Act and claimed compensation at the rate of Rs. 250/-per square metre.

3. In Land Acquisition Case No. 15/1996 before the Additional District Judge, Mapusa the respondent examined three witnesses namely AW1 respondent, AW2 Mr. Anil Mandrekar and AW3 Shri Mahadeo Waman Naik Tuenkar, the valuer.

Respondent also placed reliance upon sale deed dated 20.2.1991 (AW1/C) by which an area of 463 square metres of survey No. 237/11 was sold at the rate of Rs. 140/-per square metre. On behalf of the appellants one witness namely T.A. Achutan was examined.

4. The Reference Court upon appreciation of the evidence led by both the parties held that the respondent has established existence of facilities in the acquired land and that it had building potential. The Reference Court held that the acquired land was situated at a distance of 6 to 7 kms from Mapusa and public transport was available at a distance of 1.5 kms from the acquired land. There is also school in the vicinity of the acquired land. The Reference Court placed reliance upon the sate deed dated 20.2.1991 and deducted 40% for development, 40% on the ground of largeness of the acquired land and further 20% on the ground that the acquired land was undulated and arrived at the figure of Rs. 40.08 per square metre. The Reference Court further held that since the sale deed was executed in the same year, no escalation was warranted and fixed the market rate of the acquired land at Rs. 40.08 per square metre.

5. Mr. Bandodkar, learned Additional Government Advocate appearing for the appellants submitted that the Reference Court could not have relied upon the sale deed dated 20.2.1991 for the purpose of fixing the market rate of the acquired land since by the said sale deed a developed plot admeasuring 463 square metres situated at a distance of about 200 metres from the acquired land was sold and the same could not be said to be comparable with the acquired land. Mr. Bandodkar, further submitted that perusal of the sale deed discloses that the sale deed plot had PWD road on southern boundary and the acquired land was not having advantage of a road. He further submitted that the acquired land was cashew land with trees and gradient and as such the same could not have been compared with the sale deed plot in Exh. AW 1/C. In the alternative, Mr. Bandodkar, further submitted that the Reference Court ought to have made further deduction on the ground that advantage of road was not available to the acquired land which was available in respect of the sale deed plot.

6. Per contra, Mr. Godinho, learned counsel for the respondent supported the impugned judgment and award and submitted that no fault can be found with the impugned judgment and the Reference Court has correctly made deduction of 100% step by step.

7. I have carefully considered the rival submissions, perused the record.

8. In view of the rival submissions, following point arises for determination :-

Whether the Reference Court was justified in fixing market rate of the acquired land at Rs.40.08 per square meter ?If not, what compensation respondent is entitled to?

9. As stated above, the Reference Court has placed reliance upon the sale deed dated 20.2.1991 exhibit AW1/C by which plot of 463 square metres situated at a

distance of about 200 metres from the acquired land was sold at the rate of Rs. 140/-per square metre. The Reference Court has deducted 40% towards development, 40% on the ground of largeness of the acquired land and 20% on the ground that the sale deed plot was levelled land, whereas the acquired land was undulated and was away from the city.

10. I do not find any infirmity in the approach of the Reference Court in making above referred deductions. However, in my considered opinion as rightly submitted by Mr. Bandodkar, the Reference Court ought to have made further deduction on the ground that the sale deed plot had advantage of the road on the southern side which advantage the acquired land did not have. In my considered opinion, it would be appropriate to make further deduction of 10% on this Count. Therefore, the market rate of the acquired land as on the date of publication of section 4 notification works out to Rs. 36.08 per square metre which is rounded off to Rs. 36/-per square metre. The respondent is, therefore, entitled to compensation at the rate of Rs. 36/-per square metre in respect of the acquired land.

11. For the reasons aforesaid, the appeal is partly allowed. The market rate of the acquired land is fixed at Rs. 36/-per square metre. Needless to mention that the respondent is also entitled to all the statutory benefits under the Act. Appeal stands disposed of with no order as to costs.

