

IN THE HIGH COURT OF BOMBAY AT GOA.

**FIRST APPEAL NO.276 OF 2008
WITH
CROSS OBJECTION NO. 3 OF 2009.**

Dy. Chief Executive Officer,
Goa Industrial Development
Corporation, having office at
Plot No.13A-2, EDC
Complex, Patto Plaza, Panaji,
Goa. Appellant.

Versus

- 1 Comunidade of
Quelossim, through
Administrator of
Comunidade, Margao,
Salcete, Goa.
- 2 Dy. Collector & S.D.O
Quepem and Land
Acquisition Officer. Respondents.

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

Mr. S. D. Padiyar, Advocate for the respondent no.1.

Ms. S. Linhares, Additional Government Advocate for the
respondent no.2.

**Coram:-F. M. REIS,
K. L. Wadane,JJ.**

Date:-23rd February, 2015.

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

Heard Mr. H. D. Naik, learned counsel appearing for the

appellant, Mr. S. D. Padiyar, learned counsel appearing for the respondent no.1 and Ms. S. Linhares, learned Additional Government Advocate appearing for the respondent no.2.

2. The above appeal challenges the judgment and award dated 14th February, 2008 passed by the learned District Judge, South Goa, Margao in the Land Acquisition case no. 84/2000 whereby the Reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as “the said Act” for short), filed by the Respondent no.1 was partly allowed and the compensation for the lands acquired, was fixed uniformly at the rate of Rs.56/- per square metre.

3. Briefly the facts of the case are as follows :-

Pursuant to the notification issued under Section 4 of the said Act, published in the official gazette dated 5.10.1987, the lands belonging to the respondent no.1 was intended to be acquired for Phase I of the Verna Industrial Estate. The untenanted land belonging to respondent no.1 which was acquired was approximately admeasuring between 75 to 1,78,350 square metres under various survey numbers. Besides an approximate area of 49,875 square

metres which was shown as tenanted lands was also acquired under the said notification from the respondent no.1. The Land Acquisition Officer passed an award dated 29.11.1994 whereby the compensation for the lands acquired was offered at different rates ranging from Rs.2/- to Rs.7/- per square metre, depending upon the nature of the said lands. The Land Acquisition Officer had offered a sum of Rs. 4.50 per square metre for tenanted lands.

4. Being dissatisfied with the said award, the respondent no.1 preferred a reference under Section 18 of the said Act for enhancement of the compensation and claimed a sum of Rs.100/- per square metre for the land acquired. The Reference Court, after recording of evidence and hearing the parties by the impugned judgment and award dated 14.02.2008, fixed the compensation for the lands acquired uniformly at the rate of Rs.56/- per square metre.

5. Being aggrieved by the said judgment, the appellant preferred the said appeal. The respondent no.1 after being served in the above appeal filed cross objections challenging the said amount fixed by the Reference Court and claimed Rs.100/- per square metre for the acquired lands.

6. Mr. H. D. Naik, learned counsel appearing for the appellant has pointed out that the learned Reference Court failed to consider that there were no comparable sale instances produced on record to establish that the market value of the acquired lands as on the date of Section 4 notification was about Rs. 56/- per square metre. The learned counsel further points out that the lands acquired had no potential of being used for non-agricultural purpose, considering that the said lands were rocky lands, besides they contained open stone quarries. The learned counsel further points out that there was no development in the vicinity of the said acquired lands as on the date of Section 4 notification and as such, the Reference Court has erroneously enhanced the compensation for the lands acquired. The learned counsel submits that the respondent no.1 has failed to discharge the burden to establish that the amount offered by the Land Acquisition Officer was inadequate. The learned counsel further points out that the Land Acquisition Officer offered the amount on the basis of the nature of the lands considering that some portions of the property were bharad land and flat in nature whereas some portions were rocky land and some wherein tenants were already existing. The learned counsel further submitted that the Reference Court has failed to note the differences of the nature of the lands while awarding

the compensation and as such uniformly awarded a sum of Rs.56/- per square metre for the lands acquired and even for tenanted lands, which according to him, cannot be used for non-agricultural purpose. The learned counsel further submits that the Reference Court has fixed the compensation at the rate of Rs. 56/- per square metre which is totally unjustifiable though some portions thereof cannot be used for non-agricultural purpose. The learned counsel has, thereafter, taken us through the evidence as well as the impugned judgment to point out that the Reference Court has erroneously enhanced the compensation, when according to him, the reference itself by the respondent no.1 deserves to be dismissed.

7. On the other hand, Mr. Padiyar, learned counsel appearing for the respondent no.1 has pointed out that in fact the amount fixed by the Reference Court at the rate of Rs.56/- per square metre is on the lower side as the market value of the acquired lands as on the date of Section 4 notification is Rs. 100/- per square metre as the land in the vicinity of the acquired lands has high potential value as there was lot of demand for land, considering that hotel and other developments had already started as on the date of Section 4 notification. The learned counsel further points that the lands

acquired are flat land and suitable for non-agricultural purpose and as such, the Reference Court has failed to consider this aspect while considering the value of the lands acquired. The learned counsel further points out that the respondent no.1 has produced comparable sale instances to establish that the market value of the lands acquired was Rs.100/- per square metre.

8. Learned counsel further submitted that in support of their claim for enhancement of compensation, the respondent no.1 has examined an expert. The learned counsel further pointed out that the respondent no.1 has also produced awards in Land Acquisition Case no.23/1987(Exh.28), Land Acquisition Case no. 116/89 (Exh.29), Land Acquisition Case no.269/88(Exh.30), Awards in Land Acquisition Case nos.123/92 and 124/1992 at Exh. 31 and 32 respectively, besides copy of the sale deed dated 25.9.1984 (Exh.33) and valuation report to establish that the amount of compensation fixed by the Reference Court is inadequate. The learned counsel further points out that the Reference Court has erroneously fixed the compensation at the rate of Rs.56/- per square metre and, as such, according to him, the compensation should be fixed at the rate of Rs.100/- per square metre. The learned counsel further points out that

the cross objections filed in the present appeal be allowed and compensation be fixed at Rs.100/- per square metre.

9. We have duly considered the submissions of the learned counsel and have also gone through the record and on the basis thereof the following point for determination arise in the present appeal.

POINT FOR DETERMINATION

Whether the Reference Court was justified to fix the compensation for the acquired land at the rate of Rs.56/- per square metre and whether said amount deserves to be enhanced?

10. On perusal of the impugned judgment, it appears that the Reference Court has uniformly fixed the compensation for the lands acquired at the rate of Rs.56/- per square metre. The Reference Court has failed to note that in the award passed under Section 11 of the said Act the land which was the subject matter of acquisition was partly bharad land and partly at high level land and in some portion there were existing stone quarries. The Reference Court has failed to note that even while offering the compensation, the Land Acquisition

Officer had offered a sum of Rs.6/- to Rs. 7/- per square metre for different portions of the land whereas for a substantial area of 178350 square metres compensation at the rate of Rs.2/- per square metre was offered depending on the nature of the land. The Reference Court has failed to note that though the Goa Land Use Act was not in force in the year 1987 as it came in force somewhere in the year 1991 nevertheless, there are statutory restrictions in force for conversion of such land to be used for non-agricultural purpose. In such circumstances, considering the law in force after the protection to agricultural tenants by the Fifth amendment to the Goa Agriculture Tenancy Act in the year 1975, this aspect has also to be considered by the Reference Court while fixing the compensation of the land as such land is not a freehold land. On perusal of the judgment of the Reference Court, we find that the nature of the different portions of the lands acquired was not considered by the Reference Court as well as the fact that some portions of the lands were tenanted land. These factors would be material while fixing the market value of the lands acquired as it will have a bearing on the market value of the land acquired.

11. During the course of the hearing of the above appeal, it

was pointed out by the learned counsel for the parties that this Court, (wherein one of us F. M. Reis, J is a member) has disposed of First Appeal No. 138 of 2008 by judgment dated 26.11.2010 whereby an appeal preferred by the appellant herein was partly allowed and the compensation of the land acquired was fixed at Rs.36/- per square metre with regard to bharad land and Rs.30/- per square metre in respect of other lands which were of a different nature. In this connection Mr. H. D. Naik, learned counsel appearing for the appellant and Mr. S. D. Padiyar, learned counsel appearing for the respondent no.1 have pointed out that as far as the subject matter of the land acquired in the present proceedings is concerned, an area of 1,78,350 square metres of such land is acquired wherein the Land Acquisition Officer had offered a sum of Rs.2/- per square metre. In such circumstances, it is also not disputed by the learned counsel appearing for the appellant that the land which was subject matter of the acquisition to the extent of an area of 1,78,350 square metres was comparable to the land which was subject matter of said First Appeal No. 138/2008 as said land was of similar nature wherein this Court has fixed compensation at the rate of Rs.30/- per square metre. In such circumstances, it is also not in dispute that the notification in the present case as well as the notification of the subject matter of the said

First Appeal No. 138/2008 was one and the same. The learned counsel also do not dispute that the lands which were the subject matter of the present proceedings were adjoining to the lands which were the subject matter of the said First Appeal. In such circumstances, this Court can advantageously rely upon the judgment passed in the said First Appeal to fix the compensation in the present case. Mr. Padiyar also points out that the Special Leave Petition preferred by the appellant herein challenging the said judgment came to be dismissed by the Hon'ble Apex Court by an order dated 05.10.2012. In such circumstances, the appellant cannot dispute the amount fixed by this Court while awarding compensation in the present acquisition proceedings as the similarity and nature of both the lands is accepted.

12. Taking note of the said admitted position, we find that for the reasons stated in the said judgment of the Division Bench of this Court dated 26.11.2010, the compensation fixed by the Reference Court deserves to be modified as the subject matter of both the lands are similar. Besides the fact that both the lands were acquired pursuant to the same notification issued under Section 4 of the Act is also accepted and as such we find that the amount of compensation

for the land acquired in the present acquisition is to be fixed on the similar basis as that fixed by this Court while disposing of the said First Appeal.

13. Taking note of the fact that in the award passed by the Land Acquisition Officer under Section 11 of the said Act, an amount of Rs. 2/- per square metre was offered for an area of 1,78,350 square metres the compensation for such land is to be fixed at the rate of Rs.30/- per square metre. As far as the remaining untenanted land which is subject matter of the present appeal, the compensation is to be fixed at Rs.36/- per square metre based on the judgment in the First Appeal.

14. With regard to the land which is tenanted, Mr. Naik, learned counsel appearing for the appellant has also contended that in view of the statutory restrictions for conversion a specific deduction would have to be effected in respect of such tenanted land. No doubt, the provisions of Goa Land Use Act, 1991 would not be applicable to such land which was subject matter of the acquisition in the present appeal as admittedly Notification in the present case was issued much prior to coming into force of the said Goa Land Use Act. In such

circumstances, as the land would be vested in a tenant in terms of the provisions of the Agricultural Tenancy Act, this aspect would have to be taken up while fixing the market value of the land acquired as the tenancy itself imposes restrictions for transfer of such lands. In the facts and circumstances of the case, we find that there is no material on record to establish that the claim of tenancy is admitted by the respondent no.1 herein. However, some lands are shown to be tenanted land in award itself. As such, we find that as far as the tenanted land is concerned, a further deduction of 50% would have to be effected to fix the market value of such land. In such circumstances, the compensation for the land acquired which approximately admeasures 49875 square meters is to be fixed at the rate of Rs.18/- per square metre. To that extent, the impugned judgment and award passed by the Reference Court would have to be modified.

15. The contention of Mr. Padiyar, learned counsel appearing for respondent no.1 that the compensation awarded by the Reference Court needs to be enhanced cannot be accepted in view of the judgment passed by this Court while disposing of the said First Appeal. The point for determination is answered accordingly.

16. In view of the above, we pass the following:-

ORDER

- i. Appeal is partly allowed.
- ii. Cross objections stand rejected.
- iii. The impugned judgment and order passed by the Reference Court is modified. The compensation for the land admeasuring 178,350 square metres where Land Acquisition Officer has awarded Rs.2/- per square metre is fixed at Rs.30/- per square metres and for the balance untenanted land compensation is fixed at the rate of Rs. 36/- per square metre. As far as tenanted land is concerned, the compensation is fixed at Rs.18/- per square metre. Needless to say that respondent no.1 is entitled to all the statutory benefits in terms of Sections 23(1A), 23(2) and Section 28 of the said Act in accordance with law.
- iv. The impugned judgment passed by the Reference Court stands modified accordingly. Appeal and Cross objections stand disposed of accordingly with no order as to costs.

K. L. WADANE, J .

F. M. REIS, J.