
(1994) 06 BOM CK 0005
In the Bombay High Court
Case No : First Appeal No. 107 of 1989

Subhaschandra Narayan Bhobe	APPELLANT
Vs	
Land Acquisition Officer, Panaji, Goa and Another	RESPONDENT

Date of Decision : 09-06-1994

Acts Referred:

Evidence Act, 1872 — Section 61
Land Acquisition Act, 1894 — Section 18, 51A

Citation : (1995) 1 BomCR 283

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : S.D. Lotlikar, for the Appellant; H.R. Bharne, Add. Govt. Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

E.S. Da Silva, J.—The appellant challenges in this appeal the Award of the learned Addl. District Judge, Panaji, dated 28-4-1989, in a reference u/s 18 of the Land Acquisition Act (hereinafter called the Act) in Land Acquisition Case No. 32 of 1986 whereby the learned Addl. District Judge has partly affirmed and partly modified the Award of the Land Acquisition Officer dated 28-1-1986.

2. The case of the appellant is that the Government of Goa has acquired some land for the purpose of construction of approach road to Nerul Bridge on Nerul side. For that purpose section 4 of the Act was published on 29-12-1983. The appellant is the owner of a plot admeasuring 649.50 sq. meters which is a developed plot wherein his bungalow has been constructed. Out of that, an area comprising of 130 sq. meters has been acquired by the Government for the purpose of approach road to Nerul Bridge. It is further the case of the appellant that what was acquired is the front portion of the house which is thus affecting the use of the french windows of the entrance hall. The appellant was awarded by the Land Acquisition Officer a compensation of Rs. 35/- per sq. metre for the land acquired and Rs. 10,000 was also paid to him as a lumpsum towards

severance of the land. In respect of the compound wall with gates and also for the road which was included in the area acquired he was given a total compensation of Rs. 10,373/-.

3. Aggrieved by the Award of the Land Acquisition Officer, the appellant has approached the District Court and the learned Addl. District Judge by the impugned Award has enhanced only the rate awarded by the Land Acquisition Officer as far as the land acquired is concerned from Rs. 35/- to Rs. 50/-. The compensation awarded towards severance and in respect of the compound wall and road was maintained.

4. The grievance of the appellant as far as the fixation of the market rate of the land is concerned is that the method adopted by the learned Judge is faulty and not borne in law. It was submitted by Shri Lotlikar, learned Counsel for the appellant, that the consistent view adopted by all the courts is to take into consideration the latest sale deed produced by the interested party which is seeking the reference for enhancement of compensation. The learned Counsel found fault with the learned Judge that inspite of the appellant having made available before the Court a sale deed concerning a comparable plot showing that the price of sale was Rs. 100/-, the learned Judge did not feel it proper to award to the appellant a compensation similar to the price mentioned in the said sale deed. It was further contended on behalf of the appellant that the said sale deed wherein the price of Rs. 100/- was shown as being the sale price is only a part of the property which was to be sub-divided, while the suit plot a portion of which was acquired is by itself a part of a sub-divided property which was fully developed and wherein his house was located. Again there was no structure in the sale plot which was consisting merely of a coconut garden. As such the said plot was sold as an open piece of land, while the suit land belonging to him is enclosed within his compound wall and provided with a gate. It was further urged by the learned Counsel that in such circumstances the compensation to be awarded by the Land Acquisition Officer should be the price of a willing seller of a plot situated along the road with a garden in its front. The learned Counsel tried to impress upon me that being so it would be difficult to believe that the appellant would be willing or prepared to sell his land for less price than the price obtained by the seller of the sale plot which is an open land wherein the rate of Rs. 100 was obtained by him. In addition the land acquired was the land appurtenant to his bungalow and which was another reason for the Land Acquisition Officer to give him a higher price as that land was badly required for the appellant who was thus deprived from the required amenities which he was enjoying before the acquisition. It was also submitted by the learned Counsel that there was no such formula to make any case of 10% every year with regard to escalation of the price of land and everything was depending upon the locality of the land and other surrounding circumstances. According to the learned Counsel the trial Judge has not given any reason not accept in full the rate of Rs. 100/- mentioned in the sale deed produced by the appellant and at the same time has not made out any case to justify his taking an average of the said sale

deed with the past sale deeds which were relied upon by the Land Acquisition Officer for the purpose of making his award. It was lastly contended that the appellant was entitled for compensation in respect of loss of aesthetics of his building consequent upon the acquisition of the land situated in its front which also covered the very garden existing therein. Besides the compensation given for the severance was also low and the one adjudged towards the loss of the compound wall with the gate and the road was not according to the prevailing market rate. He therefore, pleaded that suitable enhancement should be made by this Court in order to correct the injustice done to the appellant.

5. In his turn Shri Bharne, learned Government Pleader, has submitted that the judgments produced by the appellant were not proved and besides that the deed relied by him, dated 26-11-83, wherein the rate of Rs. 100/- per sq. metre was shown as being the sale price could not be compared. Similarly the nature of the land in respect of the plot was not established so as to make it comparable to the land acquired from the appellant. Shri Bharne has pointed out that the appellant himself has admitted that the plot sold for Rs. 100/- per sq. metre was a coconut plantation. Being so it could not be ruled out that the value of the coconut trees also could have been included in that price. Thus the appellant has not adduced any evidence to show that the rate of Rs. 100/- was the flat rate for the land only. The learned Government Counsel has also contended that the said plot sold for Rs. 100/- per sq. metre was admittedly an open plot of land while the plot of the appellant was a small portion of his plot wherein a bungalow was already existing. Therefore the smallness of the portion acquired would be itself render the land unsuitable for any useful purpose contrary to the usefulness of the other plot referred to in the deed dated 26-11-83.

6. On a careful consideration of all the aspects placed before me there seems to be a lot of substance in the submissions of the learned Government counsel as far as market rate of the land is concerned. I have gone through the records which show that the appellant has produced before the trial Court four sale deeds, being one dated 28-12-81, the second dated 20-5-82, the third dated 19-8-82 and the last one dated 25-1-84 although the agreement for sale in respect thereof was executed on 26-11-1983. Thus the last sale deed closest in time is to be deemed to which the agreement of sale dated 26-11-1983 refers. The rate mentioned in the said sale deed is of Rs. 100/- per sq. metre. However it is seen that the Reference Court instead of taking into account the price of this sale deed has indulged in an exercise with the help of the rates mentioned in the other three sale deeds and has drawn an average of the prices mentioned in all four deeds to reach to the conclusion that the fair market rate of the suit land of the appellant should be Rs. 50/- per sq. metre. Admittedly the plot which was sold by deed dated 25-1-1984 and to which the agreement for sale was executed on 26-11-1983, which otherwise the learned Addl. District Judge found it very much relevant to the matter, is situated at a distance of hardly 600 meters from the suit plot. In his deposition A.W. 1, who is the appellant, has stated that the plot acquired is situated in the commercial area of Nerul and there was a

bungalow built therein since 1971. The type of land is a dry crop land. As far as the plot referred to in the deed dated 28-12-81 the same is situated 1 km. away from the commercial area of Nerul and is not along the main road but on the side road. Similarly the land concerning the sale deed dated 20-5-82 is also about 1 km. away from the market place of Nerul and is situated along the side road having no access. The said land is a narrow plot of 10 meters width not suitable for development. He further stated that the plot belonged to him and partly acquired is having electricity connection and drinking water well. With regard to the sale deed dated 25-1-1984 involving the agreement for sale dated 26-11-1983 the said plot is a coconut garden and situated along the main road. None of these averments made by the appellant in his deposition were challenged by the respondents during his cross-examination and therefore, I have to deem it as admitted by the Government as far as the features of the land are concerned. Being so, it seems to me that the approach of the learned Addl. District Judge in not considering the price of this last plot sold by deed dated 25-1-84 and instead in drawing an average with respect to the price of the four sale deeds appears to be erroneous. Further the exercise made by him in increasing the price of the land in respect of plots which by no stretch of imagination can be compared with the suit plot because they were situated in the interior and far from the suit plot by availing of 10% yearly escalation on the price and adding to that Rs. 5/- on account of being located along the side road cannot be said as justified or reasonably based on any scientific or relevant standards to which the learned Judge was supposed to adhere to while fixing the valuation of the land. The very fact that the learned Judge found it necessary to make this addition of Rs. 5/- to the price of the plot situated in the interior suggests that he was not expected to lay down any comparison between these plots and the suit plot of the appellant which is admittedly situated on the main road close to the commercial market area of Nerul.

7. In the circumstances it seems to me that Shri Bharne's contention that there is no evidence to substantiate a further increase on the market price of the land fixed by the Reference Court because the learned Addl. District Judge has allowed the enhancement in a more reasonable manner does not appear to be a sound proposition. In this respect I may say that the sub-mission made by Shri Bharne that the judgments produced by the appellant cannot be deemed as proved because none of the executing parties intervening in the sale deeds have deposed on its contents is clearly impermissible. The said submission is contrary to what section 51-A of the Act as amended provides. Indeed the said section 51-A provides that in any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 including a copy given u/s 57 of that Act, may be accepted as evidence of the transaction recorded in such document. This provision shows that section 51-A permits that the sale deeds once are certified documents be taken as evidence. However, I must say that if the value mentioned in the said deeds is challenged, that is to say, it is alleged that the same are under or over valued, only then one is required to prove the similarity

of the nature of the land so as to make it comparable with the land acquired. On this aspect a reference may be made to the decision in *Inder Singh and Others Vs. Union of India (UOI) and Others*, for the purpose of determining the relative comparativeness of the sale transactions. In that case only one has to prove comparativeness and this view seems to be also in consonance with the ratio of a judgment delivered by a Division Bench of this Court relied by Shri Bharne dated 2nd September, 1993 in *Union of India v. Mr. Francisco Pereira*, First Appeal No. 92 of 1987. I am therefore, of the opinion that if the deeds are not challenged and refer to comparable cases then they are deemed to be proved or established in terms of Article 51-A of the Act. In that case the certified copies of the sale deeds produced by the parties are bound to be admitted as proper and valid evidence. Irrespective of these considerations, I must add that in the instant case there is evidence to show that the plot referred to in the sale deed dated 25.1.1984 and to which the agreement for sale dated 26.11.1983 refers is comparable to the suit plot acquired from the appellant. This much appears to have been acknowledged by the learned Addl. District Judge in the Award wherein he has expressly mentioned that really speaking the price of the land under Exh. AW 1/D which is the sale deed dated 25.1.1984 should be taken as price of the land referred to in the deed dated 26.11.1983 being this plot about 700 meters away from the suit plot. The learned Judge has also admitted that this plot as well as the other plots referred to in the remaining sale deeds and the suit plot of the appellant are fit for house construction and therefore there is no difference in the nature of the land. Being so, in my view there was no reason or justification for the learned Addl. District Judge not to have taken into full consideration the said sale deed dated 25.1.1984 which is the sale closest in time for the purpose of fixing the market rate of the land acquired at the same rate referred to in the aforesaid sale deed.

8. Now and with regard to the claim made by the appellant that no fair and equitable compensation was paid to him towards the severance of his land as well for the loss of esthetics and other amenities which he has suffered consequent upon the acquisition, I must say that no cogent and conclusive evidence was produced by the appellant to substantiate this grievance. In this regard it is seen that apart from the appellant's own deposition, he did not bother to adduce the evidence of any expert namely an urbanist to explain as to what extent the esthetics of his bungalow were affected consequent upon the acquisition. Not even a plan of the building or a photo of the same was produced by him during the trial of the case so as to place before the learned Addl. District Judge the correct position with regard to this aspect. Similarly on the point of severance of the land there is no material for this Court to come to the conclusion that the amount of Rs. 10,000/- awarded by the Land Acquisition Officer and held by the learned Addl. District Judge as reasonable is unfair and unequitable. In the same manner the contention of the appellant that the compensation fixed in respect of the compound wall is not realistic in terms of the actual cost of the construction remained also unproved for lack of reliable

and consistent evidence. Admittedly the said compensation was fixed by the learned Land Acquisition Officer on the basis of the Goa Schedule of Rates. Nothing was brought on record by the appellant to negativat this contention made by the respondents with regard to the proper valuation of the cost of the construction of the compound wall as per the said rates. This being the position it is obvious that it is not possible for this Court to interfere with the impugned award on this aspect.

9. In the result the appeal is partly allowed and the compensation awarded by the learned Addl. District Judge is modified to the extent that the market rate of the land acquired is enhanced to Rs. 100/- per sq. metre. Needless to say that the appellant would be entitled to the consequent benefits including solatium, compensation u/s 23(1)(A) and interest in terms of section 28 of the Act. In the circumstances of the case there will be no order as to costs.