

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 72 OF 2011

Shri Vaman Anant Prabhu Gaonkar.
(since Deceased through his legal representatives:)

1. Smt. Ratnabai Vaman Prabhu Gaonkar,
Widow of late Vaman Prabhu Gaonkar.
Major of age;
2. Shri Ulhas Vaman Prabhu Gaonkar,
son of late Vaman Prabhu Gaonkar,
Major of age;
3. Smt. Sudha Ulhas Prabhu Gaonkar,
Wife of Ulhas Vaman Prabhu Gaonkar,
Major of age;
4. Shri. Anil Vaman Prabhu Gaonkar,
Son of late Vaman Prabhu Gaonkar,
Major of age;
5. Smt. Nila Prabhu Gaonkar,
Wife of Anil Vaman Prabhu Gaonkar,
Major of age;
6. Shri. Rajendra Vaman Prabhu Gaonkar,
son of late Vaman Prabhu Gaonkar,
Major of age;
7. Smt. Sushma Prabhu Gaonkar,
Wife of Rajendra Vaman Prabhu Gaonkar,
Major of age;

All residents of Loliem, Canacona.

.....Appellants.

Versus

1. The Dy. Collector And Land Acquisition Officer,
Quepem, Goa.

2. The Executive Engineer,
W. D. XXV (NH) P.W.D.
Borda, Margao, Goa. Respondents.

Mr. Sudesh Usgaonkar with Ms. R. Pereira, Advocates for the Appellants.

Ms. Neha Kholkar, Additional Government Advocate for the respondents.

CORAM: U. V. BAKRE, J.

DATE : 24th February, 2015.

ORAL JUDGMENT :

Heard Mr. Usgaonkar, learned Counsel for the appellants and Ms. Kholkar, learned Additional Government Advocate for the respondents.

2. This appeal challenges the Judgment and Order dated 06/12/2010 passed by the learned District Judge-I, South Goa, Margao (Reference Court, for short) in Land Acquisition Case No. 246/1992. The appellants were the applicants and the respondents were the respondents in said Land Acquisition Case. Parties shall hereinafter be referred to as per their status in the said case.

3. Vide notification bearing No. 22/132/88-RD, dated 24/11/1988, issued under Section 4(1) of the Land Acquisition Act, 1894 (L. A. Act, for short) and published in the Official Gazette dated 19/01/1989, land was acquired for the approaches to the Galgibaga bridge on National

Highway 17 (re-alignment). This included land admeasuring 420 square metres from survey no. 4/1 of Village Loliem in which there was a structure and 17 coconut trees. The said structure belonged to one Ramesh Loliemkar and he has been separately paid compensation for the same, by award dated 02/12/1991. Vide the same award, the original applicant has been awarded compensation at the rate of ₹ 3/- per square metre, in respect of the acquired land and compensation of ₹ 13,855/- has been awarded to him, in respect of the coconut trees. Not being satisfied with the compensation offered by the Land Acquisition Officer (L.A.O., for short), the original applicant made an application under Section 18 of the L. A. Act before the L.A.O. which gave rise to the said Land Acquisition Case No. 246 of 1992.

4. In the application under Section 18 of the L. A., Act, the Original Applicant Shri Vaman Prabhu Gaunkar, stated as follows :

He is the owner in possession of the property bearing survey no. 4/1 of village Loliem. The said property is on the bank of river Galgibaga and is adjoining the main road and is about 100 metres away from Margao-Mangalore Highway i.e. NH-17. The acquired land has commercial and residential structure connected with electricity. The acquired land was near Galgibaga river ferry point and adjoining the river Galgibaga and consequently provided with natural irrigation and fertility and had healthy coconut plantation in it. The market

complex of Mashem, primary school, Mashem bus stop, Public Health office, Nirakar temple and Galgibag Seashore etc. were all within range of two kilometers of the acquired land at the time of acquisition. Canacona Police station, Court building, P.W.D. Office, Municipal building, Cinema house, Hospital, High School, etc. are within a range of 10 kilometers from the acquired land. The acquired land had the market value of at least ₹ 75/- per square metre at the relevant time.

5. Accordingly an issue was framed by the learned Reference Court as per the claim of the applicants. The applicants examined the applicant no.1(f) namely Shri Rajendra Vaman Prabhu Gaonkar as AW1. He produced a sale deed of June, 1987 as PW1/A and valuation report of Engineer Vikas Desai as Exhibit-20. The applicants examined said Engineer Vikas Desai as AW2 and Shri Ramchandra Bhiku Varik, the vendor of sale deed as AW3. The respondents did not examine any witness in defence.

6. By judgment and award dated 28/01/2004, the learned Reference Court rejected the reference. The Reference Court held that there was a house of mundkar in the sale deed plot and hence the same would not depict the correct and free market value of the land. The Reference Court also found that the valuation report of AW2 was not reliable. The Applicants filed First Appeal No. 128 of 2004 before

this Court. By judgment dated 03/09/2010, this Court held that the sale deed at Exhibit AW1/A stipulates that the structure which was existing in the sale deed plot was belonging to the purchaser and therefore, the finding of the Reference Court that the price mentioned therein would not reflect the correct market value of the open land as there was structure located therein, was wrong. This Court held that the Reference Court was not justified in discarding the said sale deed. This Court held that the Reference Court had not appreciated the evidence on record to consider as to whether the land acquired and the land which was the subject matter of the sale instance was comparable or not. The appeal was partly allowed. The impugned Judgment and order dated 28/01/2004 was quashed and set aside. The reference was restored to file of the Reference Court with a direction to decide the reference afresh after hearing both the parties on the basis of the evidence on record in accordance with law.

7. Accordingly, the Reference Court heard the submissions of learned Counsel for both the sides. By impugned Judgment and Order dated 06/12/2010, the learned Reference Court, however, again rejected the reference. Therefore, the applicants are before this Court.

8. Mr. Usgaonkar, learned Counsel for the applicants, submitted that there is apparent error committed by the Reference Court by

holding that there was no evidence of any building existing in the acquired land. He pointed out that the award itself mentions about the existence of such building for which one Ramesh Lolienkar has been paid compensation. Learned Counsel further submitted that the statement of AW2 that the acquired land had no development potential since it was within 70 metres from the bank of river was only an opinion of the expert witness. He submitted that legally the said statement had no force at all since Coastal Regulation Zone Notification came into existence much after the publication of notification under Section 4 of the L. A. Act and therefore, was not applicable to the acquired land. He submitted that the purpose of the acquisition was itself the construction of approaches to Galgibaga bridge and therefore, the Reference Court had erred in holding that the acquired land was coming within the set back area of the road and therefore had no development potential. He pointed out that the sale deed at Exhibit PW1/A had a house therein as also coconut trees and the acquired land also had a building therein and coconut trees. According to him, therefore the sale deed plot was exactly similar in nature as compared to the acquired land and could not at all have been discarded. He, therefore, urged that the impugned judgment and order be quashed and set aside and appropriate compensation be awarded to the applicants.

9. On the other hand, Ms. Kholkar, learned Additional Government Advocate submitted that the evidence on record reveals that AW1 does not know the boundaries of survey no. 4/1 and the total area of the said survey holding from which land was acquired. She submitted that insofar as the sale deed plot was concerned all the details were available in the evidence. She pointed out that the acquired land was towards rural side whereas the plot of the sale deed, on the other side of the river, was towards Panaji city side. The learned Additional Government Advocate further submitted that there was already a road existing at site which was going to the ferry point and the acquired land was touching this road. She submitted that in respect of another plot no. 2, acquired vide the same notification, the reference was initially rejected and in First Appeal the same was remanded back but the said reference was again rejected after remand. The learned Additional Government Advocate further submitted that there is evidence on record to prove that the acquired land gets flooded during monsoon. She also pointed out that the valuation report of the valuer was rightly discarded by the learned Reference Court. The learned Additional Government Advocate therefore submitted that the reference has been rightly rejected by the Reference Court and no interference with the impugned judgment and order is called for.

10. I have gone through the original records and proceedings in

Land Acquisition Case No. 236 of 1992 and I have considered the arguments advanced by the learned Counsel for the parties.

11. The point that arises for my determination is as to what is the true market value of the acquired land as on the date of publication of notification under Section 4(1) of the L. A. Act.

12. The award of the L.A.O. dated 02/12/1991 in Case No. LQN/21-88, which is a part of the reference made by the L.A.O., pertaining to the acquired land, clearly reveals that the acquired land under Survey no. 4/1 admeasured 420 square metres and there were 17 coconut trees in the said acquired land which were valued by the L.A.O. at ₹ 13,855/-. The original applicant has been paid the compensation for the land and the trees. The award also shows that in the said acquired land there was a structure admeasuring 86.19 square metres which was valued at ₹ 56,973/-. One Shri Ramesh Loliemkar has been paid compensation for the said structure. In his affidavit-in-evidence, AW1 has specifically stated that in the acquired land 17 coconut trees were situated and that the acquired land was abutting a road and there was a commercial building belonging to Shri Ramesh Loliemkar. AW1 has stated that the acquired land was leveled land and it falls within the area of Village Panchayat of Loliem Polem. Therefore, the learned Reference Court has clearly erred in holding that there was no

evidence about the nature of the acquired land. The acquired land was agricultural land having coconut trees and a commercial building situated in the same. The learned Reference Court has wrongly observed that there is no whisper in the reference application under Section 18 of the L. A. Act about the building having been existing in the acquired land. In the reference application, the original applicant has specifically stated that the acquired land has commercial and residential structure connected with electricity power in the same. In fact, it is an admitted fact, as can be seen from the award itself, that in the acquired land admeasuring 420 square metres there was a building belonging to Shri Ramesh Lolienkar for which compensation of ₹ 56,973/- has been awarded.

13. The learned Reference Court has not cited any provision of law to hold that the acquired land had no development potential as it was within 70 metres from the bank of river wherein construction is not permissible. Merely because AW2, the valuer stated so in the cross-examination, the learned Reference Court appears to have believed him. In fact, the Coastal Zone Regulation Notification restricting the development activity within a particular distance from the bank of river came into existence sometime in the year 1991 whereas the date of publication of Notification under Section 4(1) of the L. A. Act, in respect of the acquired land is January, 1989.

14. The evidence on record reveals that the acquired land was adjoining a panchayat road. The acquired land lies at a distance of about 50 metres from Mashem beach and 100 metres from Mashem Chapel. The Nirakar temple, State Bank, Post Office, grocery shops, fish market, restaurants, etc. are about 300 metres away from the acquired land. All the above amenities were existing at the time of notification under Section 4(1) of the L. A., Act. The acquired land was served with electricity, telephone and transport facility at the relevant time of acquisition. The acquired land was leveled land falling within the village panchayat area of Loliem Polem. The applicants had produced on record a sale deed at Exhibit 20/AW1/A which was executed in June, 1987 and by which piece of immovable property bearing survey no. 111/3 of village Mashem, admeasuring 335 square metres, wherein purchaser's house was already existing and coconut plantation was existing was sold was ₹ 30,000/- i.e. at the rate of about ₹ 89.55/- per square metre. There was evidence on record to establish that the acquired land was less than one kilometer from the said sale deed plot. The nature of the said sale deed land was, therefore, similar to the acquired land.

15. However, the land of the sale deed was bounded towards south by National High Way. But the acquired land was abutting only a panchayat road. The sale deed land is not at the bank of river and

there was never question of getting flooded at any time. But the acquired land was on the bank of river Galgibaga and the ferry service was by the side of the acquired land. Besides the above the transaction of the said sale deed was in June 1987 but the date of Notification under Section 4(1) of the L. A., Act was of January 1989. According to AW3, Shri Vishwanath Ramchandra Varik, the acquired land even used to get flooded if there were heavy rains. AW3 is the brother of Sharadchandra Varik Gaunkar, the vendor of the said sale deed at Exhibit 20/AW1/A. He confirmed that by the said sale deed an area of 335 square metres of land was sold for ₹ 30,000/-. According to him, the sale deed land was by the side of public road viz the national High Way Margao-Karwar. He also deposed that there were about 6 to 7 old coconut trees in the sale deed land. Therefore, considering all the advantages and disadvantages, the sale deed at Exhibit 20/AW1/A could have been considered by making appropriate annual increase on account of the gap of one and half years between the date of sale deed and the date of Notification under Section 4(1) of the L. A., Act and appropriate deductions on account of the above disadvantages.

16. Be that as it may, in paragraph 2 of the affidavit-in-evidence, AW1 deposed that by Notification bearing no. 22/18/88-RD dated 24.11.1988, an area of 420 square metres was acquired and in the year 1990, by Notification No. 22/143/90-RD, dated 18.12.1990, an

area of 240 square metres was acquired from the same land. Aw3 stated that his father Ramchandra Bhiku Varik Gaunkar, had deposed in Land Acquisition Case No. 40/97. A certified copy of the deposition of said Ramchandra Bhiku Varik has been produced on record as Exhibit 21/A. Said uncontroversial deposition reveals that land of Ramchandra Bhiku Varik was also acquired. He had relied upon his own sale deed dated 11/09/1989 pertaining to land admeasuring 1225 square metres from survey no. 111/1 for total price of ₹ 1,00,000/-. Ramchandra Varik had admitted in his cross-examination that in the land of the above sale deed dated 11/9/1989, there was a house belonging to the purchaser. There were also about 30 coconut trees therein. The land and the said trees were sold together.

17. The said 240 square metres of land from survey no. 4/1, belonging to the original applicant was acquired subsequently for the same purpose of construction of approaches to Talpona Galgibaga bridge on NH17, by notification published under Section 4(1) of the L. A. Act in the Official Gazette dated 31/01/1991. The L.A.O., by award dated 04/03/1994, had awarded compensation at the rate of ₹ 4/- per square metre besides compensation for value of the trees and forest produce. The original applicant Waman Anant Prabhu Gaunkar had filed reference which gave rise to the Land Acquisition Case No. 79 of 2001. By judgment dated 29/08/2005, passed in the said Land

Acquisition Case No.79/2001/I, the reference was rejected. The applicant had preferred First Appeal no. 309/2005 before this High Court and the appeal was allowed by judgment dated 14/02/2011, whereby the judgment and award dated 29/08/2005 of the Reference Court was quashed and set aside and the case was restored with a direction to the Reference Court to decide the reference afresh on merits after hearing both the parties. In that reference, after it was restored, the applicants led additional evidence by re-examining AW1 to produce additional sale deed and the judgment of the High Court in First Appeal No. 180 of 2005 as also the judgments of the Reference Court in two other Land Acquisition Cases. The learned Reference Court in the said Land Acquisition Case No. 79/2001/I considered the said sale deed dated 11/09/1989 for the determination of the market value of the said land admeasuring 240 square metres from survey no. 4/1 of Loliem village since the same was closest to the acquired land and the sale deed was executed about 1 ½ year prior to the date of publication of notification. The learned Reference Court considered the award of the L.A.O. wherein the applicant has been awarded ₹ 4/- per square metre for the land and ₹ 10,921/- towards the value of agricultural and forest produce from the said land. Dividing the said amount of ₹ 10,921/- by the area of 240 square metres of the acquired land, the Reference Court observed that the applicants were awarded ₹ 49/- per square metre towards the trees. The learned Reference

Court therefore observed that the applicants have already received ₹ 53/- (4+49= 53) per square metre towards the acquired land including the trees. Giving 5% increase per annum to the sale deed price of ₹ 81/-, the learned Reference Court arrived at the market value of the acquired land at ₹ 89/- per square metre. Deducting the amount of ₹ 53/-, which was already received by the applicants, from the amount of ₹ 89/- per square metre, the reference Court held that the applicants are entitled to excess compensation of ₹ 36/- per square metres. The said judgment in Land Acquisition Case No. 79 of 2001 is dated 21/11/2012 and admittedly the respondents did not challenge the said judgment and award, which has become final. As already stated above in the said Land Acquisition Case No. 79/2001/I, land from survey No. 4/1 of village Loliem was involved. Admittedly, the land admeasuring 420 square metres which is subject matter of present Land Acquisition Case No. 246 of 1992, is also from the same survey No. 4/1 of village Loliem. In such circumstances above, in order to maintain parity, the same sale deed which was considered in the said Land Acquisition Case No. 79 of 2001 and the same procedure which was adopted for determination of market value of the acquired land in the said case should be adopted in the present case also. The learned Counsel for both the parties have no objection if the sale deed dated 11/09/1989 produced in the said Land Acquisition Case No. 79 of 2001 is taken into account for the purposes of determination of

market value in the present case also, since the deposition of Ramchandra Varik in case No. 40/97 is on record as Exhibit 21/A and is not disputed. The date of publication of notification under Section 4(1) of the L. A. Act in respect of the acquired land which is subject matter of the present case is 19/01/1989 whereas the date of sale deed is 11/09/1989. Thus, date wise, this sale deed transaction is the closest to the date of Notification under Section 4(1) of the L. A., Act. It is also closest to the acquired land distance wise. The value of the sale deed plot is approximately ₹ 81/-. There were 17 coconut trees valued at ₹ 13,855/- in the acquired land which was subject matter of the present case. Dividing the said amount by 420 square metres which is the area of the acquired land, we get a figure of ₹ 33/- per square metre. The applicants in the present case were paid compensation at the rate of ₹ 3/- per square metre for the land. Therefore, the applicants have been paid compensation at the rate of ₹ 3/- + ₹ 33/- that is ₹ 36/- per square metre. Since the sale deed plot is exactly similar to the acquired land and further since it was of May, 1996 i.e. very close to the date of publication of the notification under Section 4(1) of L. A. Act, the question of making any deduction or increase in the price of sale deed land does not arise. By deducting the compensation of ₹ 36/- per square metre already received by the applicants, the applicants become entitled to excess compensation of ₹ 45/- per square metre (81 - 36 = 45/-) for the acquired land in the present

case.

18. I therefore hold that the market value of the acquired land admeasuring 420 square metres from survey no. 4/1 of village Loliem was ₹ 45/- per square metre as on the date of the publication of notification under Section 4(1) of the L. A. Act. Point for determination is therefore answered accordingly.

19. In the result, the appeal is partly allowed.

- (a) the impugned judgment and order dated 06/12/2010 passed by the learned Reference Court in Land Acquisition Case No. 246 of 1992 is quashed and set aside.
- (b) the said Land Acquisition Case No. 246 of 1992 is partly allowed.
- (c) the market value of the acquired land admeasuring 420 square metres from survey no. 4/1 of village Loliem is fixed at ₹ 45/- per square metre.
- (d) the applicants are entitled to 30% of solatium on the market value of the land under Section 23(2) of the L. A. Act and also for additional compensation at the rate of 12% per year on the said market value for the period commencing on and from the date of notification under Section 4(1) of the L. A. Act to the date of the award of the

Collector, in terms of Section 23(1-A) of the Act.

- (e) The applicants are also entitled to interest on the excess of the compensation at the rate of 9% for the first year from the date of taking possession of the land and at the rate of 15% from the second year till the amount is paid, in terms of Section 28 of the Act.
- (f) The applicants are also entitled to costs of ₹ 2000/-.

20. Appeal stands disposed of accordingly.

U. V. BAKRE, J.

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