IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NOS. 74 & 56 OF 2015

FIRST APPEAL NO. 74 OF 2015

Goa Housing Board,
Through its Managing Director,
having office at Porvorim,
Bardez Goa … Appellant

Versus

Devalaia of Shri Deus,
Vithal of Carapura,
Sattari Goa, through its attorney
Mr. Daulatrao Vijurao Ranes – Sardessai,
Major of age, Indian National,
r/o Wadaval, near P.O.,
Bicholim Goa. … Respondent

Mr. H. D. Naik, Advocate for the appellant.

Mr. C. A. Ferreira, Advocate for the respondent.

AND

FIRST APPEAL NO. 56 OF 2015

Devalia of Shri Deus
Vithal of Carapura,
Sattari Goa, through its attorney
Mr. Bhausaheb S. Rane,
r/o Bicholim Goa. … Appellant

Versus

The Managing Director,
Goa Housing Board,
Porvorim, Bardez Goa. … Respondent

Mr. C. A. Ferreira, Advocate for the appellant.

Mr. H. D. Naik, Advocate for the respondent.

Coram:- F. M. REIS &
K. L. WADANE, JJ

Date :- 2nd September, 2015

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. H. D. Naik, learned counsel appearing for the appellant and Mr. C. A. Ferreira, learned counsel appearing for the respondent.

2. Admit. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respondent waives service.

4. Both the appeals have been taken up together for final disposal as both challenge the same judgment and award dated 20.12.2014 passed by the learned District Judge-1, North Goa, Panaji Goa. The parties shall be referred to in the manner they so appeared in the cause title of the impugned award.

5. The above appeals challenge the judgment and award dated 20.12.2014 passed by the learned District Judge-1, North Goa, Panaji Goa, in Land Acquisition Case No. 44/2009 whereby a reference

preferred by the applicant under Section 18 of the Land Acquisition Act, 1894 (herein after referred to as "the said Act") was partly allowed and the compensation for the land acquired was fixed at the rate of Rs.300/- per square metre.

6. Briefly, the facts of the case are that pursuant to the Notification dated 02.11.2006 under Section 4 of the said Act, land belonging to the applicant was proposed to be acquired admeasuring an area of 66253 square metres from the property surveyed under No. 66/1(part) of village of Podocem Sattari Taluka. After complying with the formalities under the said Act, an award under Section 11 of the said Act came to be passed by the Land Acquisition Officer on 28.08.2008 whereby compensation was offered at the rate of Rs.50/- per square metre. Being dissatisfied with the said amount, the applicant preferred a reference under Section 18 of the said Act for enhancement of compensation and claimed a sum of Rs.500/- per square metre. The Reference Court after recording of evidence and hearing the parties by the judgment and award dated 20.12.2014 partly allowed the reference and fixed compensation at the rate of Rs.300/- per square metre. Being aggrieved by the said judgment, the applicant and the respondent have preferred the present appeals.

7. Mr. Naik, learned counsel appearing for the respondent in support of the appeal preferred by the applicant has pointed out that

the Reference Court has misconstrued the well settled principle of law in terms of Section 23 of the said Act while fixing the compensation for the land acquired at the rate of Rs.300/- per square metre. The learned counsel further pointed out that the land acquired was admeasuring more than 66000 square metres wherein the sale instance relied upon by the learned Judge is admeasuring an area of 270 square metre. The learned counsel further points out that the sale instance relied upon by the Reference Court at Exhibit 29 was not comparable to the land acquired and consequently, the Reference Court was not justified to fix the compensation for the land acquired at the rate of Rs.300/- per square metre. The learned counsel further pointed out that the report produced by the applicants themselves suggest that the land acquired was hilly area, undeveloped and was not suitable for development purpose. The learned counsel further submits that the Reference Court has failed to examine such demerits of the land acquired while fixing the compensation of Rs.300/- per square metre. The learned counsel thereafter has taken us through the impugned judgment to point out that the Reference Court has relied upon the sale deed at Exhibit 29 which is more or less at the time of Section 4 Notification was published wherein the developed plot admeasuring an area of 270 square metre was sold at the rate of Rs.500/- per square metre. The learned counsel however pointed out that the Reference Court has made a deduction of 40% without giving any deduction on account of largeness of land and the fact that the land acquired was hilly area and the sale instance relied upon by the Reference Court was flat land. The learned counsel further pointed out that in such circumstances, considering the demerits of the land acquired vis-a-vis sale instance, a deduction of more than 60% would be fair and appropriate. The learned counsel as such submits that the impugned award passed by the Reference Court accordingly be modified.

8. On the other hand, Mr. C. A. Ferreira, learned counsel appearing for the applicant has submitted that the compensation fixed by the learned Reference Court at the rate of Rs.300/- per square metre is based on a sale instance produced by the applicant wherein the price of Rs.300/- per square metre was mentioned when the prevailing market value at least four years prior to the Notification under Section 4 of the said Act was also the same as reflected in another sale instance produced by the respondent. The learned counsel further submits that in such circumstances, the deduction affected by the Reference Court at 40% is not at all justified and consequently, the compensation for the land acquired has to be fixed at the rate of Rs.500/- per square metre. The learned counsel further submits that the land acquired was at a distance of one kilometre from Sanquelim town and as such, had high potentialities for the use of non agricultural purpose. The learned counsel further submits that the land acquired had a gradient and as such, the question of any deduction on that count would not be justified. The learned counsel further points out

that the Reference Court has fixed the compensation at the rate of Rs.300/- per square when according to him the compensation has to be fixed at the rate of Rs.500/- per square metre. The learned counsel as such submits that the impugned award passed by the Reference Court accordingly be modified and the compensation fixed by the Reference Court accordingly be enhanced.

9. Upon hearing the learned counsel and on perusal of the records, the following point arises for our determination :

POINT FOR DETERMINATION

> Whether the Reference Court was justified to fix the compensation for the land acquired at the rate of Rs.300/- per square metre ?

10. On perusal of the evidence on record, as pointed out herein above, the Notification under Section 4 of the said Act was dated 02.11.2006 and published in the Official Gazette dated 03.11.2006 for the implementation of the housing scheme of Podocem Village in Sattari Taluka. By the award under Section 11 of the said Act, the compensation was fixed at the rate of Rs.50/- per square metre. The claim put forward by the applicant was for compensation at the rate of Rs.500/- per square metre. In support of the claim for enhancement of compensation, the attorney of the applicant -Devalaya was examined who has stated that the land acquired was admeasuring an area of

66253 square metres situated in the village Podocem in Sattari Taluka. He has further stated in his affidavit in evidence that the land acquired is rocky land and mainly levelled with the main road on the southern side and sloping downwards about 10 degrees towards north-eastern side. He has also stated that the land is located in the residential zone as per Sanquelim- Honda zoning plan. He has also stated that the land is accessible by 10 metres road, 20 metres long connecting to the main road of Bicholim-Sanquelim State highway. He has also stated that the infrastructure facilities for development are available in the vicinity of the acquired land and that the main market is within a radius of 1 Km from the acquired land. He has also stated that there are different facilities available around the acquired land. In support of his claim for enhancement, he has produced the report of valuation dated 20.01.2007 prepared by Mr. Sanzgiri. He has also produced the certified copy of the sale deed dated 24.06.2005 whereby survey No.109/3 of Village Carapur admeasuring an area of 353 square metres was sold which land was located at a distance of 500 metres from the acquired land. He has also produced the copy of the sale deed dated 24.06.2005 in respect of the land surveyed under No.100/2 (part) of village Carapur admeasuring an area of 277 square metres. He has also produced the copy of the sale deed dated 09.10.2002 in respect of the property surveyed under No.100/2(part) of the same village. Another sale deed is also produced dated 10.03.2003 in respect of the land surveyed under No.100/2 (part) of the same village besides a sale deed dated 09.08.2006 in respect of the property surveyed under No.103/25 of Village Carapur, wherein an area of 270 square metres was the subject matter of the said sale deed. He has also produced the copy of the sale deed dated 22.06.2001 in respect of the land surveyed under No.100/1-B of village Carapur wherein the subject land was admeasuring an area of 400 square metres. He has further stated that all the sale transactions referred to herein above were within the vicinity of the acquired land. In his cross examination, he has stated that part of the land acquired is irregular and some parts are sloppy and that there is a structure in the portion of the said land which belongs to the Devalaya. He has also stated that the subject matters of the sale deed plots were rocky lands and denied the suggestion that the sale deeds plots are not at all comparable to the land acquired. On perusal of the said evidence of the attorney of the Devalaya, the fact that the subject matter of the land acquired and the sale deed plots are rocky is not disputed by the respondent nor the fact that sale deed plots are located in the vicinity of the acquired land. It is also not disputed that the land acquired was accessible of 10 metres wide road and close to the main highway Sanquelim-Bicholim. The respondent have also examined the Assistant Engineer of the Goa Housing Board. He has stated in his affidavit in evidence that he was looking after the said Land Acquisition proceedings and the housing board proposed to acquire the said land. He has further stated that the entire land is part of the survey No.66/1 of Village Podocem Sattari Taluka and that it had no facilities or construction potentialities. He has further stated that lot of expenditure for infrastructural development had to be incurred for the purpose of developing the acquired land. He has also stated that 11KV electricity line was passing in the midst of the acquired land. He has also stated that the road has been constructed to align with the said electricity line. He has further stated that all the sale instances which have been produced by the applicant consists of very small areas as compared to the vast land which has been acquired and as such are not comparable sale instances. He has also disputed the validity of the valuation report produced by the applicant. He has further stated that the land is sloppy and the nature of the soil was hard rock and admitted that the rocky land is more suitable for construction than the soft soil. He has admitted that the go-down is facing the road and abutting Bicholim-Sanquelim road. He has also admitted that there is an internal road which was about 10 metres in length from Bicholim-Sanquelim road going towards rear side of the go-down and the internal road touches the acquired land. He has also stated that he has not seen the electrical transformer in the corner of the acquired land. He has also admitted that Sanquelim town is at a distance of 1 Km from the acquired land and that there is a bus stop near the acquired land on the Bicholim-Sanquelim road. He has also admitted that 11KV electricity line has been shifted after the acquisition. He has also admitted that he has not seen the plots in respect of the sale instances produced by the applicant. In re-examination he has produced the

NOC dated 15.03.2013. In his further cross examination, he has admitted that the total land put up for sub division was 66253 square metres. He has also admitted that the electricity line has been shifted. The learned Reference Court while passing the impugned judgment has noted that the sale deeds at Exhibits 24 to 29 relied upon by the applicant are in the vicinity of the acquired land and in fact the Exhibits 24, 25 and 28 are sharing the boundary of the acquired land. The learned Judge has also noted that the prices disclose a gradual increase in the price depending upon the size of the land covered in the sale instances. The learned Judge further noted that as such deduction would have to be made on account of development charges and smallness of the plot in the sale instances. As pointed out herein above, the land acquired was in the vicinity of the residential houses which were located very close to the acquired land. Taking note of the dissimilarities of the acquired land and the demerits thereon, the learned Judge has deducted 40% towards such factors and fixed compensation at the rate of Rs.300/- per square metre.

11. The Apex Court in the judgment reported in **(2015) 2 SCC 262** in the case of **Major General Kapil Mehra and others V/s Union of India and another** has reiterated the factors to be considered while fixing the market value of the acquired land in terms of Section 23 of the said Act. Some of the factors include the existing geographical situation of the land, use of the land, proximity to the

national or State highway, market value of other land in the same locality. It is now well accepted that comparative sales method is preferred over other methods of valuation of land since it furnishes evidence for determination of the market value of the acquired land which a wiling purchaser would pay for the land if it had been sold in the open market at the time of issuance of Section 4 Notification. The Apex Court has observed at paras 14, 34, 35, 36 and 37 thus :

> "**14**. While taking comparable sales method of valuation of land for fixing the market value of the acquired land, there are certain factors which are required to be satisfied and only on fulfillment of those factors, the compensation can be awarded according to the value of the land stated in the sale deeds. In Karnataka Urban Water Supply and Drainage Board and Ors. v. K.S. Gangadharappa & Anr., (2009) 11 SCC 164, factors which merit consideration as comparable sales are, interalia, laid down as under:-
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> > "8. '16."9. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:
> >
> > (i) when sale is within a reasonable time of the date of notification under Section 4(1);
> >
> > (ii) It should be a bona fide

> transaction;
>
> (iii) It should be of the land acquired or of the land adjacent to the land acquired; and
>
> (iv) It should possess similar advantages.
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> 10. It is only when these factors are present, it can merit a consideration as a comparable case (See Special Land Acquisition Officer v. T. Adinarayan Setty (AIR 1959 SC 429). These aspects have been highlighted in Ravinder Narain v. Union of India (2003) 4 SCC 481."

34. Consistent view taken by this Court is that one- third deduction is made towards the area to be used for roads, drains, and other facilities, subject to certain variations depending upon its nature, location, extent and development around the area. Further, appropriate deduction needs to be made for development cost, laying roads, erection of electricity lines depending upon the location of the acquired land and the development that has taken place around the area.

35. Reiterating the rule of one- third deduction towards development, in Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by Lrs. and Ors. vs. Special Land Acquisition Officer and Ors., (2012) 7 SCC 595, this Court in paragraph 19 held as under:-

"19. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In Kasturi vs. State of Haryana (2003) 1 SCC 354) the Court held: (SCC pp. 359-60, para 7)

"7… It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for road and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough, particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character or a developed area. In 84 acres of land acquired even if one portion on one sides abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose." (emphasis supplied).

The rule of 1/3rd deduction was reiterated in Tejumal Bhojwani v. State of U.P. ((2003)10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer, (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority. (2004)10 SCC 745"

36. While determining the market value of the acquired land, normally one third deduction i.e. 33 1/3% towards development charges is allowed. One third deduction towards development was allowed in Special Tehsildar, L.A. Vishakapatnam vs. Smt.A. Mangala Gowri, (1991) 4 SCC 218; Gulzara Singh & Ors. vs. State of Punjab & Ors., (1993) 4 SCC 245;

> Santosh Kumari & Ors. vs. State of Haryana, (1996) 10 SCC 631; Revenue Divisional Officer-cum-LAO vs. Shaik Azam Saheb etc., (2009) 4 SCC 395; A.P. Housing Board vs. K. Manohar Reddy, (2010)12 SCC 707; Ashrafi & Ors. vs. State of Haryana & Ors., (2013) 5 SCC 527 and Kashmir Singh vs. State of Haryana & Ors., (2014) 2 SCC 165.
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> **37**. Depending on the nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in Haryana State Agricultural Market Board and Anr. vs. Krishan Kumar and Ors. (2011) 15 SCC 297; Deputy Director Land Acquisition vs. Malla Atchinaidua And Ors. AIR 2007 SC 740; Mummidi Apparao (Dead by LR) vs. Nagarjuna Fertilizers & Chemical Ltd., AIR 2009 SC 1506; and Lal Chand vs. Union of India and Anr. (2009) 15 SCC 769."

12. Taking note of the said observations, the Reference Court has found the most comparable sale instance wherein the price was fixed at Rs.500/- per square metre. In the present case, the land acquired as pointed out herein above is very close to the highway besides being surfaced by an internal road. The evidence also discloses that a substantial portion of the land is levelled and as admitted by the witness of the respondent, the land being rocky land was more suitable

for construction purpose. Apart from that, the telephone line and the electrical transformer were also available at the time of Section 4 Notification adjoining to the acquired land. As such, on account of development charges which include the construction of internal roads and maintaining the requisite statutory set back etc., after considering the advantage of the acquired land being close to the highway, partly levelled and rocky land, a deduction of 30% would be fair and reasonable. Besides deductions on account of the dissimilarities of the land acquired vis-a-vis comparable sale instances produced by the applicant would also have to be examined. It is not in dispute that the sale instances are small plots as compared to the acquired land and on this count of the largeness of the land acquired a deduction of 15% would be required to be effected. Thus, an aggregate deduction of 45% from the price disclosed in the sale instance would as such be fair, just and appropriate. After such deduction, the market value of the acquired land as on the date of Section 4 Notification would work out to a sum of Rs.275/- per square metre. To that extent, the impugned judgment and award deserves to be modified.

13. The contention of Mr. Ferreira, learned counsel appearing for the applicant that the compensation for the land acquired is to be fixed at the rate of Rs.500/- per square metre based on the sale instances and the potential of the land acquired cannot be accepted. Taking note of the price of developed plot prevailing as on the date

proximate to the date of Section 4 Notification in the present case, the market value of the acquired land has to be fixed at the rate of Rs.275/- per square metre for the reasons recorded herein above. As such, the appeal preferred by the applicant bearing First Appeal No. 56 of 2015 deserves to be dismissed. The point for determination is answered accordingly.

14. In view of the above, we pass the following :

O R D E R

(i) First Appeal No. 74 of 2015 is partly allowed and the compensation for the land acquired is fixed at the rate of Rs.275/- per square metre.

(ii) First Appeal No. 56 of 2015 preferred by the applicant stands dismissed.

(iii) Needless to say that the applicant are entitled for the statutory benefits in terms of Sections 23(1A), 23(2) and Section 28 of the said Act in accordance with law.

(iv) Both the appeals stand disposed of accordingly with no order as to costs.

K. L. WADANE, J **F. M. REIS, J**

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