

Anjani Molu Dessai vs State Of Goa & Anr on 7 December, 2010

Author: R.V. Raveendran

Bench: A.K. Patnaik, R.V. Raveendran

1

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8042 OF 2004

Anjani Molu Dessai

... Appellant

VS.

State of Goa & Anr.

... Respondents

O R D E R

R.V. RAVEENDRAN J.

An area of 3,65,375 sq.m. of land in Balli Village, Quepem Taluk, Goa was acquired for laying the New Broad Gauge line for Konkan Railway in pursuance of preliminary notification dated 27.6.1991 (published on 30.7.1991) and final declaration dated 4.11.1991. The acquisition included parts of survey Nos. 45/1, 45/5, 45/6, 51/1 and 51/2 of Balli village measuring 60343 sq.m. (for short the 'acquired lands') belonging to the appellant. The Land Acquisition Collector, by his Award dated 7.12.1993, awarded compensation at the rate of Rs.12/- per sq.m. for bharad (orchard) lands and Rs.6/- per sq.m. for irrigated (paddy) lands. The Reference Court and the High Court affirmed the said valuation by rejecting the reference and appeal by the appellant. The refusal to increase the compensation is under challenge in this appeal by special leave. The only question that arises for consideration is whether compensation awarded, should have been at a higher rate.

Description, Location and potential of the land

2. AW-1 (power of attorney holder of the appellant) has given evidence stating that the acquired lands are level lands, fit for construction; that all amenities and facilities including a market, a school, a hospital, temple and the village panchayat office are situated within a distance of half kilometer; that there is an access road right upto the acquired lands and the bus stop is also within half a kilometer; that electricity, water and telephone facilities are available for the acquired lands;

and that there are houses within a distance of 50 meters from acquired lands. He has also stated that the acquired lands are orchard lands with coconut, cashew, mango, jackfruit and other trees, with houses and a well. The Land Acquisition Collector has also confirmed in the Award that the lands are situated in Balli village; that the major portion of the lands with several structures and a well, lies on the eastern side of National Highway from Margao to Karwar. The award also states that the major portion of acquired lands is bharad (orchard) land consisting of cashew, coconut and other fruit bearing trees and some small portions are paddy fields.

3. The High Court has also referred to the situation of the property and has noted that the acquired lands are in a village where all basic amenities like primary health centre, high school, post office were available within a distance of 500 meters. It can therefore be safely concluded that the acquired lands are not undeveloped rural land, but can be urbanisable land situated near a developed semi-urban village with access to all infrastructure facilities. Basis of compensation awarded

4. The Land Acquisition Collector has relied upon two sale transactions in his award to arrive at the market value of the acquired lands.

4.1 The first is a Sale Deed dated 30.8.1989 relating to sale of 2055 sq.m. of land in survey No.83 which is situated at a distance of 200 m. from the acquired lands which was sold at the rate of Rs.43.80 per sq.m. The Award states that the land sold under the deed dated 30.8.1989 is a developed bharad type of land with approach road. Therefore it is similar to the acquired lands. The description of the land and the extent of the land sold, make it clear that what was sold was an orchard land and not a residential plot. To arrive at the market value of the acquired land, the Land Acquisition Collector deducted 45% from the sale price of Rs.43.80 per sq.m., towards 'development cost', i.e. providing approach roads and open spaces, expenses relating to development work, conversion charges etc. He thus arrived at the value of the undeveloped plot as Rs.24 per sq.m. As there was a gap of 23 months between the date of the said sale and the date of preliminary notification in this case, the Collector provided a cumulative increase at the rate of 14.5% per annum over the said Rs.24/- to arrive at the market value as on 30.7.1991 as Rs.32.24 per sq.m.

4.2) The second sale deed relied upon by the Collector is dated 30.1.1990 and related to the sale of 7600 sq.m. of land in survey No.77 of Balli Village situated at a distance of one km from the acquired land, sold at the rate of Rs.3 per sq.m. As there was a gap of about 18 months between the date of the said sale deed and the date of preliminary notification, the collector provided a cumulative rate of 14.5% per annum over Rs.3/- and arrived at the market value on 30.7.1991 as Rs.3.82 per sq.m.

5. The Collector next averaged the said two rates derived from the sale prices under the two sale deeds (that is, Rs.32.24 per sq.m. and Rs.3.82 sq.m.) and arrived at the market value for bharad type of land as Rs.18 per sq.m. However, as the Collector had separately valued and awarded compensation for the trees (that is Rs.24,14,677/- for the entire 3,65,375 per sq.m. acquired) he was of the view that the average value of trees per sq.m. would be around Rs.6/- and that should be deducted from the said market value of Rs. 18 per sq.m. He thus awarded compensation at the rate

of Rs.12 per sq.m. for the bharad land. Thereafter he determined the rate of paddy lands as Rs.6/- per sq.m.

The appellant's claim

6. The appellant contended that the market value determined by the Land Acquisition Collector was very low and sought compensation at the rate of Rs.250/- per sq.m. The appellant contended that the Reference Court and the High Court had erroneously rejected the evidence produced, that is three comparable sales which showed that the market value was much more. The three exemplar sale deeds relied upon by the land owner relating to the said village were: (i) sale deed dated 6.1.1989 under which an extent of 2000 sq.m. land with trees was sold at a rate of Rs.100/- per sq.m.; (ii) sale deed dated 7.3.1991 whereby 896 sq.m. of land at a distance of 300 m. from the acquired lands was sold at a price of Rs.150/- per sq.m.; (iii) sale deed dated 3.4.1991 whereby 300 sq.m. of land situated at a distance of 200 meter was sold at a price of Rs.221.66 per sq.m. The respondents, on the other hand, contended that the three exemplars were rightly rejected and the valuation by the Land Acquisition Collector was rightly upheld.

Valuation of the acquired lands

7. The appellant examined the purchasers under the Sale Deeds dated 7.3.1991 (Ex.AW 1/C) and 3.4.1991((Ex.AW 1/D). The purchaser in regard to Sale Deed dated 6.1.1989 was not examined. However, the power of attorney holder of the appellant (AW-1) has referred to the said Sale Deed dated 6.1.1989. On careful consideration, we find that the reference Court and the High Court have rightly refused to rely upon the said three Sale Deeds for determination of the market value of the acquired lands.

7.1) The first Sale Deed dated 6.1.1989 related to a sale by the owner of a land to his own company, that is, a private limited company of which he was the Director. Such a sale can not normally be treated as an independent sale by a willing seller to a willing buyer. No one connected with the sale was examined to establish that it was a sale at market value. This sale was therefore rightly rejected.

7.2) The second Sale Deed dated 7.3.1991 was in respect of a small area measuring 28 m. x 32 m. (896 sq.m.) which was carved out of a residential property situated within the village abadi of Balli, adjoining the Government Hospital. It was purchased for the purpose of construction of shop. The acquired lands are agricultural orchard lands situated away from the village abadi area. Therefore the said sale deed does not relate to a comparable land.

7.3) The third Sale Deed dated 3.4.1991 also related to the sale of a part of a residential property in the village abadi area and related to a corner plot measuring 300 sq.m. situated at a distance of 50 m. from Balli market. That sale also does not relate to a comparable land.

8. We are of the view that the concurrent rejection of these three Sale Deeds by the Reference Court and High Court are therefore proper and do not call for interference. If the said three Sale Deeds are excluded, there is no other evidence from the appellant's side for determining the market value.

However there is no need for a remand, as reasonable material is otherwise available for determination of market value in the form of two sale transactions that were relied upon by the Land Acquisition Collector himself in his award.

9. As already noticed, the sale deed dated 30.8.1989 relates to sale of similar bharad land in Sy.No.83 of Balli Village. The extent of the land sold was about half an acre. The distance between the acquired lands and the land in Sy.No.83 sold under the deed dated 30.8.1989, was hardly 200 meters. The said sale therefore relates to a comparable land and furnishes a reasonable basis for assessing the market value of the acquired land, by providing appropriate increase to cover the appreciation in prices during the gap of about two years between 30.8.1989 (date of sale deed) and 30.7.1991 (date of publication of the preliminary notification).

10. The Land Acquisition Collector however committed a serious error in deducting 45% from the sale price disclosed by the Sale Deed dated 30.8.1989 towards the cost of development. It is well settled that deduction for development cost has to be made only where the value of a small residential/commercial/industrial plot of land in a developed layout is made the basis for arriving at the market value of a nearly large tract of undeveloped agricultural land. Where the land sold under the relied upon sale deed and the acquired lands are both are of similar nature (as in this case where both are bharad lands) the question of making any deduction towards development cost to arrive at the cost of 'undeveloped land' would not arise. Such a deduction would have been necessary if the sale deed relied upon related to a developed residential or commercial plot. Therefore, we are of the view that the Land Acquisition Collector was not justified in making 45% deduction from the price disclosed by the Sale Deed dated 30.8.1989.

11. The Sale Deed relied upon by the Land Acquisition Collector was dated 30.8.1989. The relevant date for determination of compensation is 30.7.1991. Having regard to the fact that acquired lands were in an urbanisable area with readily available infrastructural facilities, we are of the view that the cumulative increase of 14.5% per annum adopted by the Collector in his award, would be appropriate. By providing such increase, for two years, we would be able to arrive at the market value of the acquired land as on the date of publication of the preliminary notification. By providing such appreciation at 14.5% for two years on the base price of Rs.43.80 per sq.m. the market value as on 30.7.1991 for the acquired bharad lands would be Rs.57.42, rounded of to Rs.57.50 per sq.m.

12. The next question that arises for consideration is whether the compensation should be determined only with reference to the said sale deed dated 30.8.1989 or whether the other Sale Deed dated 31.1.1990 relied upon by the Land Acquisition Collector, whereby 7600 sq.m. of land in Sy.No. 77 at a distance of one kilometer was sold at the rate of Rs.3/- per sq.m. should also be taken note of by averaging the two prices. As against the Sale Deed dated 30.8.1989 which was in regard to a land situated at a distance of 200 meters, the Sale Deed dated 31.1.1990 related to a land which was more than one kilometer away. There is nothing to show that it was similar bharad land. Further the very fact that the first Sale Deed which is relied upon and accepted by the Land Acquisition Collector as relating to a comparable land is at a price of Rs.43.80 per sq.m., would demonstrate that the second sale deed showing a very low sale price of Rs.3/- per sq.m. cannot be considered to be a comparable sale. When the second sale deed relied upon is at a rate which is only

1/15 th of the price disclosed by the first sale deed, obviously they are not comparable sales. Further the award of the Collector specifically states that the land sold under sale deed dated 30.8.1989 is a similar land, that is, a bharad land at a distance of 200 meter. Significantly there is no such finding that the subject matter of the second sale dated 31.1.1990 which was one kilometer away, was a similarly situated land. The sale deed dated 31.1.1990 should therefore be inferred to be either an undervalued sale or a distress sale or at all events not a comparable sale. The Land Acquisition Collector was not therefore justified in averaging the sale prices of the two sale deeds. Once it is found that the first sale deed was in regard to a comparable land and the second sale deed was not in regard to a comparable land, the second sale deed dated 31.1.1990 ought to have been excluded from consideration.

13. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of under-valuation or other price depressing reasons. Consequently averaging can not be resorted to. We may refer to two decisions of this Court in this behalf.

13.1) In *Sri Rani M. Vijayalakshmanna Rao Bahadur, Ranees of Vuyyur Vs. The Collector of Madras*, 1969 (1) MLJ 45, a three Judge Bench of this Court observed that the proper method for evaluation of market value is by taking the highest of the exemplars and not by averaging of different types of sale transactions. This Court held:

"It seems to us that there is substance in the first contention of Mr. Ram Reddy. After all, when the land is being compulsorily taken away from a person, he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It is not disputed that the transaction represented by Exhibit R-19 was a few months prior to the notification under section 4, that it was a bona fide transaction and that it was entered into between a willing purchaser and a willing seller. The land comprised in the sale deed is 11 grounds and was sold at Rs.1,961 per ground. The land covered by Exhibit-27 was also sold before the notification, but after the land comprised in Exhibit R-19 was sold. It is true that this land was sold at Rs.1,096/- per ground. This, however, is apparently because of two circumstances. One is that betterment levy at Rs.500 per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is about 93 grounds or so. Whatever that may be, it seems to us to be only fair that where sale deed, pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

13.2) In State of Punjab Vs. Hans Raj (1994) 5 SCC 734, this court held:

"Having given our anxious consideration to the respective contentions, we are of the considered view that the learned single Judge of the High Court committed a grave error in working out average price paid under the sale transactions to determine the market value of the acquired land on that basis. As the method of averaging the prices fetched by sales of different lands of different kinds at different times, for fixing the market value of the acquired land, if followed, could bring about a figure of price which may not at all be regarded as the price to be fetched by sale of acquired land. One should not have, ordinarily recourse to such method. It is well settled that genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value."

Therefore, we are of the view that the averaging of the prices under the two Sale Deeds was not justified. The Sale Deed dated 31.1.1990 ought to have been excluded for the reasons stated above. That means compensation for the acquired lands had to be fixed only with reference to the Sale Deed dated 30.8.1989 relied upon by the Land Acquisition Collector which will be Rs.57.50 per sq.m. As the said market value has been fixed with reference to comparable bharad land with fruit trees, the question of again separately awarding any compensation for the trees situated in the acquired land does not arise.

14. The Land Acquisition Collector had valued the trees at Rs.6/- per sq.m. to arrive at the value of the lands without trees. On that basis the market value of paddy land situated amidst the bharad land can be arrived at by deducting Rs.6/- per sq.m. In the absence of any other evidence, we fix the said rate for paddy land on that basis, that is, Rs.51.50 per sq.m.

Conclusion

15. The appellant will thus be entitled to compensation at the rate of Rs.57.50 per sq.m. in respect of bharad land without any additional or separate compensation for trees. The appellant will be entitled to compensation at the rate of Rs.50/- per sq.m.

16. We, accordingly, allow this appeal in part as follows:

(i) The compensation for the acquired lands (bharad lands) is increased to Rs.57.50 per sq.m. (instead of Rs.12/- per sq.m. plus value of trees awarded by the LAC) and Rs.51.50 per sq.m. for paddy lands (as against Rs.6/- per sq.m. awarded by the LAC)

(ii) The respondent shall pay to the appellant, additional amount under Section 23(1A) of Land Acquisition Act, 1894, at 12% per annum from 30.7.1991 to 17.3.1992 (date of taking possession) and solatium at 30% under Section 23(2) of the said Act, on the compensation amount.

(iii) The respondents shall pay to the appellant, interest at the rate of 9% per annum from 30.7.1991 for a period of one year and 15% per annum thereafter till date of deposit under Section 28 of the said Act on the amount awarded in excess of what was awarded by the Land Acquisition Collector.

(iv) The award made in regard to structures is not disturbed.

(v) Appellant will be entitled to costs through out from the respondents.

.....J. (R.V. RAVEENDRAN) New DelhiJ. December 07, 2010. (A.K. PATNAIK)