(2017) 06 BOM CK 0012

In the Bombay High Court

Case No : 81 of 2016

Valmiki Faleiro — APPELLANT

Vs

Special land Acquisition Officer, & Anr. — RESPONDENT

Date of Decision : 23-06-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 6, Section 4(1), Section 23(2), Section 23(1A) - Publication of preliminary notification a

Citation : (2017) 06 BOM CK 0012

Hon'ble Judges : Nutan D.Sardessai

Bench : SINGLE BENCH

Advocate : N.N. Sardessai, G. Kamat, P. Faldessai

Final Decision : Allowed

Judgement

1. This is an appeal at the instance of the original applicant aggrieved by the judgment and award dated 21/12/2013 pursuant to which the learned Reference Court partly allowed the reference and enhanced the market value of the acquired land to Rs.990/- per sq.mt. as against Rs.2000/- per sq.mt. claimed by him. The applicant was seeking the enhancement of the awarded amount in this appeal filed by him against the respondents/ Acquiring Department who are the respondents in the present appeal and would be referred to in their status as the appellant and the respondents for brevity''s sake hereinafter.

2. Shri Nitin Sardessai, learned Senior Counsel came to be heard on behalf of the appellant who briefly narrated the background of his case that an area of 3042 sq.mts. from the Survey holding no. 194/1 (part) was acquired by the respondent no.1 for the purpose of construction of a guest house pursuant to the Notification under Section 4 of the Land Acquisition Act, 1894 (the Act, for short hereinafter) dated 07/10/2008. The Land Acquisition Officer had awarded the compensation @Rs.84/- per sq.mt. which the learned Reference Court enhanced

to @Rs.900/- per sq. mt. The learned Reference Court however did not consider the position of the acquired land which was on the boundary of the Ward no.6 of Margao city and Raia village and that the rate prevailing in the Ward No.6 of the Margao City was Rs.2000/- per sq. mt. The Reference Court relied on an award in the Land Acquisition Case No.72 /2005 dated 16/11/2009, where the Reference Court had fixed the compensation @Rs.660/-per sq.mt. and by giving a flat 10% p.a. increase, awarded the compensation of @Rs.990/- per sq. mt. The Reference Court had erred in not applying any cumulative rate while computing the compensation to be awarded in favour of the applicant and in which event the market value of the acquired land would have worked out to Rs.1026/-per sq. mt. Shri N. Sardessai, learned Senior Counsel then adverted to the impugned judgment and submitted that the learned Reference Court fell in error to award the compensation as it did. Besides, the respondents had also not filed any cross appeal to challenge the findings of the learned Reference Court. He relied in G.M., Oil and Natural Gas Corporation Ltd. V/s. Rameshbhai Jivanbhai Patel and another [2008(14) SCC 745] and pressed for the enhanced compensation in the appellant''s favour.

3. Shri P. Faldessai, learned Additional Government Advocate for the respondents submitted that the Reference Court had given a 10% p.a. increase considering the award dated 16/11/2009 in L.A.C. No.72 of 2005 where the land was acquired pursuant to the Section 4 Notification dated 07/03/2003 and fixed the compensation @Rs.990/-per sq.mt. being the enhanced rate. The learned Reference Court had duly considered the location of the land and awarded the enhanced compensation and, therefore, it was not open to the appellant to allege that the Reference Court was in error not to grant the compensation at the rate claimed by the appellant or more precisely by applying the cumulative rate and therefore no interference was called for with the impugned Judgment.

4. i have considered the submissions of Shri N. Sardessai, learned Senior Counsel for the appellant and Shri P. Faldessai, learned Additional Government Advocate for the respondents and besides considered the impugned judgment and award apart from the judgment in O.N.G.C. (supra) to better appreciate the appeal and to decide appropriately whether any further enhancement is justified in the circumstances of the case or otherwise.

5. O.N.C.G. (supra), were the appeals by the beneficiary of the acquisition, aggrieved by the quantum of compensation to the respondents. Certain land was acquired for the want of the O.N.G.C. installations under Notification issued under Section 4(1) of the L.A. Act followed by the final Notification under Section 6 of the L.A. Act and thereafter the Special Land Acquisition Officer, O.N.G.C., by an Award dated 16/11/1994 determined the market value at Rs.2.10per sq.mt. The respondents-land owners sought reference to the Civil Court claiming Rs.30/- per sq.mt. They placed reliance on some awards passed by the Court the in other acquisition cases but did not place any evidence by way of contemporaneous sale transactions in the neighbourhood. The Land Acquisition

Officer did not choose to adduce any evidence nor produced any Sale Deeds to fix the market rate @Rs.2.10 per sq.mt. The Reference Court by the judgment and award dated 07/10/1999 determined the market value of the acquired land @Rs.17.10per sq.mt. based on the said two awards relied by the respondents and as the acquisition in those awards was in the 1992, had increased the value cumulatively @10%p.a. and arrived at a value of Rs.19.10 per sq.mt. by treating the gap between the relied-on-acquisition and the present acquisition as six and half years, reduced Rs.2/- per sq.mt. for the distance factor and fixed the market value @Rs.17.10 per sq. mt. apart from awarding the additional compensation under Section 23(1A) and solatium under Section 23(2) of the Act. The appellant challenged the award before the High Court which dismissed the appeal holding that the determination of the market value by the Reference Court did not call for an interference giving rise to the appeal before the Apex Court.

6. In O.N.G.C. (supra), the Hon''ble Apex Court observed at paragraph 15 as under : "The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year''s market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate."

The Hon''ble Apex Court further observed at paragraph 16 that application of a flat rate would lead to anomalous results and demonstrated with further reference to the earlier illustration and therefore held that the logical, practical and appropriate method is therefore to apply the increase cumulatively and not at a flat rate.

7. The learned Reference Court in the judgment under challenge had considered the fact that the Government had notified the value of the land in the Ward No.6 of Margao city as Rs.2,000/- per sq.mts. and which formed the sheet anchor of the appellants case to peg his claim at Rs.2,000/- per sq.mt. The respondents on the contrary had canvassed a case that the acquired land was falling in the village of Raia for which the Government had prescribed different rates and that the appellant was not entitled to the enhanced compensation @Rs.2,000/-per sq.mt. The learned Reference Court had considered the respondent''s case that the acquired land could at the highest fetch @Rs.300/- per sq.mt. in view of the Notification issued by the Government in respect of the land in that village. At the same time the Reference Court had not found favour with their case that the appellants were not entitled even to that rate on account of the gradient in the land. The learned Reference Court had clearly held that the respondents plea was not acceptable on the premise that though the land was falling in the village of Raia, there was no denial on the part of the respondents that it adjoined or abutted the land situated in the Ward No.6 of Margao City and that the land was acquired specifically for the purpose of construction of a guest house and

therefore there was no substance in the respondents contention that it fell in the no development zone.

8. At the same time, the learned Reference Court was clearly seized of the fact that the burden of proving the market value of the acquired land was solely on the appellant / claimant who had not undertaken the exercise of ascertaining the location of the acquired land, as also its nature and extent, as compared to the land in the Ward no.6 of the Margao City through the expert witness besides saying that it was abutting the Ward no.6. Even on a consideration of the evidence of the expert witness who had not made any reference to the land in the Ward no.6 in his deposition, the Reference Court held that the rate of land fixed for the Ward no.6 cannot be directly made applicable to the acquired land. Nonetheless, the learned Reference Court fell back on the Judgment and Award dated 16/11/2009 in L.A.C. No.72 of 2005 to compute the compensation in favour of the appellant where the land had been acquired pursuant to the Notification dated 29/08/2003 admeasuring 9,525 sq.mts. of the land surveyed under No.196/1 of village Raia and found it similar or rather identical to the acquired land and being ''bharad'' lands situated at a distance of 400 metres. The learned Reference Court therefore took the basis of Rs.660/- per sq.mts. in respect of the earlier reference land but by applying a flat rate of 10% per annum, fixed the market value of the acquired land at Rs.990/- per sq.mt. The learned Reference Court had actually to apply the cumulative rate and not the flat rate as held by Hon''ble Apex Court in O.N.G.C. (supra), and on that basis computed the compensation in which event and by cumulative calculation the compensation would work out to Rs.1064/- per sq.mt. Therefore, the appellant would be entitled to the enhanced compensation of Rs.1064/- per sq.mt. The appellant as rightly observed by the learned Reference Court had not led evidence to show the proximity of the land qua that in Ward no.6 in the Margao city as to apply the flat rate of Rs.2000/- per sq.mt. and to that extent the claim of the appellant cannot be sustained for the enhanced compensation @Rs.2000/- per sq.mt.

9. The respondents had also not filed any cross-appeal nor raised any cross-objection to the impugned judgment and award questioned by the appellant in this appeal and therefore the rate fixed by the L.A.O. @Rs.660/- per sq.mt. would be binding on the respondents and they would not be entitled to question the said rate by any stretch of imagination. It also does not lie for the respondents to oppose the computation of compensation by applying the cumulative method as shown by the appellant by relying in O.N.G.C. (supra). In view thereof, i pass the following O R D E R

The appeal is partly allowed whereby the rate fixed by the learned Reference Court is enhanced from Rs.990/- per sq.mt. to Rs.1064/- per sq.mt. The applicant shall be entitled to all the statutory benefits including solatium and interest in terms of Section 23(2) and 23(1A) of the Act apart from the additional interest provided thereunder. In these terms the appeal stands disposed off.

