

(2010) 10 BOM CK 0178
In the Bombay High Court
Case No : First Appeal No. 206 of 2003

State of Goa and The Executive Engineer, Works Div. VI,
P.W.D.

APPELLANT

Vs

Jacinto M.F. Rodrigues

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2010) 10 BOM CK 0178

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

Bench : Single Bench

Advocate : V. Rodrigues, Additional Government Advocate, for the Appellant;
Respondent through served, for the Respondent

Judgement

A.P. Lavande, J.—By this appeal, the appellants take exception to the judgment and award dated 18th December, 2002 passed by the Additional District Judge, Margao in Land Acquisition Case No. 30/1993 partly allowing the reference u/s 18 of the Land Acquisition Act ("The Act" for short).

2. Vide notification dated 18th January, 1990 issued under 44 of the Act, which was published in the official gazette on 31st January, 1990, the Government acquired lands for public purpose namely construction of road from Mungul-Calata via Seraulim. An area admeasuring 475 square meters bearing survey No. 49/05 belonging to the respondent was part of the acquired land. The respondent claimed Rs. 250/- per square meter. The Land Acquisition Officer (The LAO) made award on 13th May, 1992 and fixed the market rate of the acquired land at the rate of Rs. 30/- per square meter. The respondent sought reference under 18 of the Act and claimed compensation at the rate of Rs. 250/- per square meter. In the Land Acquisition Case No. 30/1993, the respondent examined four witnesses namely Jacinto Rodrigues - AW1 (the respondent), Antonio Rebello-AW2, Bosco Cotta-AW3 and Krishna Prabhudessai-AW4, who was the Civil Engineer.

3. The respondent/claimant relied upon three sale deeds namely sale deed dated 21st May, 1990 exhibit AW1/A executed between Luis Rebello and Amina Lotlikar by which a plot admeasuring 557 square meters was sold at the rate of Rs. 300/- per square meter; another sale deed dated 25th September, 1989 exhibit AW1/B whereby Luis Rebello sold one plot admeasuring 510 square meters to Ulhas Lotlikar at the rate of Rs. 300/- per square meter, and sale deed dated 11th May, 1989 exhibit AW1/C whereby one Arlene Cotta and Robert Alvares sold a plot admeasuring 4000 square meters at the rate of Rs. 75/- per square meter. The said plot was at a distance of about 1 kilometer from the acquired land. The appellants did not lead any evidence.

4. The Reference Court placed reliance upon the sale deed dated 11th May, 1989 on the ground that it was comparable sale instance and considering that the notification was issued under 44 in the year 1990 and taking into consideration the rise in the price, fixed the market rate of the acquired land at the rate of Rs. 85/- per square meter. The appellants have challenged the impugned judgment and award by filing the present appeal.

5. Mr. Rodrigues, learned Additional Government Advocate appearing for the appellants urged that the Reference Court ought not to have placed reliance upon the sale deed dated 11th May, 1989 for the purpose of fixing the market rate of the acquired land. He further submitted that even if reliance was placed upon the said sale deed, in view of the admission by AW3- Bosco Cotta that there was structure existing in the said sale deed plot, appropriate deduction ought to have been made by the Reference Court. He further submitted that escalation granted by the Reference Court is more than 12 % per year which is without any justification. He, therefore, submitted that the impugned judgment and award be set aside.

6. As stated above, the respondent has chosen not to put in appearance inspite of service.

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

8. In view of the submissions made, the following point arises for determination in the appeal:

Whether the Reference Court was justified in fixing the market rate of the acquired land at the rate of Rs. 85/- per square meter?

9. The Reference Court placed reliance on the sale deed dated 11th May, 1989 exhibit AW1/C, which was at a distance of about 1 Kilometer from the acquired land. The sale deed plot was similar to the acquired land except that there was structure in the sale deed plot, which has been admitted by AW3-Bosco Cotta. This being the position, in my considered opinion, the Reference Court was justified in placing reliance upon the said sale deed, but in my opinion, the Reference Court ought to have made appropriate deduction. Admittedly, 44 notification was issued after a period of almost 8 months. Therefore, considering

yearly increase of 10 %, the market rate of the sale deed plot in January, 1990 would work out to Rs. 80/- per square meter. Since the sale deed plot was comparatively bigger as compared to the acquired land by adding 10 % value the market rate would work out to Rs. 88/- per square meter. Indisputably, the sale deed plot had access and structure. In my opinion, appropriate deduction for the disadvantages would be 15 %. Hence, the market rate of the acquired land on the date of publication of 44 notification works out to Rs. 75/- per square meter. Therefore, in my opinion, the market rate of the acquired land as on the date of publication of 44 notification would be Rs. 75/- per square meter.

10. In view of the above discussion, the appeal is partly allowed. The market rate of the acquired land is fixed at Rs. 75/- per square meter. Needless to mention that the respondent is entitled to all the statutory benefits under the Act.

11. The appeal stands disposed of in aforesaid terms with no order as to costs.