

(2011) 09 BOM CK 0045
In the Bombay High Court
Case No : First Appeal No. 265 of 2002

Special Land Acquisition Officer (S.I.P.) and Another	APPELLANT
Vs	
Xavier Miranda (since deceased) represented by LR.	RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2012) 4 BomCR 216 : (2012) 1 MhLj 639

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

Bench : Single Bench

Advocate : M. Salkar, for the Appellant;

Judgement

A.P. Lavande, J.—By this appeal, the appellants take exception to the Judgment and Award dated 26th June, 2002, passed by the Additional District Judge, South Goa, Margao in Land Acquisition Case No. 70/1994, by which the compensation awarded in respect of the property of the respondent, has been enhanced. By Notification issued u/s 4 of the Land Acquisition Act ("the Act" for short), published in the official gazette dated 27th September, 1985, the Government of Goa acquired lands of several persons for public purpose viz. laying pipeline and service road from St. Jose de Areal to railway crossing. An area admeasuring 690 sq. metres bearing Survey No. 295/7 and an area admeasuring 675 sq. metres bearing Survey No. 293/1 of Village St. Jose de Areal belonging to late Xavier Miranda was part of the acquired land. The respondents are the legal representatives of deceased Xavier Miranda.

2. Late Xavier Miranda ("the applicant") claimed compensation of Rs. 30/-per sq. metre in respect of land bearing Survey No. 295/7 which was a bharad land and Rs. 25/- per sq. metre in respect of land bearing Survey No. 293/1, which was a paddy field. The Land Acquisition Officer, vide his Award dated 29th April, 1988, awarded compensation at the rate Rs. 10/- per sq. metre for the land in respect of Survey No. 293/1 and Rs. 15/- per sq. metre for the land in respect of Survey No. 295/7. Being dissatisfied, the applicant sought a reference u/s 18 of the Act

and claimed Rs. 25/- per sq. metre for the paddy portion and Rs. 30/- per sq. metre for the bharad land. During the course of reference, the original applicant expired and the respondents herein being the legal representatives of the applicant, were brought on record.

3. In support of the claim for higher compensation, three witnesses were examined, namely AW.1 Rosa Miranda, who produced four Sale Deeds, viz., Sale Deed dated 1-8-1986 Exhibit AW.1/A; Sale Deed dated 17-6-1986 Exhibit AW.1/B; Sale Deed dated 21-4-1986 Exhibit AW.1/C and Sale Deed dated 28-5-1984 AW.1/D. Shri Sakharam Bhende who prepared the valuation report Exhibit AW.1/E was examined by the applicants as AW.2. AW.3 Prakash Volvotkar was examined to prove the Sale Deed Exhibit AW.1/A. No evidence was led on behalf of the present appellants.

4. The reference Court chose not to place reliance upon the three sale deeds which are Exhibits AW.1/A, AW.1/B and AW.1/C, on the ground that they were post-section 4 Notification. The reference Court placed reliance upon the Sale Deed dated 28-5-1984 Exhibit AW.1/D by which a plot of land admeasuring 548 sq. metres was sold by Shaikh Akbar and Shaikh Roshan to Caetano Cardozo and his wife Smt. Pauline Cardozo at the rate of Rs. 50/- per sq. metre. The reference Court held that the sale deed plot was a coconut groove and since the acquired land was paddy field, appropriate deduction would be 50% and consequently fixed the market rate of the acquired land at the rate of Rs. 25/- per sq. metre. Consequently, the reference Court partly allowed the reference, enhancing compensation to Rs. 25/- per sq. metre.

5. Mr. Salkar, learned Government Advocate appearing for the appellants submitted that the reference Court ought not to have relied upon the Sale Deed dated 28-5-1984 (Exhibit AW.1/D) inasmuch as there was no evidence led by the respondent herein to prove the comparability of the acquired land with the sale deed plot. He further submitted that in any case, the reference Court could not have fixed the marked rate of the bharad land and the paddy land at the same rate. He, therefore, submitted that the impugned Judgment and Award deserves to be quashed and set aside.

6. It may be stated here that the respondents herein have chosen not to put in appearance in spite of service. In view of the submissions made on behalf of the appellants, the following point arises for determination in this appeal :

Whether the reference Court was justified in fixing the market rate of the acquired lands at the rate of Rs. 25/- per sq. metre ? If not, to what compensation the respondents are entitled ?

7. As stated above, the Reference Court has discarded the three sale deeds Exhibits AW.1/A, AW.1/B and AW.1/C on the ground that they were post-section 4 Notification sale deeds. I do not find any infirmity in the approach of the learned reference Court, since it is well settled that if a sale deed which is prior to section 4 Notification is relied upon, the same has to be relied upon in

preference to sale deed which is post-section 4 Notification, subject to comparability and other factors. Insofar as Sale Deed plot Exhibit AW.1/D is concerned, the evidence of Rosa Miranda AW.1 and that of Sakharam Bhende AW.2 discloses that the sale deed plot was situated at a distance of less than half a kilometre from the acquired land. The evidence of AW.2 Sakharam Bhende further discloses that the paddy area was one metre lower than the bharad land. This being the position, in my considered opinion, the reference Court could not have fixed the same rate in respect of the bharad land and the paddy portion of the land. The reference Court, after placing reliance upon the Sale Deed at Exhibit AW.1/D, deducted 50% on the ground that the acquired land was paddy land. The reference Court was incorrect in holding so inasmuch as the entire land was not a paddy field, but a part of the acquired land was a paddy field and another part was a bharad land. Perusal of the Sale Deed Exhibit AW.1/D discloses that one Shaikh Akbar and Smt. Shaikh Roshan had sold an area of 548 sq. metres to their mundkar Shri Caetano Cardozo and his wife Smt. Pauline Cardozo at the rate of Rs. 50/- per sq. metre and that a mundkarial house was already existing in the said plot of land. Although the applicants have not led any direct evidence as to comparability of the acquired land which was bharad type and the land in the Sale Deed Exhibit AW.1/D, considering the location of the Sale Deed plot, the same can be taken into consideration for the purpose of arriving at the market rate of the acquired land. In my opinion, it would be appropriate to deduct 50% from the sale deed price mentioned in Exhibit AW.1/D for the purpose of fixing the market rate of the bharad land. Therefore, the Award of the reference Court fixing the rate of bharad land, does not deserve any interference. Accordingly, the respondents are entitled to a compensation at the rate of Rs. 25/- per sq. metre in respect of an area of 690 sq. metres bearing Survey No. 295/7.

8. In respect of the paddy field portion bearing Survey No. 293/1, the evidence of AW.2 Sakharam Bhende itself discloses that the paddy field was about 1 metre lower than the bharad land. Obviously, therefore, the applicants would have to incur a substantial expenditure for filling up the said plot for the purpose of carrying out any construction. Moreover, the applicants had to get conversion sanad for carrying out any construction in the said plot. In my considered opinion, considering these two factors, it would be appropriate to deduct 40% from the price of land fixed in respect of the bharad portion of land. Accordingly, the market rate of the paddy field portion bearing Survey No. 293/1 works out to Rs. 15/- per sq. metre. The respondents herein are held entitled to Rs. 15/- per sq. metre in respect of the land bearing Survey No. 293/1, admeasuring 675 sq. metres.

9. In view of the above discussion, the appeal is partly allowed. The impugned Judgment and Award insofar as Survey No. 295/7 is concerned, is maintained. However, in respect of paddy field portion of land bearing Survey No. 293/1 is concerned, the respondents are held entitled to Rs. 15/- per sq. metre. Needless to mention that the respondents are also entitled to all other statutory benefits

under the Act. The appeal stands disposed of in the aforesaid terms, with no order as to costs.