

IN THE HIGH COURT OF BOMBAY AT GOA.

First Appeal No. 79 of 2011

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| 1] | Deputy Collector (LA)
South Goa, Margao. | |
| 2] | The Director of Sports and Youth Affairs,
Panaji, Goa. | .. <u>Appellants</u> |

Versus

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| 1] | Mr. Renato R. Dias
<u>Through L.Rs.</u> | |
| | 1(a) Glen Dias (son of deceased)
1(b) Jacqueline Dias (wife of Glen Dias)
1(c) Vinod Dias (son of deceased)
1(d) Frida Dias (wife of Vinod Dias). | |
| 2] | Maria Edviges,
Both r/o 2/10 Edward House,
Bamanwada,
Post Office :Sahar
Mumbai, 400 099 | <u>Respondents</u> |

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Mr.Manish Salkar, Government Advocate for the appellants/applicants.
Mr. C. A. Coutinho, Advocate for the respondents.

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CORAM : K.L. WADANE, J.

Date of reserving the Judgment : 03rd July, 2015.

Date of pronouncing the Judgment : 17th July, 2015.

JUDGMENT:

- 1] Heard Mr. Manish Salkar, learned Government Advocate
for the appellants and Mr. C.A. Coutinho, learned Advocate for the
respondents.

2] The original respondents-appellants have preferred this appeal against the judgment and award passed by the Adhoc District Judge-1, Fast Tract Court-I, South Goa in Land Acquisition Case No.91 of 2004 dated 15/12/2006, by which the learned Reference Court has enhanced the compensation of the acquired land i.e. for bharad land from Rs.24/- per sq. mt. to Rs. 100/- sq.mt. and for the paddy land from Rs.8/- per sq. mt. to Rs. 20/- per sq.mt. along with 30% solatium on the value of the land and the interest @12% per annum etc. Being aggrieved with the same, the original respondents have preferred this appeal, mainly on the ground that the learned Reference Court has not appreciated the oral as well as documentary evidence on record properly. The Reference Court has also not taken into consideration the relevant sale instances and its comparative value.

3] During the course of the arguments, Mr. Salkar, the learned Government Advocate appearing for the appellants, has argued that the acquired land is not connected to the route leading to the village and, therefore, 10% to 20% deduction was to be made. The learned Government Advocate further argued that the total acquired area is of 5800 sq.mt.; whereas the sale-deed of the plot is of 461 sq.mt. Therefore, the value/price of the sale-deed plot cannot be

compared with the acquired land because small plot always fetches high value/price. Therefore, the price of the sale-deed land/plot cannot be considered for the purpose of determining the market value of the acquired land.

4] As against this, Mr. Coutinho, the learned Advocate appearing for the respondents-applicants, has argued that the Reference Court has, in fact, determined and awarded the less amount of the compensation than the evidence available on record. According to the learned Advocate appearing for the respondents, even considering the relevant sale-deed dated 18.8.1999, it appears that this land under the sale-deed is adjacent to the acquired land and the sale-deed land was sold @ Rs.300/- per sq.mt. So, according to Mr. Coutinho, the compensation awarded by the Reference Court is less.

5] With the help of the learned counsel appearing for the respective parties, I have gone through the oral as well documentary evidence available on record and perused the entire record. On perusal of record, it is seen that the respondents have made reference under Section 18 of the Land Acquisition Act, 1894, relating to the acquisition of the land Survey nos. 80/3 ad-measuring 3600 sq.mt, 80/4 ad-measuring 1125 sq.mt., 80/5 ad-measuring 800 sq.mt., 80/6 sq.mt.

ad-measuring 350 sq.mt., and 101/8 sq.mt ad-measuring 150 sq.mt., situated at village Dramapur village, Tq. Salcete, Goa. On perusal of record, it is seen that the respondents have acquired land vide Notification under Section 4 of the Land Acquisition Act on 28.05.2001 and it was published in the Government Gazette on 14.06.2001.

6] From the pleadings of the parties and the evidence on record, it is seen that the land sought to be acquired was for the purpose of construction of Government School play-ground and the award was passed on 08.10.2003 and the learned Land Acquisition Officer awarded the amount of Rs. 24/- per sq.mt., for bharad land and Rs. 8/- sq.mt. for the paddy land. The respondents have received this amount under protest and filed a Reference. In the Reference Court, the applicant no.1 filed his affidavit and has reiterated all the contentions in his Reference under Section 18 of the Land Acquisition Act. In support of his oral evidence, the respondents have relied upon the sale-deed dated 18.8.1999 at Exhibit 20 and the sale-deed dated 21.10.2003 at Exhibit 21. Besides the oral evidence of the claimants, the claimants have adduced oral evidence of one Mahendra S.Kakule, Civil Engineer, a Registered Valuer, vide Exhibit 21 and relied upon his Valuation Report at Exhibit 22, the form of 1/14. Another Surveyor

Mr. Furtado has adduced his oral evidence at Exhibit 23. Considering the oral as well as documentary evidence on record, the learned Reference Court has awarded the compensation, as referred above.

7] After hearing both sides and upon the scrutiny of the oral as well as documentary evidence on record, the following points arise for my determination:-

<u>Points</u>	<u>Findings</u>
(i) Whether the Reference Court has awarded compensation to the acquired land in excess of the evidence on record?	.. <u>NO.</u>
(ii) What order?	.. Appeal is dismissed with costs.

Reasons:

8] To prove the claim of the original applicants/respondents herein, the applicant no.1 has deposed that the acquired land is very close to the main road proceeding from Dramapur to Margao and it touches to the road. He further deposed that the acquired land is closed to the Church which is at the distance of 50 metres, market is at a distance of 65 metres and the school is at a distance of 65 metres. Besides the above, there are water and electric facilities readily available to the acquired land. There are houses located surrounding the acquired property and its heart of the village which is developing

fast. During the cross-examination of this witness, nothing has been brought on record to disbelieve his version. In addition to the oral evidence, the applicants have relied upon the evidence of Mahendra Kakule and Mr. Agostinho Furtado, both of them are Experts, one is Valuer and another is Surveyor. Both the witnesses have consistently stated that the acquired land was having a good potentiality for the purpose of commercial activities as well as residential purposes. From the record and the circumstances, it is absolutely clear that the land is acquired for the purpose of Government School Play-ground and it has come in the evidence that the school is adjacent to the acquired land. So, naturally the land must be of plain and it is suitable for the construction. Therefore, it has been acquired for the purpose of school play-ground.

9] Looking to the contents of the sale-deed at Exhibit 20, it appears that this sale-deed dated 18.8.1999 i.e. before the publication of the notification under Section 4 of the Land Acquisition Act. Therefore, it can be considered to determine the value of the acquired land as on the date of the notification under Section 4 of the Land Acquisition Act. From the recitals of the sale-deed, it is seen that one Mr. Prabhu Gaonkar and his wife sold this land at the rate of Rs.300/- sq.mtr. From the map submitted along with valuation report, it is seen

that sale-deed land is just adjacent to the acquired land and there is road between these two lands leading from Dramapur to Margao. However, this plot under the sale-deed of 1999 is a small having area of 461 sq.mt., whereas a large area for about 5800 sq.mt. consisting of several survey numbers and its pot-share were acquired. Therefore, some deduction to that effect has to be considered. Apart from that aspect, the learned Reference Court has awarded Rs. 100/- per sq.mt. to the bharad land and Rs. 22/- sq.mt., for the paddy land, much less compared to the evidence on record. Therefore, at any stretch of imagination, it cannot be said that the amount of compensation awarded by the Reference Court is excessive, compared to the evidence on record.

10] I have gone through the reasons recorded by the learned Reference Court, I find that the reasons recorded by the learned Reference Court appears to be proper while enhancing the amount of compensation. Hence, the finding recorded by the learned Presiding Officer of the Reference Court needs no interference. There is no substance in the appeal. Therefore, it has to be dismissed. Accordingly, it is dismissed with costs.

K.L.WADANE, J

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