(2010) 10 BOM CK 0017

In the Bombay High Court

Case No : First Appeal No. 117 of 2005

The Executive Engineer APPELLANT

Vs

Mr. Domingo Carneiro RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:
Land Acquisition Act, 1894 — Section 4(1)

Citation : (2010) 10 BOM CK 0017

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

Bench : Single Bench

Advocate : S. Vahidulla, Additional Government Advocate, for the Appellant; Mahesh Amonkar, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—These appeals have been filed by the State of Goa. These appeals can be conveniently disposed of by this common judgment. They have been filed against Judgments dated 14-5-2004 of the learned reference Court, Margao in Land Acquisition Case Nos. 228, 223 and 226 of 1994.

2. In all the cases, the lands were acquired by a common notification issued u/s 4(1) of the Land Acquisition Act, 1894 published on Gazette dated 8-11-1990. By common award dated 15-6-1993 each of the Respondents(Applicants, for short) were given compensation at the rate of Rs. 20/-per sq. meter. That has now been enhanced to Rs. 36/-per sq. meter in all the three cases, and this has been done on the basis of a sale deed dated 11-9-1989 by which a plot of land admeasuring 1225 sq. meters was sold at the rate of Rs. 81/-per sq. meter. This plot of the sale deed was situated at a distance of about 500 to 600 meters away from the acquired properties. In the first case, the acquisition was of 500 sq. meters of survey No. 113/1. In the second case, the acquisition was of 1018 sq. meters of survey No. 356/10, and in the third case the acquisition was of 305 sq. meters from survey No. 113/3. All these lands were acquired for the purpose of construction of Mashem bridge and its approaches, on National Highway No. 17.

3. The learned reference Court has followed the decision in the case of State of West Bengal Vs. Bibhuti Bhusan Chatterjee and Others, wherein it was held that a strip of land had to be valued as part of the claimant''s plot taking into account its value to the owner with all its existing advantages, possibilities and potentialities. Subsequently, that principle has been approved by this Court in various decisions and of late by the Apex Court in the case of State of Goa and Anr. v. Gopal Baburao Gaudo and Ors. 2009 DGLS 1160 wherein the Apex Court has held that "a long strip of land admeasuring more than two-third of an acre lying alongside and adjoining the Highway cannot be treated as a land without value or without any potential for development, merely on the ground that the law relating to Highways prohibits construction on either side of the Highway, upto a depth of 40 meters from the centre of the Highway. All that was required to create or realize potential of such land was to annex or merge the said strip of land with the land to its rear. In that event, the strip of land will become the ''access'' to the rear-side land from the main road and will also become the frontage of the aggregate land, thereby enhancing the potential and value of the rear-side land, as also creating a potential for its own use. The contention that a land adjoining the Highway should be treated as having no development potential (and therefore as land without much value except as ordinary agricultural land), while considering the lands to its rear which are farther away from the road, or other adjoining lands of the same extent, but having more depth (so as to extend beyond the 40 meters margin) as having potential for development, is illogical and cannot be accepted".

4. In First Appeal No. 32 of 1999 in the case of State of Goa and Anr. v. Joaquim B. Crasto which is a case similar to the case at hand, this Court had held that there was no justification for deduction of more than 50%. In this case, the learned reference Court has taken a deduction of 60% from the price of the sale deed dated 11-9-1989, and, thereafter by giving appreciation of 10% on compounding basis has determined the price of the plot of sale deed at Rs. 90/- per sq. meter and then has taken a deduction of 60% and has worked out the market value as per Rs. 36/-per sq. meter. Compensation payable can never be assessed by mathematical precision and some guess work is always permissible. The learned reference Court has followed the correct principle and has assessed the compensation payable.

5. Considering the facts of the case, therefore, in my view, there is no scope for interference with the judgments of the learned reference Court.

6. Consequently, the appeals are hereby dismissed.

