
(2010) 06 BOM CK 0121
In the Bombay High Court
Case No : First Appeal No. 39 of 2001

State of Goa

APPELLANT

Vs

Shri Jose Pedro Coutinho

RESPONDENT

Date of Decision : 25-06-2010

Acts Referred:

Goa Land Use (Regulation) Act, 1991 — Section 2
Land Acquisition Act, 1894 — Section 11, 18

Citation : (2010) 06 BOM CK 0121

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : S. Vahidulla, for the Appellant; J. Godinho, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—Heard the learned Government Advocate appearing for the appellants and the learned Counsel appearing for the respondent. The challenge in this appeal is to the judgment and award dated 25th August, 2000 passed by the learned Additional District Judge in a Reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894") made at the instance of the respondent.

2. The acquisition relates to the area of land admeasuring 1350 square meters bearing Survey No. 48/4 part situated at Taleigaon village of Tiswadi Taluka, Goa. The award u/s 11 of the said Act of 1894 was made on 13th September, 1996. The market value offered under the award is Rs. 25/- per square meter. In the Reference u/s 18 of the said Act of 1894, claim made by the respondent was for market value for Rs. 1000/- per square meter. The Reference Court partly allowed the reference and fixed the market value at the rate of Rs. 100/- per square meter.

3. The learned Additional Government Advocate submitted that admittedly, the respondent is a tenant purchaser of the acquired land under the provisions of the

Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as "the said Act of 1964") and, therefore, in view of Section 2 of the Goa Land Use (Regulation) Act, 1991 (hereinafter referred to as "the said Act of 1991"), the respondent was not entitled to use the acquired land for any purpose other than agriculture. He submitted that the sale instance of the sale deed at Exh. AW1/B relied upon by the respondent was not in respect of the land held by tenant, who was entitled to purchase the same under the said Act of 1964. He submitted that, therefore, the sale instance cannot be said to be of a comparable land. He submitted that the said award based on the only one sale instance will have to be set aside. The learned Counsel appearing for the respondent supported the impugned judgment and award.

4. The relevant date of determining of market value is 9th August, 1995. The area of acquired land is 1350 square meters, which was admittedly a paddy land. Reliance has been placed on the sale deed dated 8th December, 1993 in respect of the land admeasuring 795 square meters in the same village. The land was sold for a price of Rs. 250/- per square meter.

5. The respondent stepped into the witness box. He produced a copy of the sale deed dated 8th December, 1993 (Exhibit AW1/B) in evidence. A copy of the plan was produced at Exh.AW1/C. He stated that the acquired land as well as the plot of land subject matter of the sale deed were agricultural lands and in fact both were paddy lands. He stated that the land subject matter of sale instance was at a distance of 370 meters from the acquired land. The respondent stated that the nature of both the lands is similar. In the cross-examination, the respondent admitted that he was a tenant purchaser of the agricultural land under the said Act of 1991. He stated that the land subject matter of sale deed was also a paddy land. It was bounded on one side by public road. He denied the correctness of the suggestion that the land subject matter of the sale deed is not similar to the acquired land.

6. The vendor under the said sale deed dated 8th December, 1993 was examined. He stated that the land subject matter of the sale deed was at a distance of 300 meters from the acquired land. He stated that the land subject matter of the sale deed at Exh.AW1/B was a paddy land. The said witness was not cross-examined by the appellants.

7. Thus, there is no challenge to the evidence that the acquired land was at a distance of about 300 meters from the land subject matter of the sale deed, and that both the lands on the relevant date were paddy lands. The sale deed is a pre-notification sale deed. However, no suggestion has been given by the appellants to both the witnesses that as on 9th August, 1995, the agricultural use of the land subject matter of the sale deed was discontinued. There is no significant difference between the area of the acquired land and the area of the land subject matter of the sale deed. Therefore, it is not possible to find fault with the finding that the land subject matter of the sale deed at Exh.AW1/B was comparable to the acquired land.

8. In view of Section 2 of the said Act of 1991, the acquired land could not have been used by the respondent for any purpose other than the agricultural. Therefore, the acquired land could not have been said to be a comparable with the land, which was put to non-agricultural use or which had non-agricultural potential. In the present case, the sale deed at Exhibit AW1/B was in respect of the paddy land. It is not even the case made out by the appellants that the said land had a potential for non-agricultural use. Therefore, the sale instance is of a land in respect of which a willing buyer has paid price at the rate of Rs. 250/- per square meter. Nothing is on record to show that the purchaser acquired it for non-agricultural use. Therefore, the market value of the acquired land could have been lawfully fixed on the basis of the market value reflected from the said sale deed at exhibit AW1/B. It is pertinent to note that though the sale deed reflects the market value of Rs. 250/- per square meter, the Reference Court has fixed the market value only at the rate of Rs. 100/- per square meter. Therefore, no fault can be found with the impugned judgment and award. There is no merit in the present appeal and the same is dismissed with no order as to costs.