IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 110 of 2010

1 State of Goa,
through its Land Acquisition
Officer, (Collector under Land
Acquisition Act, 1894), PWD
Cell, Altinho, Panaji Goa.
403001.

2 The Executive Engineer,
Works Division-VII (NH)
P.W.D., Panaji Goa. .... Appellants.

V/s

1 Mrs. Millicent Felicia Pinto Sa,
Widow of Marcos Alvaro De
Sa, Major in age.

2 Mr. Fransisco Mirabeau Pinto
Sa, commonly known as
Fransisco de Sa, son of late
Marcos Alvaro De Sa, Major
in age.

3 Ms. Maria Julia Filomena
Pinto e Sa, Daughter of late
Marcos Alvaro de Sa, Major in
age.

4 Mr. Tino Rossi Antonio Sao
Judas Pinto Sa, commonly
known as Tino de Sa, Son of
late Marcos Alvaro de Sa,
Major in age.

5 M. Maria Yolanda Pinto e Sa,

Daughter of late Marcos
Alvaro de Sa, Major in age.

6 Mr. Baldwin Maria Pinto Sa, Commonly known as Baldwin de Sa, Son of late Marcos Alvaro de Sa.

7 Mr. Harold Marcos Antonio Pinto Sa, commonly known as Harold de Sa, Son of late Marcos Alvaro De Sa, Major in age.

8 Mr. Inacinho Celestinho do Pinto e Sa, commonly known as Ignatius de Sa, Son of late Marcos Alvaro de Sa, Major in age.

All Indian Nationals and residents of House No.73, Near Ex-Hospital, Now by Goa Institute of Management, Ribandar, Ilhas, Goa. .... Respondents.
Pin Code 403006.

Ms. S. Mordekar, Additional Government Advocate for the appellants.

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

CORAM : U. V. BAKRE, J.

Reserved on : 19th January, 2015.

Pronounce on : 30th January, 2015.

JUDGMENT :

Heard Ms. Mordekar, learned Additional Government Advocate for the appellants and Mr. Ferreira, learned Counsel for the respondents.

2. This Appeal is directed against the Judgment and Award dated 30/03/2010 passed by the learned Adhoc District Judge, FTC, Panaji (“Reference Court”, for short) in Land Acquisition Case No. 13 of 2009. The appellant no.1 was the respondent whereas respondents were the applicants in the said Land Acquisition Case. 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 12/11/2002, land was acquired from 8 villages for Ribander bye-pass from kilometres 143.500 to 153.200 kilometres of NH-4A. This included an area of 300 square metres of land from Chalta no. 16 of P. T. Sheet no. 16 of city of Panaji, belonging to the applicants. By award dated 16/02/2008, the learned Land Acquisition Officer ('L.A.O.', for short) awarded compensation at the rate of ₹ 150/- per square metre. Not being satisfied with the offer made by the L.A.O., the applicant filed an application for reference under Section 18 of the L. A. Act, before the L.A.O. which gave rise to the said Land Acquisition Case No. 13 of 2009.

4. The applicants stated that the acquired land fell within the limits and jurisdiction of Corporation City of Panaji and was a prime land in the settlement zone (S-2) which was next to Ex-Bal Niketan. They stated that the acquired land had great potential for development of residential houses and housing complex etc. They stated that the Government had fixed the land price in the area at the rate of ₹ 2000/- per square metre. The acquired land was a flat leveled land and the remaining major portion of the property of the applicants was a valley where no development was possible. They stated that the acquired land was less than 5 kilometres away from Panaji City. They claimed compensation at the rate of ₹ 1,000/- per square metre.

5. Accordingly, the issue was framed by the Reference Court.

The applicants examined Ms. Maria Yolanda Pinto Sa, the applicant no. 5, as AW1. She produced the property card of Chalta No. 16 of P. T. Sheet no. 16 as Exhibit 12; the valuation report of Engineer Mahendra Kakule as Exhibit 13 and sale deed dated 11/10/2001 as Exhibit 14. The applicants examined the said Civil Engineer Shri Mahendra Kakule as AW2 who proved his valuation report. The respondent did not examine any witness.

6. Upon consideration of the entire evidence on record, the learned Reference Court held that the sale instance at Exhibit 14 was suitable for determination of the market value of the acquired land. Since the acquired land was small in size whereas the sale deed land was bigger in size, the Reference Court made a deduction of 20%. Since the sale instance was about one year prior to the publication of notification under Section 4(1) of the L. A. Act, the Reference Court gave an increase of 10% and ultimately fixed the market value at the rate of ₹ 660/- per square metre. All the statutory benefits were also been granted to the applicants. The respondent has challenged the said judgment and award.

7. Ms. Mordekar, learned Additional Government Advocate submitted that the acquired land was a very narrow strip of land being about one and half to two metres in width and the remaining portion of the property of the applicants was a valley and, therefore, the sale deed at Exhibit 14 was not at all a comparable instance. She pointed out that AW1, in her cross-examination, has herself stated that the acquired land was not similar to the sale deed plot. She therefore urged that the impugned Judgment and award should be set aside and reference should be dismissed. In the alternative, the learned Additional Government Advocate submitted that if at all the sale deed was to be considered, a deduction of at least 75% had to be made.

8. On the other hand, Mr. Ferreira, learned Counsel appearing on behalf of the respondents submitted that the entire remaining property of the applicants was not a valley but only major part of the land was valley. He submitted that the applicants had flat leveled land which was beyond the acquired land and the said land was in settlement zone. He submitted that the evidence of AW2, the Civil Engineer, proves that the acquired land was similar in nature to the land of the sale deed at Exhibit-14. He submitted that deduction at the rate of 20% was adequate and it should be kept in mind that the respondent did not produce any evidence. He submitted that there is no merit in the appeal and no interference is called for with the impugned judgment and award.

9. I have perused the original record and proceedings of the Land Acquisition Case No. 13 of 2009. I have considered the arguments advanced by the learned Counsel for the parties.

10. The point that arises for determination is whether the compensation fixed by the Reference Court is just and reasonable or the same is exorbitant and requires to be reduced.

11. The acquired land is situated in the City of Panaji as is evident from the property card which is at Exhibit 12. The total area of Chalta No. 16 of P. T. Sheet No. 16 is 44004 square metres. Thus, the acquired land was a part of the vast property. In such circumstances, though the actual acquired land was a narrow strip of land having width of about one and half metres to two metres, however, the same is a part of the very vast land. It is true that AW1 in her evidence has stated that the major portion of the remaining property of the applicants was a valley where no development is possible. The above statement does not mean that the entire remaining portion of the property of the applicant was a valley where no development was possible. In any case, even a valley can be developed by filling land and bringing it to the level of the road. The acquired land was abutting the existing road. There is evidence of AW1 corroborated by a Civil Engineer that is AW2 which reveals that the acquired land was a leveled land suitable for construction of plots and it fell in settlement zone. The respondents had not produced any evidence in rebuttal. In such circumstances, it cannot be said that the acquired land did not have any potentiality for development.

12. The land of the sale deed which is Exhibit 14 was vast land admeasuring 24281 square metres. However, even the acquired land was a part of the vast last admeasuring 44004 square metres. In the sale deed land, a huge complex for army has been construction. Though AW1 has admitted in the cross-examination that the sale deed land is not similar and comparable with the acquired land, however Aw1 is a laymen. AW2, the expert witness, has stated that the land of the sale deed which is at Exhibit 14 is only at a distance of about 300 metres from the acquired land and is also in settlement zone and similarly served by civic amenities and other facilities. AW2 added that the plot of the sale deed was situated within the limits of Village Panchayat of Chimbel whereas the acquired land is situated within the limits of Panaji Municipal Corporation. AW2 stated that the nature of the acquired land was plane Bharad land which was ideal for construction. In such circumstances, the learned Reference Court has rightly relied upon the sale deed at Exhibit 14 for determination of the market value of the acquired land. The said sale instance being about one year prior to the date of notification under Section 4(1) of the L. A. Act, annual increase at the rate of 10% has been made in the price of the said sale deed land which in my view is just and reasonable. Since the acquired land was only 300 square metres in area whereas the sale deed land was vast being 24281 square metres, a deduction of 20% has been made in the price of the sale deed which also in my considered view is just and reasonable. The learned Reference Court has rightly arrived at the market value of the acquired land at the rate of ₹ 660/- per square metre. In my view, no interference is called for in the impugned Judgment and Award.

13. In the result, the appeal is dismissed.

U. V. Bakre, J.

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