
(2014) 11 BOM CK 0112
In the Bombay High Court
Case No : First Appeal No. 43 of 2011

State of Goa

APPELLANT

Vs

Imtiyaz

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 4(1)

Citation : (2014) 11 BOM CK 0112

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Vivek Rodrigues, Additional Government Advocate, Advocate for the Appellant; S. Bhobe, Advocate for the Respondent

Judgement

U.V. Bakre, J.

1. Heard Mr. Rodrigues, learned Additional Government Advocate for the appellant and Ms. Bhobe, learned Counsel for the respondent.

2. This appeal is directed against the judgment and order dated 17/05/2010 passed by the learned Ad hoc District Judge, FTC, Panaji ("Reference Court" for short) in Land Acquisition Case No. 87 of 2008. The appellant was the respondent in the said Land Acquisition Case whereas the respondent was the Applicant therein. Parties shall hereinafter be referred to as per their status in the said Claim Petition.

3. Vide notification bearing no. 23/24/2004-RD dated 05/02/2005 issued under Section 4(1) of the Land Acquisition Act, 1894 ("L. A. Act", for short) and published in the Official Gazette dated 23/02/2005, land was acquired for improvement and widening of road from Prabhu Towers, Upper Bazar to Shantinagar including reconstruction of culvert in Ponda constituency. This included land admeasuring 585 square metres from Survey no. 167 (part) of village/ city Ponda, in respect of which, the applicant was interested only in 183 square metres. By award dated 24/08/2006, the Land Acquisition Officer

("L.A.O.", for short) awarded compensation of Rs. 300/-per square metre towards the said acquired land. Not being satisfied by the offer made by the L.A.O., the applicant made a reference under Section 18 of the L. A. Act before the L.A.O. which gave rise to the said Land Acquisition Case No. 87/2008. The applicant claimed compensation at the rate of Rs. 700/-per square metre.

4. One issue was framed by the learned Reference Court as per the claim of the applicant and in order to establish his case the applicant examined himself as AW1. He produced various documents including a Sale Deed dated 20/12/1991 at Exhibit 21 and the copy of the award dated 24/08/2006 as Exhibit 22 concerning the present acquired land.

5. Upon going through the entire record of the case and hearing the learned Counsel for the parties, the learned Reference Court awarded compensation at the rate of Rs. 1,000/-per square metre to the acquired land along with all statutory benefits under the L. A. Act. The respondent is aggrieved by the above judgment and award and has filed the present appeal.

6. Mr. Rodrigues, learned Additional Government Advocate, submitted that the judgment of the Reference Court is non-speaking in as much as the evidence produced by the applicant is not discussed in proper perspective. He further submitted that plot of the sale deed dated 20.12.1991, produced by the applicant, was not similar in nature to the acquired land and the Reference Court has not made proper comparison of the acquired land with the plot of the sale deed. He pointed out that by reference application, the applicant had claimed only Rs. 700/-per square metre but the Reference Court has awarded compensation at the higher rate of Rs. 1,000/-per square metre which according to him is without any basis. He further pointed out from the evidence on record that there was already in existence a muddy road in the acquired land which was not tarred and the people used to pass through the same and, therefore, considering all the above facts, the impugned judgment and award cannot sustain and either the same be set aside or compensation be reduced accordingly.

7. On the other hand, Ms. Bhobe, learned Counsel for the respondent submitted that the applicant has produced on record the award of the L.A.O. in respect of the acquired land which has been exhibited wherein the Mamlatdar of Ponda had furnished sale statistics. She submitted that the learned L.A.O. ought to have considered the sales statistics furnished by the Mamlatdar. She further submitted that there was evidence on record regarding the proximity of the plot of the said Sale Deed with the acquired land, distance wise as well as similarity. Learned Counsel pointed out that more than required deductions have been made in the price of the Sale Deed dated 20/12/1991 produced by the applicant and She submitted that the question of further deduction in the compensation does not arise. She, therefore, prayed that the appeal be dismissed.

8. I have gone through the records and proceedings and considered the arguments advanced by the learned Counsel for the parties.

9. The point which arises for determination is whether the compensation awarded by the Reference Court is just and reasonable or whether the same is arbitrary and unjust.

10. A perusal of the award of the L.A.O. which is produced by the applicant in his evidence and which has been marked as Exhibit 22 reveals that the Mamlatdar of Ponda vide letter no. 13/CI/SAL-ST/434/05/2191 dated 14/12/2005 had furnished the following details of sales statistics of the plots sold in the vicinity of the acquired land:

11. A perusal of the award reveals that the plots of the sales statistics furnished by the Mamlatdar were situated in Ponda city, within a radius of 500-1200 metres from the acquired land and that they were developed plots. In the circumstances above, the learned L.A.O. could have given appropriate deduction and could have arrived at appropriate market value on the basis of the sales statistics produced by the Mamlatdar since the plots were otherwise in the close vicinity of the acquired land.

12. The evidence of AW1 reveals that the acquired land was situated in the heart of the city of Ponda and was adjacent to Ponda market. There was electricity and water pipe line passing through the property of the applicant. A perusal of the cross-examination of AW1 reveals that except suggestions, nothing much has come on record. In such circumstances, the contention of learned Additional Government Advocate that the evidence on record has not been discussed in entirety has no substance.

13. Be that as it may, the applicant himself had produced on record a sale deed dated 20/12/1991 as Exhibit 21 by which a developed plot having an areas of 558 square metres was sold for Rs. 4,25,000/-that is at the rate of Rs. 700/-per square metre. AW1 had specifically stated that the plot of the sale deed was situated in the vicinity of the acquired land. He had denied the suggestion that the sale deed plot was not similar to the acquired land. In such circumstances, the learned Reference Court rightly took the said sale deed dated 20/12/1991 as basis for determination of the market value of the acquired land. No doubt, AW1 in his cross-examination stated that in the acquired land there was a muddy road which was not tarred and the people used to pass through that road. However, there was no evidence to show that the same was used as public road. It was merely a permissive use by the people from the portion of the property of the applicant. Such permissive use will not diminish the value of the acquired land. In such circumstance, question of making deduction on this ground does not arise. It is pertinent to note that the learned Reference Court relied upon the case of Lal Chand Vs. Union of India (UOI) and Another, in which it was held that in respect of developed and subdivided plots, deduction towards development charges may vary from 20% to 75%. In spite of the above, the learned Court has given deduction of 50% towards development charges from the Sale Deed plot and thereafter further deduction of 20% on the remainder value. An annual increase of 110% has been given since the sale deed was of December, 1991

whereas the Notification under Section 4 of the L.A. Act was published on 23/03/2005 and, therefore, there was gap between the two. Considering all the aspects, fixing of market value at Rs. 1,000/-per square metre cannot be termed as erroneous. In any case, the same appears to my mind to be just and reasonable. The Court was required to determine the market value of the acquired land and, therefore, merely because the applicant had claimed the market value of Rs. 700/-per square metre that did not mean that Reference Court had to restrict the compensation to Rs. 700/-per square metre though it had arrived at the market value of the same at Rs. 1,000/-per square metre. Grant of market value at a higher rate than which is claimed is permissible.

14. In all the circumstances above, in my considered view, there is no merit in the present appeal, hence the same stands dismissed.

15. The appeal is disposed of accordingly.