

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**FIRST APPEAL NOS. 101 OF 2007 & 191 OF 2008**

**FIRST APPEAL NO. 101 OF 2007**

1. Deputy Collector (SDO)  
Sub-Division, Margao Goa.
2. The Execution Engineer,  
WD. VI, ( Road South ) PWD,  
Fatorda, Margao Goa. .... Appellants

***V e r s u s***

Martinho Wilson das Chagas  
E Silva, r/o 1334/A,  
Mazilwaddo, Benaulim,  
Salcete Goa. .... Respondent

Ms. S. Linhares, Addl. Government Advocate for the appellants.

Mr. Judas Chagas e Silva, Advocate for the respondent.

**FIRST APPEAL NO. 191 OF 2008**

Mr. Martinho Wilson das Chagas e Silva,  
r/o H.No.1334, Mazilwaddo,  
Benaulim, Salcete Goa. ... Appellant

***V e r s u s***

1. Dy. Collector (L.A.)  
South Goa, Margao.
2. The Executive Engineer,  
Works Div. VI (R-S),  
PWD, Fatorda, Margao Goa. ... Respondents

Mr. Judas Chagas e Silva, Advocate for the appellant.

Ms. S. Linhares, Addl. Government Advocate for the respondents.

**CORAM : K. L. WADANE, J**

**JUDGMENT RESERVED ON : 20.08.2015**

**JUDGMENT PRONOUNCED ON : 08.10.2015**

**J U D G M E N T :**

Both the appeals are arising out of the award passed by the Ad-Hoc Additional District Judge, FTC – II, South Goa, Margao, in Land Acquisition Case No. 107/1998 dated 14.08.2006 by which the reference is partly allowed.

2. The parties are referred to their original status.

The respondent nos.1 and 2 have filed First Appeal No. 101/2007 and the applicant has filed First Appeal No. 191/2008. The brief facts of the case may be stated as follows :

The subject matter of the reference was the lands under survey Nos. 401/8 admeasuring an area of 830 square metres and 401/9 admeasuring an area of 225 square metres situated at Benaullim.

The Land Acquisition Officer issued Notification under Section 4 of the Land Acquisition Act ( In short " the Act" ) dated 13.02.1991 and the same was published in the Government Gazette dated 28.02.1991 by which various lands including the subject lands were acquired for the purpose of construction and black topping of Vassuvado Bunder Vassuvaddo Sorim Tambdimati Mazilwado main road

to old Livramento Chapel main Varca to Mazilvado Mellant road extension Pulvado road in a length of 1,330 metres in V. P. Banaulim.

An area to the extent of 830 square metres from survey No.401/8 and area of 225 square metres from survey No.401/9 were acquired by award dated 16.01.1995 and the Land Acquisition Officer has awarded compensation at the rate of Rs.7/- per square metre for both the aforesaid survey numbers. Being aggrieved with the award, the applicant moved an application under Section 18 of the Act and the matter was referred to the District Court for enhancement of compensation under Section 18 of the Act. After the receipt of the reference, the learned Additional District Judge after hearing both the sides enhanced the compensation and the compensation at the rate of Rs.54/- per square metre was granted for survey No.401/8 and Rs.116/- per square metre for survey No.401/9. Being aggrieved with the same, the applicant and the respondents have presented the above two appeals as indicated above.

3. I have heard the arguments of Ms. S. Linhares, learned Additional Government Advocate appearing for the respondents/appellants and Mr. Judas Chagas Silva, learned counsel appearing for the applicant/respondent and with the help of the learned counsel appearing for the parties, I have gone through the entire evidence on record and the contents of the award passed by the learned Additional District Judge. In order to establish the claim of the

applicant, the applicant has examined himself and relied upon three sale instances vide Exhibits 19, 20 and 21 dated 20.12.1990, 06.05.1992 and 10.04.1989 respectively. In addition to that, the Engineer AW2 Ernest Monis is examined to prove the valuation report at Exhibit 30 and thereafter the applicant has closed the evidence.

4. As against this, no evidence is adduced by the respondents. After considering the contents of the sale deeds at Exhibit 20 and 21, the learned Additional District Judge has awarded compensation as referred above. From the record, it is seen that the sale deed at Exhibit 20 is a post Notification. The learned Additional District Judge has mostly relied upon the contents of the sale deed at Exhibit 21 dated 10.04.1989 however, though both the survey numbers were owned and possessed by the applicant and both survey numbers were adjacent to each other, still different amount of compensation was awarded to both the survey numbers and that too by huge difference.

5. From the record, it is seen that the valuation report was prepared after so many years from the Notification. Therefore, such report cannot be believed. The learned Additional District Judge has rightly discarded this report and not taken into consideration for the determination of the market value of the acquired land as on the date of the Notification under Section 4 of the said Act.

6. Looking to the entire evidence on record, it reveals that the survey no.401/9 is situated just adjacent to survey No.401/8 towards the western side and there is a village road towards the eastern side of survey No.401/9. On perusal of the reasons recorded by the learned Additional District Judge, it appears that the learned Judge has considered the facilities as available to survey no.401/9. Therefore, the compensation of Rs.116/- has been awarded to survey No.401/9. However the sale deed relied upon by the learned Additional District Judge was a post notification and the relevant sale deed to be taken into consideration is the sale deed at Exhibit 21 dated 10.04.1989. Therefore, the available evidence is on the basis of the sale instance. The sale deed of the year 1989 shows that the land under sale deed was sold for consideration of Rs.75/- per square metre. Therefore, considering the dissimilarities, location, shape/size, and the nature, some amount has to be deducted. On the other hand, the sale deed was of the year 1989 and the Notification is of the year 1991. Therefore, some additional amount has to be considered for the determination of the compensation for the acquired land at the time of the acquisition. So considering the plus and minus aspect of the matter, I am of the opinion that an amount of Rs.80/- per square metre would be proper amount of compensation to be paid to the applicant for both the survey numbers. On the same set of evidence, the learned Additional District Judge has awarded different amount of compensation and that too with huge difference. Therefore, the award passed by the

learned Additional District Judge has to be modified to some extent.  
Hence, the following order :

**O R D E R**

- (i) Both the appeals are partly allowed.
- (ii) The award passed by the Additional District Judge, Margao dated 14.08.2006 stands modified and the compensation is fixed at the rate of Rs.80/- per square metre in respect of both the survey number nos.401/8 and 401/9.
- (iii) Needless to say that the applicant would be entitled for statutory benefits under Sections 23(1A), 23(2) and 28 of the said Act in accordance with law.
- (iv) Both the appeals stand disposed of with no order as to costs.

**K. L. WADANE, J**

**at\***