

(2010) 11 BOM CK 0068
In the Bombay High Court
Case No : First Appeal No. 9 of 2006

The Executive Engineer

APPELLANT

Vs

Shri Chandrakant R. Prabhudessai

RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2010) 11 BOM CK 0068

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

Bench : Single Bench

Advocate : G. Shirodkar, Additional Government Advocate, for the Appellant;
J.A. Lobo, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard Shri G. Shirodkar, learned Government Adv. on behalf of the Appellant/s and Shri Lobo, learned Counsel on behalf of the Respondent.

2. Both these appeals can be conveniently disposed of by this common Judgment.

3. First Appeal No. 9 of 2006 arises from Land Acquisition Case No. 185/1994, and the second appeal rises from Land Acquisition Case No. 186/1994.

4. The first appeal pertains to acquisition of Respondent's land admeasuring 325 sq. meters from survey No. 356/3, 1250 sq. meters from survey No. 356/7 and 285 sq. meters from survey No. 111/24 of Loliem Village. The second appeal pertains to the acquisition of Respondent's land admeasuring 1025 sq. meters from survey No. 356/8, 375 sq. meters from survey No. 356/11 and 2300 sq. meters from survey No. 112/1 also of Loliem village. In both the cases, the said lands were acquired by virtue of notification issued u/s 4(1) of the Land Acquisition Act, 1894 and published on Gazette dated 8-11-1990 for the purpose of construction of Maxem bridge and its approaches on the National Highway No. 17. Not only the lands in both the cases were covered by the same notification but were also located in the same village of Loliem. In both the cases, the Land

Acquisition Officer had awarded compensation for the acquired lands at the rate of Rs. 20/- per sq. meter. The Respondents had sought enhancement. Placing reliance on a sale deed dated 11-9-1989 by which a plot of land admeasuring 1225 sq. meters was sold at the rate of Rs. 82/- per sq. meter in both the cases, the learned trial Court after taking a deduction of 40% has assessed the compensation payable at Rs. 54/- per sq. meter. However, the learned reference Court thereafter deducted the value of the trees and fixed the compensation payable at the rate of Rs. 37/- per sq. meter for survey No. 111/24, Rs. 47/- per sq. meter for survey No. 356/8 and Rs. 40/- per sq. meter for survey No. 112/1.

5. These appeals were filed on the assumption that what was acquired were narrow strips of the land for the purpose of widening the said Highway/approach roads, and, therefore had no building potential. The learned reference Court had relied upon the case of State of West Bengal Vs. Bibhuti Bhusan Chatterjee and Others, wherein it was held that when a strip of land was acquired, it should be valued as part of the claimants plot, taking into account, the plot's value to the owner with all its existing advantages and all its possibilities and potentialities. A similar principle has been approved by the Hon'ble Supreme Court in the case of State of Goa and Another Vs. Gopal Baburao Gaudo and Others, . The Government has already got the benefit of the value of the trees being deducted from the market value of the land. The Government could not have hoped for anything more. The deduction taken of 40% in relation to the price of the sale deed dated 11-9-1989 cannot be said to be on the lower side. Considering that the sale deed was about a year prior to the date of execution, the learned reference Court has given appreciation at the rate of 10% per year and fixed the market value first at Rs. 54/- per sq. meter and after deducting the value of the trees the same has been assessed at Rs. 37/-, Rs. 47/- and Rs. 40/-, respectively. In doing so, the approach of the learned reference Court cannot be faulted.

6. There is no merit in these appeals, and accordingly the same are hereby dismissed.