

(2010) 10 BOM CK 0209
In the Bombay High Court
Case No : First Appeal No. 251 of 2003

State of Goa and The Executive Engineer	APPELLANT
Vs	
Shri Sonny Correia (since deceased) now his Widow Mrs. Hilda da Silva Correia	RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2010) 10 BOM CK 0209

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

Bench : Single Bench

Advocate : Amey Kakodkar, Additional Government Advocate, for the Appellant;
None, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—By this appeal, the appellants take exception to the Judgment and Award dated 18.6.2001 passed by IInd Additional District Judge, South Goa, Margao in Land Acquisition Case No. 164/1996, partly allowing the reference u/s 18 of the Land Acquisition Act, 1894 ("the Act" for short).

2. Vide notification issued u/s 4 of the Act dated 21.6.1991 which was published in the official gazette dated 22.8.1991, the Government of Goa acquired the lands of several persons for public purpose namely construction of a road from Khareband to Sirvodem rice mill in Margao Town. An area admeasuring 80 square metres of the property bearing survey No. 276/14, admeasuring 1710 square metres was part of the acquired land. The respondent claimed Rs. 1000/- per square metre. The Land Acquisition Officer made an award on 13.11.1992 fixing the market value of the acquired land at Rs. 20/- per square metre and also awarded Rs. 2015/- towards the value of the trees.

3. The respondents sought reference u/s 18 of the Act and claimed compensation at Rs. 1000/- per square metre.

4. In the Land Acquisition case No. 164/1996, the respondent examined only one witness Mr. Christopher Correia, AW1 duly constituted attorney of the respondent. He placed reliance upon the award dated 31.3.1989 (AW1/16) passed by the Land Acquisition Officer in LQN/ADC/53/86 and sale deed dated 15.9.1989 (AW1/16/B) and sale deed dated 2.12.1989 (Exh AW1/16/C).

5. The Reference Court placed reliance upon the award dated 31.3.1989 (Exh.AW1/16) by which large tracks of lands were acquired for public purpose in the close proximity of the acquired land. The Land Acquisition Officer had awarded Rs. 50/per square metre. The Reference Court held that since the acquisition in the said case was in the year 1986 the market rate of the acquired land would come to Rs. 70/- per square metre after considering 10% yearly increase in the price of land. The Reference Court did not place reliance upon the two sale deeds relied upon by the respondent.

6. Mr. Kakodkar, learned Additional Government Advocate appearing for the appellants submitted that the Reference Court ought not to have relied upon the award dated 31.3.1989 since the same could not be termed as comparable award. He further submitted the in any case considering the facts that the land was situated in the interior, the Reference Court ought not to have granted increase of 10% per year. On behalf of the respondent none appeared although respondent has been served.

7. I have considered the submissions made by Mr. A. Kakodkar and perused the record.

8. In view of the submissions made and the findings given by the Reference Court, the following point arises for determination in the present appeal:

Whether the Reference Court was justified in fixing the market rate of the acquired land at Rs. 70/- per square metre?

9. The evidence of Mr. Christopher Correia, AW1, who was examined on behalf of the respondent discloses that the acquired land was at a distance of 15 to 20 metres from Damodar College at Margao. The distance between the acquired land and Fatima Convent was about 5 minutes walking distance by road. Municipal Building, market and old bus stand were within the radius of 500 metres from the acquired land. All the civic amenities were available in and around the acquired land. He further deposed that the acquired land was similar to the land acquired in terms of the award dated 31.3.1989.

10. The question which arise for determination is whether the Reference Court was justified in placing reliance upon the award dated 31.3.1989. It has not been seriously disputed that the land acquired in terms of the said award were in close proximity of the acquired land and were similar to the acquired land. This being the position, in my considered opinion, the Reference Court was perfectly justified in placing reliance upon the said award (AW1/16). In the said case Section 4 notification was published on 11.5.1987 whereas in the present case

Section 4 notification was published on 22.8.1991 i.e. after a period of more than 4 years. This being the position, in my opinion, the Reference Court was justified in granting escalation at the rate of 10% per annum. I do not find any merit in the submission of Mr. Kakodkar that the acquired land was in the interior and that the Reference Court could not have granted escalation of 10% per annum. The acquired land had many facilities and was in the close proximity of main Margao Town. This being the position, the market rate of the acquired land cannot be said to be excessive warranting interference in the appeal.

11. In the result, therefore, I do not find merit in the appeal. Therefore, the same stands dismissed with no order as to costs.