(2014) 07 BOM CK 0181

In the Bombay High Court

Case No : First Appeal No. 131 of 2002 and Cross Objection No. (STA.) 1548 of 2003

State of Goa APPELLANT

Vs

Malini Vinayak Nevrekar RESPONDENT

Date of Decision : 04-07-2014

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

Citation : (2014) 07 BOM CK 0181

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

Bench : Single Bench

Advocate : S. Dhargalkar, Additional Government Advocate, Advocate for the Appellant; R.G. Ramani, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

U.V. Bakre, J.—Heard learned Counsel appearing on behalf of the parties.

2. The above appeal as well as cross-objection are directed against the judgment and award dated 28/11/2001 passed by the learned Additional District Judge, Panaji (Reference Court, for short) in Land Acquisition Case No. 19/1999.

3. Vide notification published u/s 4(1) of the Land Acquisition Act, 1984 (L.A. Act, for short) in the Official Gazette dated 25/1/1991, land was acquired from village Usgao for widening of two lanes and improvement of Geometrics between kms. 116/00 to 121/950 of National High Way 4-A. This included an area of 415 square metres from survey no. 263/1 and 2367 square metres from survey no. 259/2 (totally admeasuring 2782 square metres) belonging to the applicants. By award dated 15/02/1994, the Land Acquisition Officer (L.A.O.) awarded the rate of Rs. 20/- per square metre to the acquired land belonging to the applicants. Not being satisfied with the offer of compensation made by the learned L.A.O., the applicants filed an application u/s 18 of the L.A. Act before the L.A.O. The said reference made by the L.A.O. to the learned District Judge, North Goa gave

rise to the said Land Acquisition Case No. 19/1999.

4. In the reference application, the applicants disputed the area of the acquired land. According to them, the area acquired from survey no. 263/1 was 500 square metres and that from survey no. 259/2 was 3070 square metres. They alleged that the rate of compensation for the acquired land ought to have been Rs. 350/- per square metre. In addition to the same, the applicants also claimed further compensation for first class coconut trees at Rs. 2,000/- each, second class coconut trees at Rs. 1,500/-, each mango tree at Rs. 2,500/- and each teak tree at Rs. 200/-. For the rubble stone wall, they claimed compensation of Rs. 34,620/- and for the well they claimed an amount of Rs. 40,000/-.

5. Accordingly, the issues were framed by the learned Reference Court. The applicants examined the applicant no. 3 Shri Madhav Vinayak Nevrekar as AW1 and he produced two sale deeds one dated 10/01/1991 as Exhibit AW1/A and other dated 14/06/1991 as Exhibit AW1/B. The applicants examined a valuer by name Shri Ramesh Narayan Verenkar as AW2. His valuation report is at Exhibit AW2/A. The purchaser of the sale deed dated 10/01/1991 namely Shri Babusaheb Ramchandra Chowgule was examined as AW3 and the Chairman namely Raghuvir Narayan Chipkar of the purchaser of the plot in sale deed dated 14/06/1991, i.e. MRF Employees TISCO Housing Co-Operative Society Limited, was examined as AW4. The respondents examined two witnesses namely Prajesh Premanand Chodankar as RW1 and Laxmikant Kundaikar as RW2.

6. Upon appreciation of the entire evidence on record, the learned Reference Court partly allowed the reference and fixed the rate of compensation at the rate of Rs. 121/- per square metres and awarded all the statutory benefits.

7. The respondents are aggrieved by the enhancement granted and thus have filed the appeal whereas the applicants are not satisfied with the amount fixed as compensation and they have filed cross-objection for further enhancement.

8. Mr. Dhargalkar, learned Additional Government Advocate submitted that the sale deed dated 10/01/1991 at Exhibit AW1/A was prior to the publication of notification u/s 4(1) of the L.A. Act whereas the other sale deed dated 14/06/1991 was a post notification sale instance, but in spite of that the Reference Court wrongly relied upon the said post notification sale deed. He urged that the said sale deed dated 14/06/1991 was executed soon after Section 4 notification and thus was not genuine and hence ought not to have been considered. Besides the above, according to the learned Additional Government Advocate, the nature of plot of the said sale deed was not comparable with that of the acquired land, which was predominantly a coconut grove. He further pointed out that though the Reference Court observed that deduction of 30% has to be made, however what has been deducted is Rs. 30/- from the price of the sale deed plot and thus compensation arrived at Rs. 121/- is erroneous. He therefore urged that the impugned judgment and award be set aside and the reference be rejected.

9. On the other hand, Mr. Ramani, learned Counsel appearing on behalf of the respondents/cross objectors submitted that the Reference Court did not award any enhancement in respect of rubble stone wall and the well. According to him, the evidence on record sufficiently proved that the value of well and rubble stone wall, as on the date of notification u/s 4 of the L.A. Act, was as claimed by the cross objectors. He further submitted that there was evidence of valuer which has not been taken into account by the learned Reference Court. He urged that the market value of the acquired land was at least Rs. 180/- per square metre as arrived at by the said valuer. He, therefore, urged that appropriate enhancement be made in the compensation.

10. I have perused the record and proceedings in the Land Acquisition Case no. 19/1999 and considered the submissions advanced by the learned Counsel for the parties.

11. The point that arises for consideration is as to what is the true and reasonable market value of the acquired land, the well and the compound wall.

12. The evidence on record reveals that the acquired land was levelled land situated along the National High Way 4-A and there were residential houses situated across the road, at the time of acquisition and the land had the availability of facilities like electricity, tap water, telephone, etc. The closest bus stop was at a distance of about 4-5 metres. Primary school, cottage hospital, petrol pump, higher secondary school, market, cinema hall, etc. were all within easily reachable range. The MRF factory was adjacent to survey no. 259/2. According to AW1, the applicant no. 3 and AW2, the valuer, the acquired land had building potentiality.

13. No doubt, the valuer (AW2) had arrived at the market value of Rs. 180 per square metre for the acquired land. However, though the date of publication of notification u/s 4(1) of the L.A. Act was 05/03/1991, however, he had allegedly inspected the acquired land on 05/04/1995, i.e. after 4 years from the relevant date. Be that as it may, the valuer has relied upon the same sale deeds dated 10/01/1991 and 14/06/1991 produced by AW1. Considering the said sale deeds, the market value cannot be Rs. 180/- per square metre.

14. The applicants, through AW1 have relied upon and produced two sale deeds: one dated 10/01/1991 (Exhibit AW1/A) and other dated 14/06/1991 (AW1/B). The contention of learned Additional Government Advocate that the sale deed at Exhibit AW1/A, being of the date prior to the notification u/s 4 of the L.A. Act ought to have been considered, does not appeal to my mind. As rightly observed by the learned Reference Court the plot of the said sale deed dated 10/01/1991 (Exhibit AW1/A) is situated at a distance of about 1 k.m. from acquired land as stated by AW2 Shri Ramesh Narayan Verenkar, the valuer. Even, the purchaser of this land namely Babusaheb Chowgule has stated that the said plot is about one k.m. away from the acquired land. Besides the above, there was an old residential house bearing house no. 1071 in the said land and the land along with

this house was sold. The transaction of the sale deed at Exhibit AW1/B is duly proved by AW4, Raghuvir Chipkar. The Plot of the sale deed dated 14/06/1991 (Exhibit AW1/B) is situated just on the other side of the road that is at a very close distance from the acquired land and the said sale deed plot is from the property where MRF factory was constructed. Though the said sale deed is dated 14/06/1991, a perusal of the same reveals that an amount of Rs. 50,000/- was paid to the vendors on 12/02/1991 by cheque, Rs. 1,76,950/- was paid on 13/03/1991 by cheque and balance amount of Rs. 31,200/- was paid by cheque dated 23/03/19991. Thus, it is evident that the agreement for sale was entered into in or about February, 1991. AW1 has deposed that there was an agreement made prior to this sale deed. The acquisition was not for any project which could enhance the market value of the land in vicinity. The acquisition was for widening of the existing National High way. That would not have affected the sale deed dated 14/06/1991 to have doubt about its genuineness. The area of eight plots which were sold was 1710 square metres, which is area is comparable with the size of the acquired land. The plots were sold at the rate of Rs. 151/- per square metre. In the circumstances above, the sale deed dated 14/06/1991 (Exhibit AW1/B) was the best for determining the market rate of the acquired land. The learned Reference Court, therefore, rightly relied upon the sale deed dated 14/06/1991. Since the plots of the sale deed were developed plots, the learned Reference Court observed that deduction of 30% had to be made to the price of the plots in the sale deed for fixing the price of undeveloped acquired land. It was contended by learned Counsel for the cross objectors that the deduction as per the settled law could be between 20% to 80% and the deduction of 30% was more than necessary. However, the fact remains that the acquired land was abutting the national high way and some set back will have to be left from the edge of the property. Therefore deduction of 30% cannot be said to be on higher side. However, inadvertently, the learned Reference Court instead of deducting 30% from the price of Rs. 151/- per square metre has deducted Rs. 30/- from the said price and has arrived at Rs. 121/- per square metre, as the market value of the acquired land. In fact, by making a deduction of 30% from the price of Rs. 151/- the amount which comes out is Rs. 106/- per square metre.

15. I have minutely perused the evidence led by the applicants and I am of the considered view that there is no sufficient evidence for enhancement of compensation in respect of the rubble stone wall and the well. As deposed by RW1, Prajesh Chodankar, the Junior Engineer, S.D.I., Div. 15, National High Way at Ponda, the valuation for the well and compound wall was done as per Goa Schedule of rates. RW2, Shri Laxmikant Kundaikar, the Assistant Surveyor of Works Div. 15, National High Way, PWD, Ponda, has, in detail, stated as to how the said compound wall and the well were valued at Rs. 17,741/- and Rs. 6,226/-, respectively. The evidence of RW2, in this regard, in my view, is not shaken. I also find that there is no evidence at all regarding the applicants'' claim to the effect that the area acquired from survey no. 263/1 was 500 square metres and that of 259/2 was 3070 square metres.

16. In the circumstances above, the impugned judgment and award is required to be set aside, only with regard to the compensation for the land, on account of mistake in calculation, done by the Trial Court.

17. In the result, the appeal is partly allowed whereas the cross objection is rejected.

(a) The impugned judgment and award fixing the rate of compensation for the acquired land at Rs. 121/- per square metres is quashed and set aside.

(b) The compensation for the acquired land is fixed at the rate Rs. 106/- per square metre.

(c) The applicants shall be entitled to all the statutory benefits as granted by the Reference Court and the amount already paid shall be adjusted.