

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 41 of 2012
and
CROSS OBJECTION NO. 6 of 2012

FIRST APPEAL NO. 41 of 2012

1. Special Land Acquisition Officer,
Salauli Irrigation Project,
W.R.D., Gogol,
Margao- Goa.
2. The Executive Engineer,
Works Div – VI (RS), P.W.D.,
Fatorda, Margao- Goa. ... Appellants.

Versus

1. Laxmikant D. Naik Karmali,
Major of age,
r/o near St. Joaquim Chapel,
Borda, P.O. Fatorda,
Margao- Goa.
2. Bhaskar D. Naik Karmali,
Major of age,
r/o Curchorem Goa,
403706. ... Respondents.

Ms. Susan Linhares, Additional Government Advocate for the appellants.

Mr. P. A. Kholkar, Advocate for the respondents.

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403706. ... Respondents.
(Cross-objectors)

Mr. P. A. Kholkar, Advocate for the Cross objectors.

Ms. Susan Linhares, Additional Government Advocate for the original appellants.

CORAM :- U. V. BAKRE, J.

DATE : 5th February, 2015

ORAL JUDGMENT :

Heard Ms. Linhares, learned Additional Government Advocate for the appellants and Mr. Kholkar, learned Counsel for the respondents/Cross-objectors.

2. The above appeal and cross objection have been filed

against the judgment and award dated 04/07/2010 passed by the Ad hoc District Judge-I, FTC-I, South Goa, Margao (Reference Court, for short) in Land Acquisition Case No. 39 of 2010. The respondents of the appeal, who are the cross-objectors, were the applicants in the said Land Acquisition Case, whereas the appellants were the respondents therein. Parties shall, hereinafter, be referred to as per their status in the said Land Acquisition Case.

3. Vide notification issued under Section 4(1) of the Land Acquisition Act, 1894 (L. A. Act, for short) and published in the Official Gazette dated 16/12/2004 and in two news papers (Sunaparant and Herald) dated 18.12.2004, land was acquired for the work of improvement and widening of road from old survey office to T.V.S. Show Room in a length of 1.00 km. in Margao city. This included an area of 14 square metres of bharad land from Chalta No. 35 of P.T. Sheet No. 153 and 46 square metres of bharad land from Chalta No. 36 of P.T. Sheet No. 153 of Margo city. By award dated 15/11/2007, the Special Land Acquisition Officer (SLAO, for short), awarded compensation at the rate of ₹ 70/- per square metre, to the acquired land. Not being satisfied with the offer made by the SLAO, the applicants filed an application before the SLAO, for reference under Section 18 of

the L. A. Act which gave rise to the above Land Acquisition Case. In the reference application, the applicants claimed that the market value of the acquired land was ₹ 4,000/- per square metre. They also claimed an amount of ₹ 1,00,000/- for the compound wall alleging that it was of laterite stones masonry with ornamental concrete grill thereon and gate made of G.I. Pipes.

4. Accordingly, issues were framed by the Reference Court. The applicants examined the applicant no. 1 Shri Laxmikant D. Naik Karmali as AW1. He produced the notice under Sections 9 and 10 of the L. A. Act as exhibit 17, reply dated 09/01/2006 to the said notice as exhibit 18, notice under Section 12(2) of the L. A. Act as exhibit 19, copy of the reference application as exhibit 20, sale deed dated 14/10/2003 as exhibit 21, another sale deed dated 10/07/2003 as exhibit 22, occupation certificate dated 25/06/1973 as exhibit 23 and letters dated 08/12/2010, 30/11/2010, 27/10/2010 and 19/10/2010. The said letters, however, were marked X colly for identification. The respondents did not examine any witness in defence.

5. Upon consideration of the entire evidence on record, learned Reference Court relied upon the sale deed dated

14/10/2003. Saying that the sale deed plot admeasures 284 square metres whereas the acquired land is a strip of land admeasuring 60 square metres, the Reference Court made 20 % deduction in the rate of sale deed plot to fix the market value of the acquired land as on 14/10/2003. Considering that the date of notification under Section 4(1) of the L. A. Act was 16/12/2004, annual increase of 10 % was given and market rate was fixed at ₹ 1,760/- per square metre as on 16/12/2004. The respondents have filed First Appeal No. 41/2012, they being aggrieved by the enhancement made by the Reference Court, whereas the applicants have filed cross objections claiming the compensation at the rate of ₹ 4,000/- per square metre.

6. Ms. Linhares, learned Additional Government Advocate for the respondents, submitted that deduction of 20% made in the price of sale deed is too less. She submitted that the plot of the sale deed was a developed plot from out of the subdivided property, whereas the acquired land was a small narrow strip of land which could not be utilised for construction. Learned Additional Government Advocate, therefore, urged that the deduction ought to have been above 50 %. Learned Additional Government Advocate relied upon the judgment dated 21/01/2015 passed by this Court in First Appeals No. 50/2010 and

67/2011.

7. On the other hand, Mr. Kholkar, learned Counsel for the applicants, submitted that the evidence on record sufficiently establishes that the acquired land is from the property which was developed and subdivided by the applicants into various plots by providing separate access road for the plots. He submitted that the acquired land was in settlement zone and in commercial area and, therefore, had great potential and value. He pointed out that though the acquired land was smaller than that of the sale deed plot, deduction of 20 % was made in the price of the sale deed when in fact small plots procure more price. He submitted that no deduction at all requires to be made in the price of the sale deed dated 14/10/2003 since the acquired land is part of the fully developed subdivided plots. He submitted that the acquired land though was a narrow strip of land, it was, however, a part of a fully developed plot of land. He contended that the applicants had produced on record the occupancy certificate dated 15/06/1973 which shows that permission was granted to occupy the building constructed as per the plans approved by the Municipality for commercial purpose. He also drew my attention to the rent receipts at exhibit 24 colly which show that the building standing in the property of the applicants was yielding

monthly rent of ₹ 40,000/-. He submitted that the learned Reference Court did not take into account all the above aspects. He, therefore, urged that the impugned judgment and award be set aside and compensation be enhanced to ₹ 4,000/- per square metre.

8. I have gone through the original record and proceedings of Land Acquisition Case no. 39/2010. I have considered the arguments advanced by the learned Counsel for the parties.

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

10. An area of only 14 square metres was acquired from Chalta No. 35 of P.T. Sheet No. 153 and an area of 46 square metres was acquired from Chalta No. 36 of P. T. Sheet No. 153. Thus, total acquired land admeasures only 60 square metres. The acquisition was for the purpose of widening of the road. Therefore, it can be understood that a narrow strip of land was acquired. The evidence of AW1 reveals that the width of the acquired land from both Chalta Nos. is 2.5 metres only. However, AW1 has stated that the said strips of the acquired land were parts of the fully

developed plots, used for commercial purposes, due to which no further subdivision or leaving of additional area for access, etc. was required. AW1 has stated that he has constructed his house in one of the plots of the said property and is staying therein and this house is adjacent to the part of the acquired land. According to him, the front plot of the property of the applicants, part of which has been acquired, is having a commercial building therein. AW1 has stated that multistoried commercial projects have already come up in the area within the radius of 200 metres to the West, to the North and to the East of the acquired land, namely Kunde Complex, Aurora Estate Complex, Sapna Barrier Complex and the Complex of Shrison Realtors. AW1 has stated that all amenities such as electricity, piped and treated water supply, sewerage lines, telephone lines and public transport were available in and around the acquired land at the time of acquisition. AW1 has given the distances of various schools, colleges and other facilities from the acquired land. These facilities like schools, colleges, church, temple, hospitals, markets, shops, railway stations and bus stand, etc. are all within the radius of about 850 metres from the acquired land. He has stated that the property which is the subject matter of the sale deed dated 14/10/2003 is situated at a distance of about 100 to 110 metres from the acquired land and is similar in all respects

with the acquired land. He further stated that the acquired land is more valuable plot as compared to the sale deed plots. In the circumstances above, AW1 stated that the acquired land should definitely fetch the market rate not less than ₹ 4,000/-.

11. In his cross-examination, AW1 stated that he had made 8 or 9 plots of the two amalgamated properties purchased by them in the year 1970 and after the year 1976 he obtained separate survey numbers to each of the subdivided plots. He stated that in the sale deed plots, constructions have already come up and that there are four unsold plots wherein no constructions have come up. He stated that the said four unsold plots are not plots surveyed under Chalta Nos. 35 and 36 of P. T. Sheet No. 153. He stated that in Chalta No. 35, there was already construction existing when he purchased the said plot in the year 1970 and that he extended the same. He stated that plots no. 35 and 36 are adjoining to the main road and no construction has come up in plot No. 36. He could not state as to what is the total area which he can utilise for construction in the plots bearing Chalta Nos. 35 and 36. He stated that all the other subdivided plots are behind the plots no. 35 and 36 and that from the main road, there is six metres wide road which goes into the amalgamated properties, as was required, under the law pertaining to

subdividing of plots. He stated that open space is behind the said plots and about 200 metres away from the main road and open space forms part of the amalgamated property. He denied that the plot of the sale deed was not comparable to the acquired land.

12. From the deposition of AW1, it appears that construction is already existing in Chalta No. 35. Therefore, it cannot be said that any land is remaining in Chalta No. 35 beyond the acquired land which can be utilised for construction. It appears that no construction was made in Chalta No. 36 at the time of acquisition. However, there is no evidence to establish as to what was the area of the said plot bearing Chalta No. 36. Since the transaction of sale deed dated 14/10/2003 is closer in time with the date of publication of notification under Section 4(1) of the L. A. Act as compared to the sale deed dated 10/07/2003, and was of a smaller plot, the learned Reference Court rightly relied upon the said sale deed dated 14/10/2003.

13. Vide the said sale deed dated 14/10/2003, an area of 284 Square metres was sold for ₹ 5,68,000/- i.e. at the rate of 2,000/- per square metre. There can be no dispute that the acquired lands are bharad lands, lying in settlement zone and in

commercial area. The nature of the acquired lands are similar to the plot of the sale deed. Merely because the acquired lands were narrow strips, it cannot be said that they had no potential. In the case of ***“State of Goa and another Vs. Gopal Baburao Gaudo and others”***, reported in [(2009) 10 SCC 686], the Hon'ble Supreme Court has observed thus :

“3. The petitioner alleges that the acquired land measuring 2715 square meters, was a narrow strip which fell within the 40 meters margin from the centre of the highway where constructions were prohibited. It is contended that as the acquired land could not be used for construction, the land had to be considered as not having any development potential, and that therefore it could not be compared with the land (which was the subject matter of LAC No. 48/1995) for which compensation had been determined having regard to its potential for development. It was also contended that being a narrow strip it was also not of much use even for agriculture purposes.

4. A long strip of land measuring more than two-third of an acre lying alongside and adjoining the highway cannot be treated as a land without value or without any potential for development, merely on the ground that the law relating to highways prohibited construction on either side of the

highway, upto a depth of 40 meters from the centre of the highway. All that was required to create or realise potential of such land was to annex or merge the said strip of land with the land to its rear. In that event, the strip of land will become the "access" to the rear-side land from the main road and will also become the frontage of the aggregate land, thereby enhancing the potential and value of the rear-side land, as also creating a potential for its own use.

5. The contention that a land adjoining the highway should be treated as having no development potential (and therefore as land without much value except as ordinary agricultural land), while considering the lands to its rear which are farther away from the road, or other adjoining lands of the same extent, but having more depth (so as to extend beyond the 40 meters margin) as having potential for development, is illogical and cannot be accepted.

6. We may demonstrate the absurdity of such a contention with reference to an illustration. Let us take the example of a residential plot of land measuring 60' x 100'. Let us assume that the Municipal Bye-laws require a front (road side) set-back of 20' for construction of houses in a plot of that size. Therefore, the owner would leave a twenty feet wide front strip in the said plot free of any construction while putting up the

construction in the plot. Obviously, he cannot thereafter construct in that front strip. Let us further assume that the front strip is acquired for road widening. Can the acquiring authority deny compensation to that strip on the ground that the said 20' strip acquired for road widening could not in any event be used for any construction purpose and therefore, was not of any value? Obviously not."

14. In the facts and circumstances of the present case, since the acquired lands were parts of bigger property, the principle laid down in the judgment of the Hon'ble Apex Court in the case of **"Gopal Baburao Gaudo"** (supra) is applicable and, therefore, it cannot be said that the acquired lands had no value at all. The sale deed is dated 14/10/2003 whereas the date of publication of notification under Section 4(1) of the L. A. Act is 18/12/2004. There is, therefore, a gap of about 1 year and the sale deed is one year prior to the date of notification. It is a settled fact that prices of land go on increasing every year and in a developed city like Margao, such increase in price would certainly be 10% per annum. By giving an increase of 10% to the price of ₹ 2,000/-, the price of the sale deed plot as on the date of notification becomes ₹ 2,200/-. Since in Chalta No.36, a building was already existing and since the acquired lands in Chalta Nos. 35 and 36

were actually narrow strips of land admeasuring only two and half metres, deduction was bound to be made from the price of the plot of the sale deed dated 14/10/2003. The plot of the sale deed dated 14/10/2003 was not a strip of land which could be utilised in the manner as stated in the case of ***"Gopal Baburao Gaudo"*** (supra). The said plot was itself suitable for construction of residential building and, therefore, in order to bring the acquired land i.e. strip of land having width of only 2.5 metres, at par with the said sale deed plot, appropriate deduction is bound to be made. In my view, the deduction of 50% would be reasonable. By making said deduction of 50 %, the price comes down to ₹ 1,100/- per square metre. The acquired land was abutting the road. Hence set-back was bound to be kept. Since the acquired land was within the set-back area, it could not be used for construction and could only be used in the manner as explained in the case of ***"Gopal Baburao Gaudo"*** (supra). In my considered view, further deduction is required to be made. Therefore, I am of the view that the market value of the acquired land was ₹ 1,000/- per square metre, as on the date of publication of notification under Section 4(1) of the L.A. Act.

15. Even, in First Appeals No. 50 of 2010 and 67 of 2011, by judgment dated 21/01/2015, in respect of the land acquired

under the same notification as in the present case, this Court fixed the market value at ₹ 1,000/- per square metre. Parity should be maintained. I, therefore, hold that the market value of the acquired lands from Chalta Nos. 35 and 36 of P. T. Sheet No. 153 is ₹ 1,000/- per square metre.

16. In the result, the appeal is partly allowed, whereas cross objection is rejected.

(a) The impugned judgment and award insofar as enhancement of compensation for the acquired land, from ₹ 70/- to ₹ 1,760/- per square metre is concerned, is quashed and set aside and the said compensation is fixed at ₹ 1,000/- per square metre.

(b) The applicants shall be entitled to all the statutory benefits under the L. A. Act.

(c) The impugned judgment and award stands modified to the extent as above.

U. V. BAKRE, J.

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