

(2010) 09 BOM CK 0015
In the Bombay High Court
Case No : First Appeal No. 195 of 2003

State of Goa and The Executive Engineer	APPELLANT
Vs	
Fr. Antonio Figueredo (since deceased), represented by Lrs. (Dr. Antonio Colaco and Smt. Carman Colaco)	RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Land Acquisition Act, 1895 — Section 18, 4

Citation : (2010) 09 BOM CK 0015

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

Bench : Single Bench

Advocate : S. Linhares, Additional Government Advocate, for the Appellant;
Sudesh Usgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—By this appeal the appellants takes exception to the judgment and award dated 3/7/2002 passed by the Additional District Judge, Margao in Land Acquisition Case No. 35 of 1993, partly allowing the reference u/s 18 of the Land Acquisition Act, 1895 ("The Act" for short).

2. Vide notification dated 28/11/1986 published in Official Gazette on 15/1/1987, the Government of Goa acquired lands of several persons for public purpose namely, for construction of Sonarvado-Colledongor road in Raia. Land admeasuring 400 sq. metres bearing survey No. 85/1 of Raia village belonging to the respondents was part of the acquired land. The respondents claimed Rs. 100/ - per sq. metre. The Land Acquisition Officer made award on 24/09/1989 and granted Rs. 30/ - per sq. metres. Dissatisfied with the compensation granted, the respondents sought reference u/s 18 of the Act and claimed Rs. 400/ - per sq. metre and also claimed amount of Rs. 4000/ - in respect of the mango trees acquired.

3. In Land Acquisition case No. 35 of 1993, the respondents examined three

witnesses namely Antonio Colaco, AW.1, who produced sale deed dated 9/4/1987 (Exhibit AW. 1/A) and the report of Valuer (AW.1/B). The respondents also examined N.T. Joseph (AW.2) who was the vendor in the sale deed (Exhibit AW.1/A) and Shri Costao Xavier Menezes, AW.3, the valuer who had prepared the report (Exhibit AW.1/B). The appellants herein did not examine any witness.

4. The Reference Court placed reliance upon sale deed dated 9/4/1987 (Exhibit AW.1/A) by which an area of 400 sq. metres was sold at the rate of Rs. 100/- per sq. metre. The said plot was at a distance of about 800 metres from the acquired land. The said sale deed plot was a developed plot purchased by N.T. Joseph, AW.2. By the said sale deed, N.T. Joseph himself had sold the plot to the purchaser towards 50% of his share, since N.T. Joseph and the purchaser had earlier purchased a bigger property jointly. The reference court deducted 40% on the ground that by the said sale deed, the purchaser had purchased a share of the vendor and accordingly fixed the market rate at Rs. 60/- per sq. metre.

5. Ms. Linhares, learned Additional Government Advocate appearing for the appellants submitted that according to the appellants, the acquired land could not have been compared to the land in the sale deed (Exhibit AW.1/A). She further submitted that the sale deed plot had a compound wall, whereas the acquired land was an agricultural land without any compound wall. She therefore submitted that the acquired land could not be compared with the land in the sale deed while fixing the market rate of the acquired land. She further submitted that the Reference Court ought to have rejected the reference sought by the respondents. She further submitted that the acquired land was a narrow strip of land and as such could not have been compared to the land in the sale deed (Exhibit AW.1/A).

6. Per Contra, Mr. Usgaonkar, learned Counsel appearing for the respondents submitted that although the sale deed plot was a developed plot, the fact remains that the same was at a distance of 800 metres from the acquired land and was situated in the same village Raia and therefore has been rightly relied upon by the Reference Court. He further submitted that the sale deed was executed on 9/4/1987 and the Section 4 notification was published in the Official Gazette on 15/1/1987 and having regard to the time factor and the location, the Reference Court was justified in placing reliance upon the said sale deed. Mr. Usgaonkar further submitted that the deduction made by the Reference Court is absolutely unsustainable and therefore the compensation awarded by the Reference Court cannot be faulted. Learned Counsel further urged that merely because the acquired land was a strip of land, it cannot be said that the same had no building potential and as such could not be compared to the sale deed plot (Exhibit AW.1/A). He further submitted that the unacquired portion of the land had a garage and a house and as such, the acquired land had building potential.

7. I have considered the rival submissions and perused the record.

8. In view of the rival submission and the findings given by the Reference Court

the following point arises for determination in the appeal.

Whether the market rate of the acquired land fixed by the Reference Court at the rate of Rs. 60/ - per sq. metre is just and proper?. If not, what was the market rate of the acquired land as on the date of publication of Section 4 notification?.

9. As stated above, the respondents examined three witnesses. The respondents primarily relied upon sale deed dated 9/4/1987 by which N.T. Joseph, AW.2 had sold a developed plot admeasuring 400 sq. metres at the rate of Rs. 100/ - per sq. metre. The said plot was at a distance of 800 metres from the acquired land, as deposed by Antonio Colaco, AW.1, which was not seriously challenged in the cross examination. Moreover, the acquired land and the sale deed plot were in the same village Raia. The main difference between the acquired land and the sale deed plot was that the sale deed plot was a developed plot, whereas the acquired land was an agricultural land and as such, not developed. However, the fact remains that in the remaining portion of the acquired land there was a garage and a structure and as such, it cannot be said that the acquired land had no building potential. Mr. Usgaonkar is right in contending that the Reference Court was not justified in deducting 40% from the market rate of the sale deed plot on the ground that N.T. Joseph had sold to the purchaser a land towards his share, since this could not have been the ground for making any deduction, but the fact remains that the sale deed plot was a developed plot, whereas the acquired land was not developed and was agricultural land. Therefore, even if 40% is deducted from the sale price towards development of the acquired land, the market value of the acquired land as on the date of publication of Section 4 notification would come to Rs. 60/ - per sq. metre. In so far as the argument of Ms. Linhares that since the acquired land was a strip of land and had no building potential is concerned, I do not find any merit in as much as the issue is squarely covered against the appellants by the judgment of the Apex Court in the case of State of Goa and Another Vs. Gopal Baburao Gaudo and Others, . In the said case, an argument was advanced on behalf of State of Goa where a long strip of land admeasuring two-thirds of acre adjoining highway of area adjoining the highway was acquired for public purpose. The Apex Court rejected the argument made on behalf of the State of Goa that the said land did not have any potential for development merely on the ground that law relating to highways prohibited constructions on either side of the highway, up to a depth of 40 m from centre of highway.

10. In the present case the land was acquired for widening of the road and applying the same analogy it cannot be said that the acquired land did not have building potential. Therefore, the argument of Ms. Linhares in this regard deserves to be rejected and is hereby rejected.

11. Thus, considering the sale deed dated 9/4/1987 by which N.T. Joseph sold an area admeasuring 400 sq. metres at the rate of Rs. 400/ - per sq. metre and deducting 40% towards development charges, the market rate of the acquired land as on the date of publication of Section 4 notification comes to Rs. 60/ - per

sq. metre. The respondents are therefore hereby entitled to Rs. 60/ - per sq. metre in respect of the acquired land. Thus, the market rate of the acquired land as fixed by the Reference court does not deserve any interference, though for different reasons.

12. In the result, the appeal is dismissed with no order as to costs.