

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 128 OF 2008
WITH
CROSS OBJECTION NO. 17 OF 2009

FIRST APPEAL NO. 128 OF 2008

1. Dy. Collector & SDO
Mormugao,
Vasco-da-Gama.
2. The Director of Health Service,
Panaji Goa. Appellants

V e r s u s

Confraria Igreja de Cortalim,
Mormugao
By its Constituted Attorney
Shri Adrian Dias,
Cortalim. Respondent

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

Mr. R. G. Ramani, Advocate for the respondent.

AND

CROSS OBJECTION NO. 17 OF 2009

Confraria Igreja de Cortalim, Mormugao
by its Constituted Attorney
Domingos Fernandes,
Thana, Alma Bhat,
Cortalim Goa ... Cross Objectitioner/
Original Respondent

V e r s u s

1. Dy. Collector & SDO,
Mormugao,
Vasco-da-Gama Goa.

2. The Director of Health Service
Panaji Goa.

.... Respondents/Original
Appellants

Mr. R. G. Ramani, Advocate for the cross objector/ original respondent.

Ms. S. Linhares, Additional Government Advocate for the respondents/original appellants.

CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 24.07.2015

JUDGMENT PRONOUNCED ON : 07.08.2015

J U D G M E N T :

Being aggrieved by the judgment and award dated 31.01.2008 passed by the learned Ad-Hoc District Judge -1, FTC-I, South Goa, Margao, the appellants have preferred the present appeal and the respondent has preferred the cross objection.

2. The brief facts of the case may be stated as follows :

The respondent herein filed a reference under Section 18 of the Land Acquisition Act, 1894. The description of the immovable properties acquired are as under :

(a) survey No.56/2 admeasuring 395 square metres;

(b) survey No.56/1 admeasuring 894 square metres; and

(c) survey No.56/3 admeasuring 400 square metres situated at Village Cortalim.

3. The Government of Goa vide Notification dated 23.10.1990 under Section 4 of the Land Acquisition Act, published in the Goa Government Gazette dated 14.02.1991 notified the subject lands to be acquired for the purpose of construction of a Primary Health Centre at Cortalim. The Government has issued Notification under Section 6 of the Land Acquisition Act which was published in the Government Gazette dated 25.03.1992 and award was passed on 25.04.1994 thereby awarding compensation of Rs.19/- per square metre for the bharad land and Rs.4.50 per square metre for the paddy land. Being aggrieved with the same, the respondent had filed a reference under the provisions of Section 18 of the Land Acquisition Act, and after hearing both the parties the learned Reference Court has awarded compensation at the rate of Rs.40/- per square metre for the bharad land and confirmed the amount of compensation awarded by the Land Acquisition Officer for the paddy lands. Being aggrieved with the compensation awarded to the bharad land, the appellants have preferred this present appeal.

4. As against this, being aggrieved with the judgment and award passed by the learned Reference Court the respondent has filed the cross objection and claimed enhanced compensation.

5. According to the respondent, the entire acquired area is well developed and there are houses in the entire area so also the market, panchayat and all other civic amenities are available within the radius of few hundred metres. There are well tarred metallic roads approaching to the acquired land and the same is fully developed for the purpose of construction. So according to the respondent, the entire acquired area is well developed having all amenities/facilities. Therefore, the learned Reference Court ought to have awarded compensation at the rate of Rs.200/- per square metre. After hearing both the sides, the learned Reference Court has awarded compensation to the respondent as referred to above.

6. By way of cross objection, the respondent raised the grounds/objections in the line of its petition under the provisions of Section 18 of the Land Acquisition Act. The President of the respondent filed his affidavit at Exhibit 13 and reiterated all the contents in the petition under Section 18 of the Land Acquisition Act.

7. As against this, no oral as well as documentary evidence produced on record on behalf of the appellants.

8. I have heard the arguments of Ms. S. Linhares, learned Additional Government Advocate appearing for the appellants and Mr. R. G. Ramani, learned counsel appearing for the respondent.

9. Considering the evidence on record and upon hearing both the sides, the following points arise for my determination :

	<u>POINTS FOR DETERMINATION</u>	<u>FINDINGS</u>
1	Whether the Reference Court was justified to fix the compensation for the property under survey no.56/2 at the rate of Rs.40/- per square metre and the compensation at the rate of Rs.4.50 for the property under survey nos. 56/1 and 56/3 ?	No
2	Whether the Reference Court was justified to reject the reference in respect of the property under survey nos. 56/1 and 56/3 ?	No
3	What Order ?	Appeal is dismissed and Cross objection is partly allowed

REASONS

10. **Point Nos. 1 and 2 :-** I have heard the arguments of Ms. S. Linhares, learned Additional Government Advocate appearing for the appellants and Mr. R. G. Ramani, learned counsel appearing for the respondent. During the course of the arguments, the learned Additional Government Advocate has argued that the amount of compensation awarded for the land under survey No. 56/2 is exorbitant compared to the evidence on record. According to Ms. Linhares, the compensation awarded by the Land Acquisition Officer was proper. The learned Additional Government Advocate further argued that the Land Acquisition Officer has taken into consideration

the relevant sale instances of the lands situated in the vicinity of the acquired land.

11. As against this, Mr. Ramani, learned counsel appearing for the respondent has argued that the lands from all the three survey numbers are adjacent to each other having similar potentialities so also similar amenities. Therefore, the learned Reference Court ought to have awarded compensation at the rate of Rs.200/- per square metre irrespective of the fact that the land is bharad or paddy land.

12. It is seen from the evidence on record that the respondent in addition to its oral evidence have placed reliance upon four sale deeds : (1) Sale deed dated 10.09.1990, (2) sale deed dated 14.03.1990, (3) sale deed dated 21.09.1989 and (4) sale deed dated 23.04.1991.

13. Looking to the oral as well as documentary evidence on record, it appears that the best available documentary evidence is the sale deeds which the respondent has produced on record. Another method to calculate and determine the compensation is on the basis of the judgment and award of the acquisition of the land in the same vicinity and by way of expert evidence. So looking to the various dates of the sale deeds referred to above, the sale deed

which is executed at the time of proximate to the date of issuance of Notification under Section 4 of the Land Acquisition Act is most relevant and has to be taken into consideration. Another factor to be considered is that the land covered under the sale deed must be within the vicinity and similar to the acquired land.

14. The size of the acquired land with comparable sale deed land is also another important factor to be taken into consideration. If the acquired land is found to be equally similar with the sale deed land in reference to the locality, size and its nature, then that would be the best evidence to show the price of the acquired land prevailing at the time of the issuance of the Notification under Section 4 of the Land Acquisition Act. Keeping in mind the above circumstances, the sale deed at serial no.1 dated 10.09.1990 admeasuring 475 square meters from survey no.23/12 situated at Cortalim village i.e. same village where the acquired land is situated. This land is sold for a consideration of Rs.1,85,000/-. This sale deed cannot be taken into consideration because its area is very small and the plot is sold along with house. So far as the second sale deed dated 14.03.1990 is concerned, it also relates to the sale of house along with surrounding land. Therefore, this sale deed also seems to be the sale of the plot along with the right in the constructed house. The fourth sale deed dated 23.04.1991 is after Section 4 Notification. Therefore, it has no much relevance. The sale deed at

serial no.3 dated 21.09.1989 is relevant sale deed to be taken into consideration. The area under the sale deed is about 2250 square metres and the total area of the acquired land is 1689 square metres. The sale deed plot is situated in the same village having similar amenities as can be seen from the evidence on record. The learned Reference Court has also relied upon the said sale deed and awarded compensation at the rate of Rs.40/- per square metre to the bharad land. However, the compensation was not enhanced in respect of the paddy land. Mr. Ramani, learned counsel appearing for the respondent has pointed out that the sale deed at serial no.3 is dated 21.09.1989 and the Notification is dated 14.02.1991. Therefore, the learned Reference Court ought to have considered the fact that the prices of the lands are increasing day by day and could have considered 15% increase in the price in view of the observations in the case of ***Krishi Utpadan Mandi Samiti Sahaswan V/s Bipin Kumar and another***, reported in **(2004) 2 SCC 283**. The land under the sale deed dated 21.09.1989 was sold at the rate of Rs.40/- per square metre and the appreciation at the rate of 15% for every year comes to Rs.46/- per square metre to which the respondent is entitled for the bharad land under survey No.56/2 admeasuring an area of 395 square metres.

15. The lands under survey nos.56/1 and 56/3, appear to be paddy lands. However, the said lands are situated in the same

vicinity where the land under survey no.56/2 is situated. Therefore, the learned Reference Court ought to have taken into consideration the similar amenities available to the paddy lands. However, the learned Reference Court has not taken into consideration such aspect. No doubt, the bharad land is having potentialities of being used for construction activities whereas the paddy land needs to be filled and required development. Therefore, the paddy land cannot be compared with the bharad land for the purpose of its potentialities for the construction activities. Therefore, the Land Acquisition Officer has classified the acquired land in two categories as referred to i.e. bharad land and paddy land.

16. Looking to the cross examination made on behalf of the appellants, nowhere it is the case of the appellants that the paddy land was a tenanted land. Therefore, it cannot be converted for non agricultural purpose. No doubt, for development of such lands, some expenses are required to be incurred and after deduction of development charges/cost, the price of the paddy land can be determined.

17. Considering the evidence on record and the fact that the respondent has proved the price of the acquired land to the extent of Rs.46/- per square metre from which if 65% is deducted towards the development charges as has been observed in the case of **Basavva**

and others V/s Special Land Acquisition Officer and others, reported in ***(1996) 9 SCC 640***, then the price for all the paddy lands can be fixed at the rate of Rs.20/- per square metre. Hence, the respondent is entitled for the compensation at the rate of Rs.20/- per square metre for the paddy land.

18. Looking to the reasons recorded by the learned Reference Court, it is seen that the learned Reference Court has not taken into consideration the well settled legal position while fixing the market price for the land acquired and not awarded any enhanced compensation to the paddy lands. Therefore, the judgment and award passed by the learned Reference Court has to be modified accordingly. Hence, the following :

ORDER

- (i) Appeal is dismissed.
- (ii) Cross objection is partly allowed.
- (iii) The cross objectioner/original respondent is entitled for the compensation at the rate of Rs.46/- per square metre for the land under survey No.56/2 admeasuring an area of 395 square metres and at the rate of Rs.20/- per square metre for the land under survey No.56/1 admeasuring an area of 894 square metres and land under survey No.56/3 admeasuring an area of 400 square metres.

(iv) The appeal and cross objection stand disposed of accordingly with no order as to costs.

K. L. WADANE, J

at*