(2017) 07 BOM CK 0041

In the Bombay High Court

Case No : 13 of 2011

The Executive Engineer, Works Division VII, PWD — APPELLANT

Vs

Shri Savio De Sa, & Anr. — RESPONDENT

Date of Decision : 13-07-2017

Acts Referred:

Land Acquisition Act, 1894, Section 54 - Appeals in proceedings before Court

Citation : (2017) 07 BOM CK 0041

Hon'ble Judges : Nutan D.Sardessai

Bench : SINGLE BENCH

Advocate : S. Linhares, F. E. Noronha

Judgement

1. This is an appeal by the State under Section 54 of the Land Acquisition Act, 1894 (''the Act'', for short) challenging the Judgment and Award dated 29/04/2010 passed by the learned Adhoc District Judge FTC Panaji in the Land Acquisition Case No.11/2009 pursuant to which the learned Reference Court enhanced the market rate of the acquired land from Rs. 150/- per sq.mt. to Rs. 600/- sq.mt. The respondents are the original applicants before the Reference Court and who would be referred to in their original status for brevity''s sake hereinafter in view of the cross-objection filed by them claiming the enhanced compensation of Rs. 2,000/-per sq.mt. and other entitlements as per law.

2. Admittedly, an area of 3100 sq.mts. from the total area of 2,75,051 sq.mts. was acquired by the appellant pursuant to the Section 4 Notification dated 07/11/2002 of the property bearing Chalta no.13(part) of the P.T. Sheet no.16 of the Panaji City for the construction of the the Ribandar bypass on NH-4A starting from Village Morombi O Pequeno at St. Cruz and ending at the Survey No. 101 (part) at Ella village. The Land Acquisition Officer (L.A.O., for short) had fixed the market rate @Rs. 150/-per sq. mt. while the respondent claimed the compensation @Rs. 2000/- per sq.mt. and the Reference Court had enhanced the market value to Rs. 660/- per sq.mt. by relying on the sale transaction dated

11/10/2001 pertaining to the Survey No.30/1 of Village Chimbel which was 1.2 km away from the acquired land. The State Challenged the Award on grounds that the deduction of only 20% on the market value of the developed plot was not justified and the impugned Award was an outcome of such flawed computation by the Reference Court. The Reference Court erred in applying the principles laid down by this Court and the Hon''ble Apex Court in the matter of assessing the market value in the Land Acquisition Cases. The learned Reference Court failed to appreciate that the original applicant had failed to produce any evidence on record to prove that the land involved in the sale transactions was similar and identical in nature to the land under acquisition. The learned Reference Court did not show any deductions for the negative factors as the acquired area was a strip of land, coming in the road widening for which a set back area was required to be maintained. The learned Reference Court also failed to consider that the original applicant had not led any evidence to show that the acquired land fell within the settlement zone. The impugned Judgment and Award was thus liable to be interfered with in appeal.

3. The applicants had raised cross-objection to the effect that the Reference Court having approved the Sale Deed dated 11/10/2001 showing the rate of Rs. 750/- per sq.mt. for the area of 24,281sq.mts. ought to have added 70% development expenses to the said rate of Rs. 750/- per sq.mt. considering that the acquired land was only 3100 sq.mts. in area. The Reference Court on the contrary had deducted 20% therefrom and arrived at @660/- per sq.mt. without considering the vast difference between the approved Sale Deed dated 11/10/2001 for 24,281 sq.mts. and the acquired area of 3100sq.mts. The learned Reference Court ought to have fixed the market value of the acquired land at Rs. 2000/- per sq.mt. and having failed to do so, they were filing the crossobjection to seek the enhanced rate @Rs. 2000/- per sq.mt. alongwith the other entitlements as per law.

4. Ms. S. Linhares, learned Additional Government Advocate came to be heard on behalf of the appellant who canvassed the grounds urged in the appeal memo and submitted in fairness that though the appeal relating to the land in Chalta No.16 of P.T. Sheet no.16 was allowed by this Court which confirmed the finding of the learned Reference Court in respect of a land in the vicinity, the Appeal preferred by the State before the Hon''ble Apex Court was dismissed. Shri F. E. Noronha, learned Advocate for the original applicants in fairness did not press for the cross-objection.

5. The applicants had examined Savio De Sa to reiterate his case on oath, relied on the sale instance dated 08/01/2001 where the land had been sold @713/- per sq.mt. and prayed for the enhanced compensation. Besides, he had also relied upon the certified extract of the Official Gazette dated 19/06/2003 where the Government had fixed the minimum land rates depending on the zone in which the property fell of a given locality and prayed for the enhanced rate of Rs. 2000/- per sq.mt.

6. The learned Reference Court on assessing the evidence including the sale instance dated 11/10/2001 and the minimum land rates fixed by the Government in the Official Gazette dated 19/06/2003 found that the land in the sale instance of 2001 was located 1.2 kilometer away from the acquired land though admeasuring 24281 sq.mts. Nonetheless, the learned Reference Court had found that this sale land was not only proximate in time to the date of publication of Section 4 Notification but also the area was large as compared to the acquired land and was the best piece of evidence to evaluate the market value of the acquired land. On that basis and making a deduction of 20%, the Reference Court arrived at a compensation of Rs. 660/-per sq.mt. being the market value on the date of the Section 4 Notification and awarded the same in favour of the applicants alongwith all the statutory benefits.

7. Shri F. E. Noronha, learned Advocate for the applicants had relied upon the Judgment of this Court in State of Goa and others v/s. Mrs. Millicent Felica Pinto Sa and others (First Appeal No. 110 of 2010) dated 30/01/2015, where a learned Single Judge of this Court had considered the State Appeal challenging the Award of the learned Reference Court in respect of the grant of the compensation @Rs. 660/- per sq.mt. in respect of the land admeasuring 300 sq.mts. of the Chalta No.16 of PT Sheet no.16 of the Panaji city belonging to the respondents therein and also the land price fixed by the Government in that area @Rs. 2000/- sq.mt. This Court had considered the position that the Reference Court had found the sale instance land being large in area and allowed the deduction of 20% and ultimately fixed the market rate @Rs. 660/- per sq.mt. by giving an increase of 10% and ultimately held that there was no basis in the case of the State Government that the acquired land did not have any building potential. On a consideration of the evidence this Court ultimately held that the Reference Court had rightly arrived at the market value of the acquired land @Rs. 660/- per sq.mt. and finding that no interference was called for with the impugned Judgment, dismissed the State Appeal.

8. Ms. Linhares, learned Additional Government Advocate placed on record the order of the Hon''ble Apex Court in the appeal filed by the State against the Judgment and Award dismissing the Special Leave Petition. The finding of this Court and the Judgment has attained finality and therefore considering that the applicant''s land is also a part of PT Sheet 16 though bearing Chalta No.13, the Judgment in First Appeal would squarely apply which had upheld the findings of the learned Reference Court on the market value of the acquired land being Rs. 660/- per sq.mt.

9. Shri Noronha, learned Counsel for the original applicant had also in fairness not pressed for the cross-objection seeking enhanced compensation and in view thereof no interference is called for with the impugned Judgment and Award enhancing the market rate of the the applicant''s land from Rs. 150/- per sq.mt. to Rs. 660/- per sq.mt. In the result, the appeal is dismissed and so too the Cross-objections.

