(2005) 10 BOM CK 0048

In the Bombay High Court

Case No : First Appeal No. 32 of 1999 and Cross Objection No. 2 of 2001

State of Goa APPELLANT

Vs

Joaquim B. Crasto RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4

Citation : (2005) 10 BOM CK 0048

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Winnie Coutinho, for the Appellant; S.S. Kakodkar, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—The IInd Additional District Judge, South Goa, at Margao in Land Acquisition Case No.157/92 by his Judgment and Award dated 5.1.1999 fixed the market value of the acquired land at the rate of Rs.1 0 0/-per sq. metre on the date of publication of Notification un de r Section 4 of the Land Acquisition Act. Aggrieved there by, the present first appeal has been preferred by the State of Goa through the Deputy Collector (Land Acquisition Officer) at Quepem and the Executive Engineer, P.W.D. (W.D.XXV), Gogal Margao.

2. The Government of Goa issued Notification dated 11.5.1 9 8 8 that was published in the Official Gazette on 4.8.19 8 8 whereby the lan d admeasuring 305 sq. metre s from the property surveyed un d e r Survey No.433/4 of Village Chinchinim , Salcete Taluk a along with other land was sought to be acquired for widening and improve me n t of National Highway No.17. Survey No.433/4 in all ad me a s u r e d 875 sq. metre s . The Land Acquisition Officer vide his Award dated 11.1 0. 1 9 9 1 awarded compe n s a t i o n at the rate of Rs.1 3/-per sq. metre. The respondent here in (claimant) was dissatisfied with the award of the Land Acquisition Officer an d sought a reference claiming compensation of the acquired lan d at the rate of Rs.2 0 0/-per sq. metre. The claim a n t also claimed

that he was entitled to Rs.20, 0 0 0/-toward s the const r u c tio n of retention wall and compensation for 12 coconut trees sta n d i ng on the acquired lan d at the rate of Rs.30 0 0/-per coconut tree.

3. Before the Reference Court, the claim a n t examined his wife Ja n e t Crasto (AW.1) an d Rosa Florin a Coutinho (AW.2). She produced two sale deeds (Exhibit AW.2/A an d Exhibit AW.2/B).

4. The Reference Court , in the light of the evidence that was prod u c e d before it, after hea rin g the parties, fixed the market value of the acquired land as on 4.8.1 9 8 8 at the rate of Rs.1 0 0/-per sq. metre. The Reference Court held that the claimant was not entitled to compensation for the coconut trees at the rate of Rs.30 0 0/-per coconut tree and , accordingly, disposed of the reference on 5.1.1 9 9 9 .

5. As already indicate d above, aggrieved by the said Judgment and Award dated 5.1.1 9 9 9 the State of Goa and the Exec u tive Engineer have filed this first appeal. The claim a n t ha s filed cross objections to the extent he was denied compensation at the rate of Rs.20 0/-per sq. metre and compensation for the coconut trees at the rate of Rs.3,0 0 0/-per coconut tree.

6. I heard Ms. Winnie Coutinho , the learned Government Advocate an d Mr. S. S. Kakodkar , the learned Advocate for the respondent .

7. Insupport of the first appeal, the learned Government Advocate submitted that the reference Court failed to apply the correct principles for deter mining the market value of the acquired land . According to the learned Government Advocate, the acquired lan d was one metre above the road level an d by keeping th a t factor in min d, the Reference Court sought to have given an appropriate deduction . The learned Government Advocate would su b mi t th at there was no justification for the Reference Court in enhancing the compensation at the rate of Rs.10 0/-per sq. metre.

8. On the other hand , Mr. S.S. Kakodkar , the learned Counsel for the respondent submitted that the market value fixed by the Reference Court at the rate of Rs.10 0/-per sq. metre s was rather on lower side an d there was no justification for the Reference Court in applying deduction of 50 % outright from the price in the sale-deed (Exhibit AW.2/B) for arriving at the market rate on the ground that the acquired land was situated adjacent to the national highway and was within the setback area. The learned Advocate for the respondent submitted that the claimant is not desirous of pres si n g the cross objections for the enhancementin so far as award of compensation at the rate of Rs.10 0/-per sq. metre for the acquired land is concerned , it being just and proper , warrants no interfere n ce .

9. That the entire area of the claimant''s property comprised 875 sq. metres is not in dispute . The said property was surveyed un d e r Survey No.43 3/4 of Village Chinchinim . Out of the said property, an area of 305 sq. metres has been

acquired for widening and improvement of the National Highway No.17. There is evidence to show that the acquired land is adjacent to Margao-Karwar National Highway. As a matter of fact, it is for this reason that for widening and improvement of that highway the respondent''s land has been acquired along with other lands. The acquired land is close to bus-stop as per evidence of AW.1. The church, the market, the school, the Bank and the Post Office are not far off. It appears from the evidence of AW.2, duly supported by Exhibit AW.2/B (Sale Deed) that a plot of land bearing Survey No.421/2 admeasuring about 402 sq. metres was sold at the rate of Rs.175/-per sq. metre vide Sale Deed dated 13.8.1985 (Exhibit AW.2/B). This very plot was later on sold vide Sale Deed Exhibit AW.2/A on 28.9.1990 at the rate of Rs.250/-per sq. metre. That plot of land which was sold vide Exhibit AW.2/B initially in the year 1985 and subsequently vide Sale Deed Exhibit AW.2/A in the year 1990 is situate in the same village. That plot is also situated by the side of Margao Karwar National Highway. It is not in dispute that the plot that was sold vide Exhibit AW.2/A and Exhibit AW.2/B is comparable with the acquired land. Was the Reference Court wrong in taking into consideration the Sale Deed dated 13.8.1985 (Exhibit DW.2/B) as the basis for determining the market value of the acquired land on 4.8.1988. Not so. Though, the deduction of 50 % applied by the Reference Court on the ground that the acquired land was situated adjacent to the National Highway and within the setback area an d that the acquired land was not suitable for construction purpose being adjacent to the National Highway may not be correct being on higher side but the same was not put in issue by the learned Counsel for the claim a n t by not pressing the cross objections . In any case, there is no justification for deduction by more tha n 50 % . As a matt er of fact, the Reference Cour t was not justified in observing th at the acquire d land was not suitable for construction being adjacent to the National Highway and within the setback area. Be that as it may, I up hold 50 % deduction from the sale-price mentioned in the sale deed dated 13.0 8. 1 9 8 5 an d mai nt a i n 10 % increase per year and the conclusion of the Reference Court that the market value of the acquired land was Rs.100/-per sq. metre on 4.8.1 9 8 8 . There being no evidence to the contrary that the land price in the area went south ward during the period from 1985 to 198 8, the 10 % increase in the rate of the lan d per year appears to be justified.

10. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , the Su p r e m e Cour t laid down the following guideline s for deter mi ni ng the mar k et value of the lan d on the date of pu blica tio n of notification un d e r Section 4 of the Land Acquisition Act : " 4. The following factor s m u s t be etched on the men t al screen :

(1) A reference un de r Section 18 of the Land Acquisition Act is not an appeal against the award and the Cour t can not take into account the mate ri al relied upon by the Land Acquisition Officer in his Award u nle s s the sa m e mate rial is produced and proved before the cour t.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or expose d to challenge before the Court hearing the Reference. It is merely an offer mad e by the Land Acquisition Officer and the mat eri al utilised by him for making his valuation can not be utilised by the Court unless produced and proved before it. It is not the functio n of the Court to sit in appeal against the Award, ap prove or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plain tiff who ha s to show th at the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the mat eri als placed an d proved by the other side can also be take n into account for this pur po s e .

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification un d e r S.4 of the Land Acquisition Act (dates of Notifications un de r Ss.6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under S.4) as if the valuer is a hypotheticalpur c h a s e r willing to purchase land from the open market an d is prep a r e d to pay a rea so n a b le price as on that day. It ha s also to be as s u m e d that the vendor is willing to sell the land at a rea so n a bl e price.

(7) In doing so by the instances method, the Court has to correlate the mar ke t value reflected in the most comparable instance which provides the index of mar ke t value.

(8)Only gen ui ne instances have to be take n into account . (Sometimes instances are rigged up in an ticipation of Acquisition of land).

(9) Even post-notification instances can be take n into account (1) if they are very proximate , (2) genuine an d (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the result and improvement in develop me n t prospects .

(10) The most comparable instances out of the genuine instances have to be identified on the following consider a tio n s :

(i) proximity from time angle.

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be take n as the nor m and the ma r ke t value of the land under acquisition may be deduced by making suitable adjustments for the

plus and minus factor s vis-a-vis land under acquisition by placing the two in juxta position.

(12) A balancesheet of plus and minus factors may be drawn for this purpose and the releva n t factors may be evaluated in terms of price variation as aprudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors . Plus factors

1. Smallness of size.

2. Proximity to a road.

3. Front age on a road.

4. Nearness to developed area.

5. Regular shape .

6. Level vis-a-vis land under acquisition.

7. Special value for an owner of an adjoining property to whom it may have some very special advantage.

(14) The exercise indicated in clauses (11) to (13) has to be under taken in a common sense manner as a prudent man of the world of business would do. We may illustrate some suc h illustrative (not exhaustive) factors :- (for table see below)

(15) The evaluation of the se factor s of course depends on the facts of each case. There can not be any har d an d fast or rigid rule. Common sense is the best an d most reliable guide. For instance, take the factor regar di ng the size. A building plot of lan d say 500 to 1000 sq. yds. can not be compared with a large tract or block of land of say 10000 eq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by prep a ri ng a lay out, carving out road s , leaving open space, plotting out smaller plots, waiting for purchasers (mea new hile the invested money will be blocked up) and the hazards of an entrepreneur . The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lan d s an d plotting out small plots. The discounting will to some extent also depend on whet her it is a rural area or urba n area, whet he r building activity is picking up, and whet he r waiting period during which the capital of the entrepreneur would be locked up, will be longer or short er and the attendant hazards . Minu s factors

1. Largeness of area.

2. Situation in the interior at a distance from the road.

3. Narrow strip of land with very small front age compared to depth .

4. Lower level requiring the depressed portion to be filled up.

5. Remoteness from developed locality.

6. Some special disadvantageous factor which would deter a purchaser.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

11. Keeping the aforesaid factors in mind, I find that the Reference Court has correctly taken into account the market value reflected in the sale instance Exhibit AW.2/B as the basis. That sale instance pertains to a small parcel of land like the acquired land. That land abutted the National Highway as the acquired land. The land that was sold vide Sale Deed Exhibit AW.2/B and the acquired land are in the same village and not very far off. The market value reflected therein has been unloaded to account for the minus factor, particularly that the acquired land was part of setback area and thereby 50 % deduction has been made. The increase of 10 % per year taking market value of the acquired land in the year 1985 at the rate of Rs.87/-per sq. metre cannot be said to be unreasonable. It is established from Exh. AW.2/A that prices of the immovable properties increased year-after-year in Goa in eighties. There is no evidence to the contrary. Thus, the market value of Rs.100/-per sq. metre fixed by the reference Court is neither unrealistic nor excessive.

12. The contention of the learned Government Advocate that the level of the acq ui re d land being one metre higher than the road level, some deduction needed to be made is wholly misconceived. As to on what basis this argument has been advanced is not shown . As a matter of common knowledge, the parcel of the land at the level higher than the road does not suffer from any minus factor like the land that is below the road level.

13. Having taken into account all the relevant factors , I am of the view th at the market value fixed by the reference Court at the rate of Rs.1 0 0/-per sq. metre is reasonable an d realistic; it is based on the evidence on record and cannot be said to suffer from application of any erroneous principle.

14. In view of the foregoing reasons , the appeal as well as the cross objections are dismissed with no order as to cost s.