
(2010) 04 BOM CK 0075
In the Bombay High Court
Case No : First Appeal No. 131 of 2000

State of Goa

APPELLANT

Vs

Sara da Costa

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

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

Citation : (2010) 3 BomCR 537

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : Susan Linhares, Additional Government Advocate, for the Appellant;
M.B. Da Costa and J.A. Lobo, for the Respondent

Judgement

N.A. Britto, J.—This is the State's appeal and is directed against judgment dated 13/03/2000 of the learned Reference Court by which the compensation payable to the respondent was enhanced from Rs. 22/-, as awarded by the Land Acquisition Officer, to Rs. 40/- in respect of 475 square meters, and Rs. 67/- in respect of 525 square meters.

2. There is no dispute that vast area of land admeasuring about 26,621 square meters was acquired by the Government by notification issued u/s 4 of the Land Acquisition Act, 1894 and published on gazette dated 1/12/1988 for the purpose of laying pipeline and service road for 160 MLD Selaulim Water Supply Project. There is also no dispute that an area of about a thousand square meters of the respondent's land was included in the said acquisition. An area of 225 square meters were acquired from Survey No. 197/6, 250 square meters were acquired from Survey No. 196/3 and 525 square meters were acquired from Survey No. 198/3. It is for this 525 square meters that the learned Reference Court has awarded compensation at the rate of Rs. 67/- per square meter and for the remaining land Rs. 40/- per square meter.

3. The Land Acquisition Officer had classified the applicant's land as bharad and has offered compensation of Rs. 22/- per square meter. As against that the

respondent claimed enhanced compensation at the rate of Rs. 70/- per square meter and in support of the reference examined her attorney and relied upon two sale deeds, namely, a sale deed dated 12/2/1985-Exhibit AW1/B by which land of Survey No. 198/3 was sold at the rate of Rs. 51.28/- per square meter, and a sale deed dated 21/02/1987 - Exhibit AW1/C by which land with house of Survey No. 196/3 was sold at the rate of Rs. 94/- per square meter.

4. The respondent (i.e. AW1) had stated that all the three properties are situated close to residential properties. She had further stated that there was one big house in the un-acquired portion of the property surveyed under No. 197/6 and besides there is a primary school in the un-acquired portion of the property surveyed under No. 196/3. She had stated that there is a high school, a church, a hospital, a Police Station, a bank, a post office, shops, within a radius of about 1 kilometer from the property under Survey No. 196/3 and at a distance of about 900 meters from Survey No. 197/6 and 198/3, and, had further stated that all other amenities such as electricity, water, etc. were available in the said properties as on the date of notification. She further stated that the entire property of Survey No. 198/3 was developed before acquisition. She also stated that the said property was reconverted (sic. converted to residential use?) and sub-divided excluding the mundkarial area.

5. The learned Reference Court noted that the acquired land was bharad land and was suitable for construction and was close to all civic amenities and relying upon the evidence of AW1/Maria Lourdes Costa and sale deed dated 12/02/1985 and giving an increase in price of 10% per year fixed the price of Rs. 67/- per square meter. As regards sale deed dated 12/02/1985, the learned Reference Court noted that a plot of Survey No. 198/3 was sold by the respondent to one Simon Rodrigues for a price of Rs. 51.28 per square meter. The learned Reference Court discarded the second sale deed dated 21/05/1987 as in the opinion of the learned Reference Court, the price of Rs. 94/- per square meter also reflected the value of the structure situated therein.

6. Ms. Linhares, the learned Additional Government Advocate submits that the respondent had not proved that the land of Survey No. 198/3 was developed land. Learned advocate further submits that the sale deed dated 12/02/1985 did not even show the survey number of the properties sold in as much as no sub-division plan was also produced. The learned advocate therefore contends that in the absence of any evidence that 525 square meters of Survey No. 198/3 were from land which was developed, sub-divided and sold, the learned Reference Court could not have granted any enhancement to the respondent. On the other hand, Shri M.B. Da Costa, the learned Senior Counsel appearing on behalf of the respondent submits that the Government had not led any evidence to rebut the evidence of the respondent and moreover had not even challenged the evidence given by AW1/Maria Lourdes Costa. Learned Senior Counsel further points out that there was not even a suggestion put to the respondent that the property surveyed under No. 198/3 was not developed land.

7. I find substance in the submissions made by the learned Senior Counsel. Indeed the respondent i.e. AW1 had categorically stated that the entire property of Survey No. 198/3 was subdivided and developed except the mundkarial area before the acquisition and this statement was not even controverted on behalf of the Government and, therefore, in my view the learned Reference Court cannot be faulted in coming to the conclusion that 525 square meters acquired by the Government from survey No. 198/3 was of developed property and based on the same, fixing the compensation payable to the respondent, after giving a suitable increase of 10% per year to Rs. 67/- per square meters. It is well settled proposition of law that when a sale instance is available of the very land acquired, there is no need to travel beyond that land. This is a principle laid down by the Apex Court in Shakuntalabai (Smt) and Others Vs. State of Maharashtra, and followed by this Court in an unreported judgment dated 24/08/2004 in First Appeal No. 21/2001 in the case of Special Land Acquisition Officer and Anr. v. Vinayak J. Thali.

8. As regards the balance land, the learned Reference Court stated that the other two properties, namely surveyed under Nos. 196/3 and 197/6 were similar to the property surveyed under No. 198/3 but were not developed and therefore taking a deduction of 40% towards development charges, and increase of 30%, fixed the market value at Rs. 40/- per square meter.

9. The next question therefore is whether the learned Reference Court was justified in taking 40% deduction and fix the price of the remaining land at Rs. 40/- per square meter? Ms. Linhares the learned Additional Government Advocate has produced a common judgment of this Court dated 16/10/2008 passed in six appeals, one of them being First Appeal No. 119/2000 in the case of State of Goa and Anr. v. Mrs. Edviges Amelia Olga Calado, in which the compensation payable to other owners in relation to the very same notification u/s 4(1) of the Act, was fixed at Rs. 35/- per square meter. The contention of Ms. Linhares is that Rs. 35/- per square meter ought to be the compensation payable to the respondent, at least in respect of the balance land. However, Shri M.B. Da Costa, the learned Senior Counsel submits that in First Appeal No. 116/2000 in the case of State of Goa and Anr. v. Fernando A branches (since deceased) through LR"s, which is also a case of land covered by same notification, this Court had upheld the award of the learned Reference Court fixing the market value at Rs. 40/- per square meter. Learned Senior Counsel further submits that in First Appeal No. 119/2000 and others, the evidence was very sketchy and for that reason it was agreed that compensation at the rate of Rs. 35/- to be paid.

10. I am not at all impressed with the submissions made by the learned Senior Counsel. It appears that Rs. 40/- was fixed as compensation by the learned Reference Court by relying on the very Sale deeds produced in this case. However, learned Senior Counsel fairly concedes that the judgment dated 16/10/2008 in First Appeal No. 119/2000 and other appeals was not brought to the notice of the High Court. If it was brought the result of First Appeal No.

116/2000 might have been different. If at all this Court fixed market value at Rs. 35/- per square meter in First appeal No. 119/2000, it was not because it was agreed by the parties but by virtue of a judicial order, based on the fact that three more cases were settled by paying market value of Rs. 35/- per square meter.

11. In other words, in nine cases the owners have been paid compensation at the rate of Rs. 35/- per square meter from Rs. 22/- per square meter. It can be seen from the judgment dated 16/10/2008 in First Appeal No. 119/2000 and others, that it was argued on behalf of the appellants that the land forming the subject matter of the said appeals was acquired by the very same notification and the nature of the lands involved was the same as was evident from the fact that the Land Acquisition Officer had awarded compensation at the rate of Rs. 22 /-per square meter in respect of all the lands. It was further submitted that the Reference Court had granted compensation at th rate of Rs. 35/- and Rs. 36/- per square meter and in view of that there was no reason to award different compensation to the respondents in the said First Appeals than the one awarded in First Appeal No. 114/2000, 115/2000 and 122/2000. On the other hand, it was argued on behalf of the Government that in the aforesaid three appeals, compensation was settled at Rs. 35/- per square meter and, therefore, that by itself was not sufficient ground to award the same compensation to the respondents and it was further contended that the respondents were entitled to Rs. 35/- per square meter only because the Government had agreed to pay compensation at the rate of Rs. 35/- per square meter in the said three appeals. The learned Single Judge after having considered the submissions made, came to the conclusion that the Land Acquisition Officer had himself awarded the same compensation in respect of all the lands acquired by the said notification. Thereafter, the learned Single Judge proceeded to accept the submissions of learned Senior Counsel and held that the respondents in the said six appeals were entitled to the same compensation i.e. at the rate of Rs. 35/- per square meter.

12. If in nine appeals (six plus three), in respect of lands pertaining to the same notification u/s 4(1) of the Act, all being bharad lands, have been awarded compensation at the rate of Rs. 35/- per square meter, I do not see any reason why the same compensation should not be awarded to the respondent herein based on the principle followed by the Apex Court in various cases including M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, followed by the Division Bench of this Court in unreported judgment dated 31/08/2004 in First Appeal No. 62/2002 in the case of Special Land Acquisition Officer and Anr. v. Aurora M.F. Do Barretto and Ors. i.e. when comparable sales method of valuation is adopted in determining the market value, it generally holds good for determining the market value of several acquired plots pursuant to the same notification.

13. Next, learned Senior Counsel further submits that the recent trend of the

Apex Court is to grant interest at the rate of 15% per year and he has placed reliance on the case of Krishi Utpadan Mandi Samiti Sahaswan District Badaun through its Secretary Vs. Bipin Kumar and Another, wherein the Apex Court has held that;

However, there is evidence of high potentiality. The increase of 15% given by the High Court cannot, therefore, be said to be unreasonable. Of course, the 15% increase has to be on Rs. 15.40 which is the figure shown in the sale deed. It cannot be on Rs. 120 as wrongly taken by the High Court. The High Court also erred in considering only three years' increase whereas in fact there is four years' difference between the respondent's sale deed and the acquisition proceedings. Thus taking an increase of 60% over the price of Rs. 15.40 per sq. yard, the value comes to Rs. 24.64 per sq. yard. We, accordingly, set aside the orders of the Reference Court and the High Court and fix the value at the rate of Rs. 24.64 per sq. yard. The respondent will also be entitled to solatium and other statutory benefits under the Land Acquisition Act, 1894.

14. Learned Senior Counsel submits that the respondent ought to be granted 15% increase in lieu of 10% already granted by the learned Reference Court. The learned Senior Counsel also submits that this Court would be entitled to grant such an appreciation, because this Court is only deciding what is the just compensation which is payable to the respondent although no appeal or cross-objection have been filed by the respondent against the award of the Reference Court. I am not inclined to accept this submission as well. The trend is to grant 10% escalation in price. If at all the Apex Court gave increase of 15% in the above said case, it was because the land was found to have high potentiality. Such a plea was not even put forward before the Reference Court. Land abutting the National Highway could not have had high potentiality either. That 10% escalation is neither excessive or unreasonable is also a view held by the Apex Court in cases reported in The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, as well as in Delhi Development Authority Vs. Bali Ram Sharma and Others, .

15. Consequently, the appeal partly succeeds. The impugned award in fixing Rs. 67/- per square meter in respect of 525 square meters of Survey No. 198/3 is maintained and in respect of the balance land of Survey No. 197/3 and 196/3 it is modified in that the respondent will now be entitled to Rs. 35/- per square meter instead of Rs. 40/- per square meter fixed by the Reference Court.

16. Order accordingly.