

(2008) 11 BOM CK 0036
In the Bombay High Court
Case No : First Appeal No. 88 of 1999

State of Goa

APPELLANT

Vs

Smt. Thereza Gzorio Saldanha

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Citation : (2008) 11 BOM CK 0036

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : G. Shirodkar, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—By this appeal, the appellant takes exception to judgment and award dated 29th April, 1999 passed by the Additional Session Judge, Margao in Land Acquisition Case No. 264/1989 by which the reference has been partly allowed.

2. Vide notification dated 24.03.1987 which was published in the official gazette on 02.04.1987, the Government sought to acquire portions of lands belonged to different persons for public purpose namely construction of Arossim Beach Road at Arossim in Village Panchayat Cansaulim. The land of the respondent admeasuring 62 square metres, was part of the acquired land. The Land Acquisition Officer awarded the compensation @ Rs.. 25 per square metre. Being dissatisfied, the respondent sought reference to the District Court, South Goa at Panaji and the Additional District Judge-I by the impugned judgment and award enhanced the compensation @ Rs.. 100 per square metre. Challenging the said award, the appellants have filed the present appeal.

3. Before the Reference Court, the respondent examined four witnesses namely A.W.1, Dr. Bento Eypso, A.W.2, Surendra K. Nagvenkar, A.W.3, Jose Perreira, and A.W.4, A.F.G. Mascarenhas. The respondent also produced several sale deeds and award dated 17.01.1995 passed in Land Acquisition Case No. 270/89/A

which was also in respect of another portion of land acquired by the same notification. The Reference Court by placing reliance upon the award dated 17.01.1995 (Exh.AW1/D) enhanced the compensation to Rs.. 100/- per square metre. The Reference Court held that the award dated 17 .01.95 in respect another portion of land acquired by the same notification, was not challenged by the Government and the land forming the subject matter of the that case, was similar to the acquired land in the present case and, therefore, can be taken as a basis for fixing the market rate of the acquired land. The Reference Court, therefore, held that the respondent was entitled to compensation @ Rs.. 100/- per square metre.

4. Mr. Shirodkar, learned Government Advocate appearing on behalf of the appellant submitted that the Reference Court could not have relied upon the award dated 17.01.95, although it was not challenged. He further submitted that at the most, the respondent is entitled to compensation @ Rs.. 42/- per square metre by placing reliance upon the judgment in the case of State of Goa and another Versus Smt. Zita Saldanha, delivered by this Court on 28.11.2003 in First Appeal No. 224/2000. As stated above, the respondent though served, has chosen not to remain present.

5. I have considered the submissions made by the learned Government Advocate and perused the record.

6. As stated above, the Reference Court, for the purpose of fixing the market rate of the acquired land, has placed reliance upon the award dated 17.01.95 passed in Land Acquisition Case No. 270/1989 which has not been challenged by the appellants. The Reference Court has held that the acquired land is comparable to the land involved in Land Acquisition Case No. 270/1989 and, therefore, fixed the market rate @ Rs.. 100/- per square metre. In the judgment in State of Goa and another Versus Smt. Zita Saldanha's case, relied upon by Mr. Shirodkar, learned Government Advocate, this Court upheld the compensation granted by the Reference Court @ Rs.. 42/- per square metre in respect of survey No. 114 admeasuring 1670 square metres belonged to Zita Saldanha. I find that the approach of the Reference Court in placing reliance upon the award dated 17.01.95 which admittedly has not been challenged, cannot be faulted. Similarly, the finding of the Reference Court that the acquired land is comparable to the land in Land Acquisition Case No. 270/1989, also cannot be faulted. Having regard to the evidence led by the parties, which has been discussed by the Reference Court, no fault can be found with the impugned award. The approach of the Reference Court, cannot be said to be contrary to the settled principles governing the fixation of compensation in land acquisition cases.

7. In view of the above, I find myself unable to place reliance upon the judgment delivered by leaned Single Judge in Zita Saldanha's case (supra) in support of the contention of the appellants that at the most, the respondent is entitled to compensation @ Rs.. 42/- per square metre. The land belonging to respondent which has been acquired, is only 62 square metres. This is an additional reason

for me, not to interfere with the impugned award.

8. For the reasons stated aforesaid, I find no grounds to interfere with the impugned judgment and award. Hence, the appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.