
(1996) 10 BOM CK 0056

In the Bombay High Court

Case No : Letters Patent Appeal No. 21 of 1990

State of Goa

APPELLANT

Vs

Srinivas Fatti Naik

RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 28, 4

Citation : (1997) 3 ALLMR 376 : (1996) 98 BOMLR 665

Hon'ble Judges : R.M.S. Khandeparkar, J; R.K. Batta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—The present appeal arises from the judgment of the learned Single Judge of this Court passed in First Appeal No. 115/87 on 12.1.1990 whereby the learned Single Judge had dismissed the appeal filed by the appellant herein against the Award dated 30th June. 1987 which was passed by the learned District Judge, South Goa, at Margao in Land Acquisition Case No. 18/85.

2. The respondent herein preferred a Reference u/s IX of the Land Acquisition Act, 1894 (hereinafter called the Act) for enhancement of compensation awarded to him regarding his land and acquired by the appellant for Distributory D2 of S.I.P. in Paroda Village (Part II) in Land Acquisition Case No. SLAO/SIP/104/1/710/85-86. The enhancement of the compensation claimed by the respondent herein was to the extent of Rs. 60/- per sq.m. and further sum of Rs. 34,290/- towards the value of the trees in the plot. The learned District Judge of Margao being satisfied with the evidence produced before him ordered the enhancement of compensation to the extent of Rs. 10/- per sq.m. and further ordered 30% solatium on the said amount and interest at the rate of 9% during the period of one year from the date of possession of the land was delivered to the appellant herein in terms of Section 28 of the Original Act and thereafter at the rate of 15% per annum from the date of expiry of the said period of one year

till the actual payment of the whole amount of compensation plus 12% over and above the market value from the date of the Notification u/s 4 of the Act upto the date of the Award of the Land Acquisition Officer in terms of modified Sub-section (1-A) of Section 23 of the Act. The amount of Rs. 2500/- was also awarded as costs to be paid by the appellant herein to the respondent. Being aggrieved by the said award, the appellant herein preferred the appeal before this Court which came to be heard and disposed of by the learned Single Judge by the impugned judgment.

3. The appellant herein being aggrieved by the said judgment of the learned Single Judge has, preferred the present appeal. Taking us through the impugned judgment, Shri Bharne, learned Addl. Government Advocate, submitted that the learned Single Judge has relied upon the evidence which cannot be relied upon for the purpose of determination of the market value of the land acquired under the Act and further submitted that the learned Single Judge while confirming the enhancement awarded by the learned District Judge has given undue importance to the Sale deed which is in fact a sale deed of three years after the issuance of Notification u/s 4 of the Act and nowhere in the proximity of time as far as the said notification is concerned. Besides there is no evidence on record to show the comparability of the land which was the subject matter of the said sale deed with that of the land acquired in the instant case. He further submitted that the learned Single Judge also erred in confirming the compensation in terms of Section 23(1-A) of the Act, when the Award in question was given on 29th January, 1982. Applying the test laid down by various judgments of the Apex Court including that in the matter of K.S. Paripoornan Vs. State of Kerala and Others, , Shri Bharne contended that it was not permissible for the learned District Judge to grant and for the learned Single Judge to confirm any relief in terms of Section 23(1-A) of the Act since the award was much prior to the date on which the said amended provision came into force. Placing reliance upon the judgment of the Apex Court in the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , learned Addl. Government Advocate submitted that the Apex Court has clearly laid down the various factors to be considered while determining the market value of the land acquired under the Act and the learned Single Judge instead of applying the said guidelines, proceeded to confirm the enhancement merely on the basis of guess work and that too which has no support from the material on record. He further sought to rely upon the judgment in the matter of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, and submitted that in the absence of examination of any of the parties to the sale deed which was produced in the course of evidence it was not permissible for the learned Single Judge to place any reliance upon the sale deed for the purpose of determination of the market value. To make his point good, he further sought to rely upon the judgment in Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, .

4. On the other hand, Shri G.V. Tamba, learned Advocate appearing for the

respondent, submitted that no case is made out by the appellant for interference in the impugned judgment and the learned Single Judge has rightly relied upon the sale deed which was produced and proved before the learned District Judge in the Reference case for the purpose, of determination of the market value. He further submitted that in the matter of fixation of market value of the land, the value by guess work is always permissible in view of various decisions of the Apex Court. He further submitted that the learned District Judge had taken into consideration various factors for the purpose of arriving at the enhanced rate of compensation for the land acquired and therefore no fault can be found in the impugned judgment whereby the said enhancement has been confirmed. Alternatively, he submitted that considering the fact that at the relevant time the judgment of the Apex Court on the point of necessity of proving the sale deed by examining one of the parties to the sale deed had not been passed, and the fact that the evidence in the matter was recorded prior to such judgment, an opportunity should be given to the respondent by remanding the matter for recording evidence in this respect. In support of his submission, he sought to rely upon the judgment of the Apex Court in the matter of Smt. Saraswati Devi and others Vs. U.P. Government and another, .

5. Having heard the learned counsels for the parties and on perusal of the record, it is revealed that the Land Acquisition Officer has awarded compensation to the land acquired at the rate of Re. 1/- per sq.m. and the same was enhanced by the learned District Judge to Rs. 10/- per sq.m. In order to justify the enhancement of the compensation, the learned District Judge has mainly relied upon the lapses on the part of the appellant in challenging certain statements made by the respondent as well as on the material collected by the Land Acquisition Officer for the purpose of determination of the amount to be offered by his award to the owner of the land. A perusal of the impugned judgment disclosed that the learned Single Judge while confirming the said enhancement granted by the learned District Judge has solely relied upon mere guess work when he did not find any material on record to support the said guess work. In fact the only piece of material on which the learned Single Judge has placed reliance is the sale deed which is of more than three years subsequent to the date of Notification u/s 4 of the Act in the instant case. It is already laid down by various judgments of the Apex Court and reiterated in the case of Periyar and Pareekanni Rubbers Ltd. v. State of Kerala (supra) that the transactions relating to the acquired land of recent dates or in the neighborhood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. Moreover, it is also further laid down in the said judgment of the Apex Court that in a comparable sale the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired; and (4) it should possess similar advantages. In fact, detailed guidelines in this respect were laid down by the Apex Court in the matter of Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Anr.

(supra) wherein it was clearly held that while determining the market value of the land the crucial date of publication of the notification u/s 4 of the Act is the determining factor for the purpose of market value and the comparable instances out of the genuine instances are to be identified on the consideration of proximity of time and proximity of the situation. Considering these decisions and the tests laid down therein, it is difficult to hold that the sale deed relied upon can by any stretch of imagination be held to be proximate to the date of issuance of notification u/s 4 of the Act in the instant case. The sale deed referred to is of the year 1983, whereas the notification of Section 4 under the Act was issued dt 7.8.1980. The sale deed being of more than 3 years subsequent to the date of issuance of the notification u/s 4, in our opinion, the learned Single Judge erred in placing reliance on the said sale deed for the purpose of guess work to justify the rate of enhanced compensation. Besides, the reasonings in support of the said finding given by the learned Single Judge do not find any support from the material on record. There is no evidence on record to establish that consequent to and as a result of the acquisition of land by the Government for some development purpose in the locality, that there has been further development of private land in the said locality. In the absence of any material to arrive at such finding, the learned Single Judge clearly erred in holding that the proximity which is required to be established in respect of the land covered by the sale deed produced in support of the claim of enhancement is not to be taken in absolute terms and on the contrary has to be considered relatively considering the nature and situation of the acquired land. The said finding has been arrived at without any basis and without referring to the material on record in order to justify the enhancement granted by the learned District Judge.

6. As rightly contended by the learned Addl. Govt. pleader, the sale deed in question has not been proved as required under the law and applying the test laid down in the matter of P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors. (supra) no reliance can be placed on the sale deed in question produced by the respondent.

7. No doubt, as contended by Shri Tamba in case of fixation of the market value some sort of guess work is permissible. However, the guess work has to be made based on the material found on record and this has been sufficiently clarified by the judgment of the Apex Court in the matter of Periyar and Pareekanni Rubbers Ltd. v. State of Kerala (supra) wherein the Supreme Court has observed that it is the paramount duty of the courts of facts to subject the evidence to close scrutiny, objectively assess the evidence tendered by the parties on proper considerations thereof in correct perspective to arrive at a reasonable market value. The Honourable Supreme Court has further observed that the attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands and that the object of the assessment of the evidence is to arrive at a fair and reasonable market value of the lands and in that process sometimes trench on the border of the guess work but mechanical assessment has to be eschewed. In the impugned judgment we do not find any

basis disclosed for the purpose of guesswork in arriving at the enhanced rate of compensation. The sole reasoning disclosed in the impugned judgment for such guess work is found in para 3 thereof which reads as under:

...Therefore, although the sale deed of 1983 cannot be considered in absolute terms, at least, it is a piece of evidence that indicates that the value of land about three years after the Notification u/s 4 was of about Rs. 12/- per sq.mt.

In our opinion the said reasoning is neither here nor there. There is no evidence on record to establish the comparability of the land acquired with that of the subject matter of the said sale deed. Besides, the sale deed relates to the date more than three years subsequent to the date of notification. Being so, merely because there is a sale deed of a piece of land in the village at the rate of Rs. 12/- subsequent to three years from the date of notification that by itself cannot by any stretch of imagination be a justification to award enhancement of compensation at the rate of Rs. 10/ per sq.mt. for the land acquired. In our opinion the said guess work is without any basis.

8. As regards the relief u/s 23(1-A) of the Act, the material on record clearly disclosed that the award by the L.A.O. was made on 29th January, 1982. The cut off date for the purpose of Implementation of the provisions of the amended Act in terms of Section 23(1-A) of the Act is 30th April, 1983. The award being made much prior to the said date the question of granting the relief in terms of provisions of Section 23(1-A) of the Act does not arise and therefore in our opinion the learned Single Judge erred in confirming the award in relation to the relief u/s 23(1-A) of the Act.

9. We do not find any justification for remand of the case to give fresh opportunity to the appellant in the instant case. In fact, it would be an exercise in futility inasmuch as that the said sale deed of the year 1982 can by no stretch of imagination be taken into consideration in support of the claim for enhancement of the compensation in respect of the land which was acquired by the notification dated 7.8.80. It has been laid down by various judgments of the Apex Court, the sale deeds which can be considered for the purpose of justifying the enhancement should be of the dates within reasonable time from the date of notification u/s 4 of the Act. Period of three years from the date of notification cannot be considered as a reasonable period of time. Being so, we do not find any substance in the submissions made by Shri Tamba for the purpose of remand of the matter. The judgment of the Apex Court in Saraswati Devi's case (supra) has no application to the case in hand.

10. In the result, the appeal succeeds and is hereby allowed. The impugned judgment of the learned Single Judge in First Appeal No. 115/87 dated 12th January, 1990 as well as the Award dated 30th June, 1987 passed by the learned District Judge, Margao In Land Acquisition Case No. 18/85 are hereby set aside. In the circumstances there shall be no order as to costs. The amount deposited by the appellant in this Court be refunded to the appellant along with interest, if

any, accrued thereon by issuing necessary cheque/draft in favour of the Special Land Acquisition Officer, South as prayed for by the learned Addl. Government Advocate, Shri H.R. Bharne.