
(2010) 10 BOM CK 0253
In the Bombay High Court
Case No : First Appeal No. 23 of 2002

State of Goa and The Executive Engineer, Works Division II, APPELLANT
Public Works Department

Vs

Smt. Bindiya M. Verlekar RESPONDENT

Date of Decision : 15-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2010) 10 BOM CK 0253

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : S. Bandodkar, for the Appellant; M.S. Sonak, for the Respondent

Final Decision : Allowed

Judgement

D.G. Karnik, J.—This appeal is directed against a judgment and Award dated 30th June, 2001 delivered by the Additional District Judge, Panaji allowing the reference bearing Land Acquisition Case No. 47/1998.

2. The respondent was the owner of the property bearing Survey No. 285/1(part) of Village Morombi-O-Grande admeasuring 595 sq. metres. The property was acquired for the purpose of a road. A notification u/s 4 of the Land Acquisition Act, 1894 was published on 1st April, 1993 and an award was made on 6th May, 1996 awarding compensation at the rate of Rs. 15/- per sq. metre. Dissatisfied with the amount of compensation granted under the award, the applicant applied to the Collector for a reference u/s 18 of the Land Acquisition Act. Accordingly, the reference was made to the District Court (hereinafter referred to as "the Reference Court"). By the impugned judgment and Award dated 30th June, 2001, the Reference Court allowed reference and awarded compensation at the rate of Rs. 150/- per sq. metre. Aggrieved by the decision of the Reference Court, the State is in appeal.

3. Before the Reference Court, the claimant examined her husband as witness

AW.1. In his deposition, he relied upon a sale deed of a nearby plot of land dated 30th June, 1990. A photo copy of the said sale deed was produced on record. No other evidence was adduced by the claimant (respondent herein). Relying upon the sale instance as a comparable sale, the Reference Court enhanced the compensation from Rs. 15/- per sq. metre to Rs. 150/- per sq. metre.

4. Learned Additional Govt. Advocate appearing for the State submitted that the Reference Court erred in enhancing the amount of compensation from Rs. 15/- per sq. metre to Rs. 150/- per sq. metre. His submissions are summarized as below:

(i) The Sale Deed dated 30th June, 1990 was not admissible in evidence. The original sale deed was never produced in the Court and only a photocopy of the sale deed was produced on record. The original was brought by the claimant and after comparing the photocopy with the original, the photocopy was taken on record and marked as Exhibit AW.1/E, without its proof. The sale deed was not produced and neither the vendor nor the purchaser was examined. Therefore, the sale deed was not admissible in evidence.

(ii) The sale deed was not of a comparable plot. Though the plot under the sale deed Exhibit AW.1/E was of a nearby plot, it was a developed plot. As against that, the acquired plot was used even in the past as a road and was acquired for the purpose of asphaltting it for use as a regular road. Therefore, the acquired land was not comparable with the land covered under the sale deed.

(iii) The acquired land had no building potential. It was only a strip of land with width of 5 metres and it was incapable of being used for building purpose. In any event, it was not comparable with the land covered by the sale deed Exhibit AW.1/E which had the building potential.

(iv) If the sale deed was excluded from consideration on any of the three grounds mentioned above, there was no other evidence produced by the claimant for proving the market value of the land. The burden of proving that the compensation offered under the award was not the market value was on the claimant and since the burden was not discharged, the claimant was not entitled to any enhancement of compensation.

5. In the facts and circumstances of the case, I am of the view that the claimant had not proved that the acquired land had any building potential. In the absence of building potential, the sale instance covered by the sale deed Exhibit AW.1/E cannot be said to be of a comparable plot and is of no assistance to the claimant. In this view of the matter, in my view, it is not necessary to consider the first ground raised by the learned Addl. Govt. Advocate that the sale deed was not proved in accordance with the law and, therefore, not admissible in evidence.

6. In the examination-in-chief, the claimant has stated: "The nature of the acquired land is bagayat land having coconut trees." He has not stated anywhere about any building potential for the acquired land. It is the case of the appellants

State that the acquired land was a long strip of land, having a breadth of only about 5 metres and was actually used as a road by the members of public even before the land was acquired. Only by way of a formality, the land was acquired for the purpose of making it as a regular tar road. It had no building potential whatsoever. In the cross examination, the claimant has admitted that the acquired land is a long strip and had a breadth of more or less 5 metres. In view of this admission of the claimant himself that the acquired land was only a long strip of land having breadth of 5 metres, the acquired land by itself had no building potential. However, relying upon a decision of the Supreme Court in the case of State of Goa and Another Vs. Gopal Baburao Gaudo and Others, , Mr. Sonak, learned Counsel for the claimant contended that even a strip of land abutting a road would have the same market value as the adjacent land. In my view, the case has no application to the facts of the present case. Where a person owns a plot of land and only a portion of the land abutting the road is acquired leaving with the owner remaining part, it can be said that the acquired land has the same value as the remaining adjacent land and was having a building potential though it cannot be actually built. Where an owner owns a larger plot of land and a portion thereof is acquired the FSI of the plot of land is taken into consideration while allowing the building construction though the actual portion area falls in a set back of the adjacent road. The FSI of a portion of the land touching the road which is acquired can be used by the owner of the plot remaining with him after the acquisition. It is on account of this that it is held that the acquired land would have more or less the same value as the remaining land.

7. In the present case, there is no evidence to show that the acquired land was a portion of a larger plot of land owned by the claimant. In the whole examination in chief, the claimant has not stated that he owned a larger piece of land and the acquired portion forms a part of the said larger plot. On the other hand, in the examination in chief, he did not give the area of the total land of survey No. 285/1 owned by him. He only stated that 595 sq. metres of survey No. 285/1 was acquired. He then stated that the acquired land was a bagayat land having coconut trees. It appears, therefore, that the claimant was claiming compensation on the basis that it was an agricultural land and not on the basis that it had any building potential. In the cross examination, it was succinctly brought on record that the acquired land was a longish strip of land having a breadth of only 5 metres. This was done to show that the sale instance which was of a buildable plot was not a comparable sale. The claimant has, therefore, failed to prove that the sale instance in respect of a buildable plot relied upon by him was of land comparable to the acquired land which had no building potential.

8. No other evidence was adduced by the claimant to show what was the value of the acquired land. The burden of proving that the value of the land offered by the Land Acquisition Officer was inadequate, was on the claimant. The burden was not discharged by the claimant.

9. Consequently, the appeal is allowed. The impugned judgment and Award passed by the learned Addl. District Judge, Panaji dated 30th June, 2001 is quashed and set aside and the reference made by the claimant (respondent) is dismissed with no order as to costs.