

(2008) 02 BOM CK 0150

Bombay High Court (Goa Bench)

Case No: First Appeal No. 78 of 1999

Executive Engineer, P.W.D. VI (R
and B) and Deputy Collector and
LAO

APPELLANT

Vs

Shri Antonio Almeida, Shri Jose
Almeida, Shri Franscisco Almeida
and Shri Amnuel Almeida

RESPONDENT

Date of Decision: Feb. 20, 2008

Acts Referred:

- Land Acquisition Act, 1894 - Section 4, 4(1)

Citation: (2008) 2 MhLj 815 : (2008) 2 MhLj 812

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

Bench: Single Bench

Advocate: Guru Shirodkar, for the Appellant; M.B. Da Costa and J.A. Lobo, for the Respondent

Final Decision: Dismissed

Judgement

N.A. Britto, J.

Challenge in this appeal is to the award dated 21/11/1998 of the learned District Judge, Margao, enhancing the compensation payable to the Respondents from Rs. 33/-to Rs. 105/-per sq. mt. as against the claim of Respondents for Rs. 500/- per sq. mt. Some facts are required to be stated to dispose off the appeal.

2. By notification issued u/s 4(1) of the Land Acquisition Act, 1894 ("Act", for short), published on Gazette dated 7/08/1986, the Government acquired a strip of land of about 10 mts. width, admeasuring 510 sq. mts. of Chalta No. 16 and 24 of P.T. Sheet No. 193 belonging to the Respondents for the purpose of construction of new road at Marlem and the Land Acquisition Officer awarded a compensation of Rs. 33/- per sq. mt.

3. Dissatisfied with the award of the Land Acquisition Officer, the Respondents preferred a reference before the District Court and in support of their claim in the reference, the Respondents relied on an award dated 20/11/1988-Exhibit AW1/B by which compensation was granted at the rate of Rs. 200/-per sq. mt. This award shows that the acquisition was prior to 1985, but does not show the exact date of notification u/s 4 of the Act, with reference to which it was made. The Respondents also relied on a sale deed dated 23/12/1985-Exhibit AW1/C, by which a plot admeasuring 318 sq. mts. was sold at the rate of Rs. 318/-per sq. mt. The Respondents relied, on yet another sale deed dated 10/03/1986-Exhibit AW1/D, by which a plot of land admeasuring 755 sq. mts. was sold at th rate of Rs. 300/- per sq. mt. and yet another sale deed dated 16/06/1986-Exhibit AW1/E, by which a plot admeasuring 418 sq. mts. was sold at the rate of Rs. 330/- per sq. mt.

4. The Respondents examined Jose Almeida/AW1 and an expert by name, Engineer Shri Ernesto Moniz/AW2. In support of the award, the Respondents examined Caitano Faleiro/AW3, and in respect of the sale deed-Exhibit AW1/D, the Respondents had examined Krishna N. Naik/AW4.

5. The learned trial Court discarded the evidence of the expert Shri Moniz/AW2 relying on a decision of this Court in Sadguru R. Kolmule v. Deputy Collector of North Goa Division 1996(1) GLT 8. The learned District Judge noted that the land sold vide Exhibit AW1/C was situated at a distance of about 500 mts. from the acquired property and the one sold vide Exhibit AW1/E was at a distance of about 900 mts. from the acquired property but the land sold vide sale deed-Exhibit AW1/D was at a distance of about 200 mts. from the acquired property and used the same as the guide to assess the compensation payable to the Respondents. The learned District Judge noted that the land of the sale deed-Exhibit AW1/D was a comparable instance as it was proximate both in terms of distance and time, and after taking certain deductions, including 25% towards development, fixed the market value at the rate of Rs. 105/- per sq. mt.

6. Admittedly, there was a strip of about 2 to 2.5 mts. of a existing kaccha road to some extent in the strip of land which was acquired but there is no evidence led on behalf of either of the parties to show as to what was the extent of the said kaccha road. There is no dispute that the acquired property was situated at Borda and formed part of larger property of the Respondents admeasuring about 25785 sq. mts. and there were residential houses in the said property. It was located at a distance of about 300 mts. from Margao-Curtorim road and at a distance of about 1 kms. from the Holy Spirit Church where there were two schools nearby and at a distance of about 2 kms. from Margao Municipal Square. As per the applicant/AW1 who is also a Civil Engineer, the acquired land was levelled land and was bharad type. According to him it was suitable for construction and was at the same level as the road which has been constructed. Water, electricity and telephone facilities were also available. There were also some houses in the said property.

7. Shri Shirodkar, the learned Addl. Govt. Advocate on behalf of the appellants submits that the Respondents had not proved that there was similarity between the plot of Exhibit AW1/D and the acquired land. In fact, learned Addl. Govt. Advocate Shri Shirodkar submits that burden that the land was similar was placed on the appellants. Learned Addl. Govt. Advocate further submits that the sale deed-Exhibit AW1/D could not have been used as a guide because it was not of the same land or land adjacent to the land acquired and in this context, Shri Shirodkar has placed reliance on a decision of the Apex court in the case of Lucknow Development Authority v. Krishna Gopal Lahoti and Ors. 2008 (1) ALL MR 475 . Learned Addl. Govt. Advocate has also placed reliance on the case of [Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others](#), and submitted that none of the factors set out by the Apex Court in the said decision were met in this case. Reliance is also placed on another decision of the Apex court in the case of Panna Lal Ghosh and Ors. v. Land Acquisition Collector and Ors. AIR 2004 SCW 66, wherein the Apex Court has reiterated well known principle that while determining the market value of the land, it must be with reference to a piece of land which is comparable to the land being acquired. It must be similar in potentiality and nature.

8. On the other hand, Shri M.B. Da Costa, the learned Senior Counsel appearing on behalf of the Respondents submits that the sale deed-Exhibit AW1/E was not considered by the learned District Judge, because none were examined in support of it. Learned Senior Counsel further submits that the report of the expert could not have been discarded totally and his opinion as regards local observations and his valuation based on the sale deeds could have been taken into consideration while determining the compensation payable. Learned Senior Counsel further submits that the acquired property was located in a fast developing locality and was otherwise accessible by a kaccha road and was closer to Margao town.

9. Although there are different methods for arriving at the market value of the land acquired, it is now well settled that comparable sales method of valuation to assess the market value of the land is preferred to other methods of valuation because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification u/s 4 of the Act, but, before that is done there are certain factors which are required to be fulfilled and only on fulfillment of those factors the compensation can be awarded according to the value of the land reflected in the sales. One of the factors which has been spelt out in the case of [Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another](#), which decision is considered as locus classicus, is that amongst comparable sale instances out of genuine instances, one has to be identified from (i) proximity from time angle, and (ii) proximity from situation angle, and that, to my mind was rightly done by the learned District Judge. The factors which have been spelt out in the case of Shaji Kuriakose and Anr. v. Indian Oil Corporation Ltd. and Ors. (supra) are:

- (1) the sale must be a genuine transaction,
- (2) that the sale deed must have been executed at the time proximate to the date of issue of notification u/s 4 of the Act,
- (3) that the land covered by the sale must be in the vicinity of the acquired land,
- (4) that the land covered by the sales must be similar to the acquired land, and
- (5) that the size of plot of the land covered by the sales be comparable to the land acquired.

If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land and in case there are dissimilarities in regard to locality, shape, size or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. In doing so, some guesswork is permissible but what is impermissible are fits of imagination and misplaced sympathies.

10. One of the reasons which weighed upon the learned District Judge in not accepting the sale deed-Exhibit AW1/E was that it was situated in another locality namely at Fatorda which was at a distance of about a kilometer from the acquired land. As far as the report of the Engineer Shri Ernesto Moniz is concerned, the same could be rejected for other reasons as well. As stated by him, in his cross-examination, though at present nothing turns out on that, he had valued the acquired property at Rs. 245/-per sq. mt. but had conceded that he had not taken into account the costs of land which was acquired for the approach road. He had also admitted that the land closer to the road fetches more price than the land situated far away from the main road but was unable to give any explanation why a closer property of one Acacio Camara, he had valued at Rs. 215/-, whereas that of the Respondents at Rs. 245/-.

11. Be that as it may, the appellants' contention that the burden to prove similarity of the acquired land with that of land of the award Exhibit AW1/D was placed on the Respondents, cannot be accepted. The applicant/AW1, who is a Civil Engineer had clearly and categorically stated that the nature of the land sale deed-Exhibit AW1/D was same as compared to the acquired land and as rightly noted by the learned District Judge, except for putting suggestions to the contrary, there was no evidence led to show that it was uncomparable, more so, when the appellants had examined their own Engineer in support of their defence. There is no doubt that the acquired land was undeveloped compared to the developed plot of sale deed-Exhibit AW1/D but for that the learned District Judge took a deduction of 25%. The learned District Judge in all took a deduction of 65% in relation to the price of sale deed-Exhibit AW1/D, before fixing the market value at the rate of Rs. 105/-per sq. mt. It can be

seen from the impugned award that the plot of sale deed-Exhibit AW1/D was at a distance of about 25 mts. from the Margao- Curtorim road and since the suit plot was at the distance of about 300 mts. the learned District Judge deducted 8% from the sale price. Another deduction of 8% was made because the plot of sale deed-Exhibit AW1/D was closer to Margao town. Yet another deduction of 7% was made because the payment of sale price of Exhibit AW1/D was done on differed basis. Yet another deduction of 10% was taken because the acquired property had only a traditional access while the plot sale deed-Exhibit AW1/D had a 6 mts. wide access. Another deduction of 7% was taken because of the existence of the said traditional access passing through the suit plot itself.

12. Considering the facts and circumstances of the case and taking overall view of the matter, and the deductions taken, in my view, the compensation assessed by the learned District Judge for the acquired property at the rate of Rs. 105/- per sq. mt. cannot be faulted.

13. There is no merit in this appeal and, hence, the same is hereby dismissed.