

(2006) 09 BOM CK 0048
In the Bombay High Court
Case No : First Appeal No. 64 of 2003

State of Goa and Another	Vs	APPELLANT
Francisco A. Cunha and Another		RESPONDENT

Date of Decision : 28-09-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2006) 6 ALLMR 444 : (2006) 6 BomCR 540

Hon'ble Judges : Kakade P.V., J

Bench : Single Bench

Advocate : M.D. Salkar, for the Appellant; V. Menezes and A.A. Agni and M.S. Prabhudessai, for the Respondent

Final Decision : Dismissed

Judgement

Kakade P.V., J.—This is an appeal preferred by the State against the judgment and order passed by Additional District Judge, South Goa, Margao in reference u/s 18 of the Land Acquisition Act, 1894, whereby enhanced compensation came to be awarded at the rate of Rs. 30/- per square metre, besides statutory benefits under the said Act.

2. I heard the learned Counsel for both the parties. Perused the record.

3. By notification u/s 4 of the Act published in the Official Gazette dated 2/11/1989, land of the claimants/respondents was acquired for construction of sump, pump house and M.B.R. at Cuelim, Cortalim Village for additional area. The Land Acquisition Officer offered compensation at the rate of Rs. 13/- per square metre. Not satisfied with this rate of compensation, the claimant filed objection on the quantum of compensation and claimed enhancement which was the subject matter of this reference.

4. After hearing both the parties and relying on the available evidence on record, the learned reference Court decided the question that though it was not possible to award enhancement compensation at the rate of Rs. 40/- per square metre,

as expected by the claimant, he was entitled to the compensation at the rate of Rs. 30/- per square metre, which was the correct market price of the impugned land on the date of notification u/s 4 of the Land Acquisition Act. Hence the present appeal is filed by the State.

5. At the outset, it may be noted that the reference Court while adjudicating the reference has relied upon two earlier decisions of the District Court in respect of adjacent lands namely, Land acquisition Case No. 166/88 and Land acquisition Case No. 136/93. In Land acquisition Case No. 166/98, the compensation was awarded at the rate of Rs. 20/- per square metre, whereas in the subsequent reference, the compensation was enhanced to Rs. 30/- per square metre, on the ground that the nature of the land involved therein is similar to the presently acquired land. Both the said decisions have attained finality.

6. In this regard, the evidence of the claimant shows that under Land acquisition Case No. 166/88 properties under survey No. 86/2 and 87/3 were involved which were partly levelled and partly sloppy. Similarly, the property involved in the subsequent reference i.e. Land acquisition Case No. 136/ 93, was not only adjacent to the presently acquired land, but was also partly levelled and partly sloppy which was given the enhanced compensation at the rate of Rs. 30/- per square metre.

7. So far as the impugned land is concerned, it was initially sought to be acquired for construction of pump house and sump line and consequently, Section 4 notification was published on 20/07/1984. Subsequently, additional area was acquired u/s 4 notification published in the Official Gazette dated 2/11/1989 and the land of the claimant surveyed under No. 65/3 was acquired in the impugned acquisition which consists of 11,663 square metres, which was situated at a distance of about 500 metres from the Airport road i.e. the road leading from Verna to Dabolim Airport and there was a katcha motorable road leading from the Airport road to his property and that portion of land under Survey No. 86/2 and 87/3 was acquired for the purpose of construction of pump house and the owner of the land filed application for an enhancement in the order which was granted and enhanced compensation was awarded to the extent of Rs. 20/- per square metre, which was the subject matter of Land Acquisition Case No. 166/88.

8. On the background of this evidential aspect, it was submitted on behalf of the appellants that if we peruse the judgment in the said earlier comparison references, it is found that there was potentiality of construction in the land involved in those earlier references, whereas, the presently acquired land is predominantly agricultural land. However, it is also to be noted that the evidence on record has shown that the impugned land has amenities such as electricity, water, transport and the facilities of the market area at a distance of about 1.5 kilo metres from the acquired land, which aspect appears to have weighed in the mind of the reference Court while decreeing the present reference. It was submitted on behalf of the appellants that the situation, location and nature of

the land involved in the earlier compared references was different in nature and all other relevant aspects, than the impugned land. Therefore, no comparison could be made between the land in the earlier references and the present reference. In support of his submission, the Government pleader sought to put reliance on unreported judgment of this Court in Deputy Collector and (S.D.O.) and Another Vs. Diogo Piedade Inacio Falcao and Others, wherein, it was observed that the law on the point is well settled to the fact that in the absence of such comparability between the land under acquisition and land which was covered under the documents produced by the claimant being established and there being no other evidence led by the party to justify the enhancement of compensation, the earlier documents could not be relied upon for the sake of comparison, for want of materials on record proving points of similarities and dissimilarities between the compared lands. However, in this connection it must be noted that there cannot be any dispute regarding the ratio led down by the learned Single Judge of this Court in the said unreported judgment. However, it is quite clear that it cannot be applicable to the present case, especially when the material on record shows that such evidence for comparison of similarities and dissimilarities was available for the reference Court Judge, while adjudicating the reference and coming to the conclusion that fair market price of the impugned land was Rs. 30/- per square metre on the date of notification u/s 4 of the Land Acquisition Act.

9. One aspect, which was not urged or referred in the reference Court, is also required to be taken into account. As per the settled law, as observed by the Apex Court in the case of The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, , the appreciation at rate of 10% for every subsequent year is also required to be taken into account. Therefore, once it is held that the land in question involved in Land Acquisition Case No. 136/93 was acquired and enhanced compensation was awarded at the rate of Rs. 30/- per square metre which attained finality, was of the notification u/s 4 of the year 1989. Similarly, the land involved in Land Acquisition Case No. 7 166/88 was given the enhanced compensation at the rate of Rs. 20/- per square metre of Section 4 under notification of the year 1984 and it is obvious that the issue of appreciation of the price from the year 1984 to 1989 indeed, required consideration while adjudicating Land Acquisition Case No. 136/93 and, therefore, the compensation was obviously granted at the rate of Rs. 30/- per square metre in Land Acquisition Case. No. 136/93. If this is the ratio to be adopted and the facts are to be looked in that angle, then also to must be held that the rate of enhanced compensation fixed in this matter at the rate of Rs. 30/- per square metre appears to be legal and proper and, therefore, has to be confirmed. Other statutory benefits regarding solatium and interest are seen to be rightly granted by the reference Court.

10. In the result, I hold that the appeal has no merits and, therefore, stands dismissed with no order as to costs, by confirming the award granted by the reference Court in this case.