

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 1 OF 2011

- 1] Executive Engineer,
W.D. VIII GTIDC,
Near Industrial Estate,
Karaswada, Bardez-Goa.
- 2] The Special Land Acquisition Officer (N)
Goa Tillari Irrigation Development
Corporation, Karaswada, Colvale Road,
Bardez-Goa.

...Appellants.

Versus

Smt. Revati G. Goltekar,
H. No. 264/4, TROPA,
Sodiem, Siolim,
Bardez-Goa.

... Respondent.

Mr. Pravin Faldessai, Additional Government Advocate for the
appellants.

Mr. Joaquim Godinho, Advocate for the respondent.

Coram :- U. V. Bakre, J.

Pronounced on : - 20th January, 2015.

ORAL JUDGMENT :

Heard learned counsel for the parties.

2. This appeal is directed against the Judgment and Award dated 05/06/2010 passed by the learned Principal District Judge, North Goa, Panaji, (Reference Court, for short) in Land Acquisition Case No. 21 of 2008.

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 26/05/2006, land was acquired for construction of L.B.M.C. of T.I.P. from ch. 27.70 kms. to 28.970 kms. in Siolim village of Bardez Taluka (Phase – I). This included land admeasuring 6073 sq. mts. from survey holding Nos. 262/2, 262/6, 262/9, 262/12, 262/15 and 264/9 of Siolim village. An area of 1020 square metres has been acquired from survey no. 262/2; 615 square metres from survey no. 262/6; 1100 square metres from survey no. 262/9; 668 square metres from survey no. 262/12; 1000 square metres from survey no. 262/15; and 1670 square metres from survey no. 264/9. By Award dated 12/10/2007, the learned Special Land Acquisition Officer (L. A. O., for short) awarded compensation at the rate of ₹ 40/- per square metre. Not being satisfied with the offer made by the L. A. O., the applicant made an application under Section 18 of the L. A. Act to the L. A. O., which gave rise to the said Land Acquisition Case No. 21 of 2008. The applicant claimed the compensation at the rate of ₹ 500/- per square metre, alleging that the acquired land is situated in residential area and close to the city and had all the facilities nearby.

4. Accordingly an issue was framed as per the claim of the applicant. The applicant examined her Power of Attorney holder namely Gajanan

Goltekar as AW-1. AW-1 produced a Sale Deed dated 27/05/1955 along with inscription and description documents and translation thereof as Exhibit 10-colly, Survey Forms No. I and XIV (six in number) in respect of the acquired land as Exhibit 11-colly, survey plan as Exhibit 12, valuation report as Exhibit 13, a Sale Deed dated 26/08/1988 as Exhibit 14, and a Sale Deed dated 12/09/2006 as Exhibit 15. The applicant examined Shri. Mahadeo Naik Tuenkar, a Civil Engineer as AW-2, who had prepared the said valuation report at Exhibit 13. The applicant also examined one Shri. Ranjit Borkar, attached to the office of Town Planner, Mapusa as AW-3, who has issued the certificate which is at Exhibit 26. The applicant lastly examined one Shri. Mahadeo Vithal Nagvenkar as AW-4 and AW-4 produced the Sale Deed dated 12/09/2006 at Exhibit 31-C. This is the same sale deed which is at Exhibit 15. The respondents did not examine any witness.

5. Upon consideration of the entire evidence on record, the Reference Court relied upon the Sale Deed dated 12/09/2006 at Exhibit 15 and after making certain deductions and also giving advantage of annual increase in the price of land, fixed the market value of the acquired land at ₹ 201/- per square metre. All the statutory benefits have been granted to the applicant.

6. Mr. Faldessai, learned Additional Government Advocate submitted that, the learned Reference Court had rightly discarded the Sale Deed at Exhibits 14. He submitted that the Reference Court wrongly relied upon the Sale Deed at Exhibit 15-C. He urged that the said Sale Deed is dated 12th September, 2006 which is after the date of publication of notification under Section 4 of the L. A. Act. He further pointed out that in the said Sale Deed at Exhibit 15, the price which was mentioned in the agreement dated 22/12/1999 was fixed. He submitted that the said transaction was therefore of more than five years prior to the date of publication of notification under Section 4 of the L. A. Act and therefore could not have been relied upon. He further submitted that the valuation report is dated 09/06/2008 and AW-2 had visited the acquired land two years after the date of notification. He submitted that the valuation report was therefore rightly not considered by the Reference Court. He pointed out from the evidence of AW1 that there was no evidence to show as to how far the plot of the Sale Deed at Exhibit 15 was situated from the acquired land. According to him, therefore there was absolutely no evidence for enhancement of the market value of the acquired land. He therefore urged that the appeal should be allowed and the impugned Judgment and Award should be quashed and set aside.

7. On the other hand, Mr. Godinho, learned counsel appearing on behalf of the applicant, submitted that the evidence on record proves that the acquired land was situated in a residential area and was touching the main tar road and all facilities and amenities were available to it. He further submitted that the acquired land was levelled land capable of being used for construction purposes. According to the learned counsel the Reference Court rightly relied upon Sale Deed at Exhibit 15 and had made appropriate deductions. He submitted that it is wrong to say that a sale instance which is more than five years prior to the date of acquisition cannot at all be looked into. In this regard, he relied upon the Judgment of the Division Bench of this Court in the case of “***Gracinda Braganza vs. Special Land Acquisition Officer (N) and another***” reported in [2010 (6) Mh. L. J.]. The learned counsel therefore submitted that no interference with the impugned judgment is called for and the appeal be dismissed.

8. I have gone through the record and proceedings of Land Acquisition Case No. 21 of 2008. I have considered the arguments advanced by the learned counsel for the parties and I have also considered the Judgment relied upon by the counsel for the applicant.

9. The point that arises for the determination is:

Whether the compensation awarded by the Reference Court is just and reasonable or whether the same is required to be reduced ?

10. AW-1, the constituted attorney of the applicant deposed that the acquired land was situated about 3 kms. away from Mapusa municipal market, Kadamba transport bus stop, colleges and high-schools and that the same was close to hospitals and banks. He stated that the applicant is the owner in possession of survey No. 264/9 having an area of 12075 square metres, survey No. 262/2 having an area of 4150 square metres, survey No. 262/6 having an area of 2175 square metres, survey No. 262/9 having an area of 4525 square metres, survey No. 262/12 having an area of 2675 square metres, and survey No. 262/15 having an area of 4050 square metres. He stated that all the above properties are situated in the residential area and are touching the municipal boundary of Mapusa city as also the main tar road due to which there was good transport facility available. He stated that the facilities of electricity and water supply were also available to the said properties. He stated that the said properties were levelled and could be used for construction of houses. He further stated about the existence of the trees therein. On perusal of the cross-examination of AW-1, it is seen that the testimony of AW-1 is not shaken. AW-1 produced various documents including the Sale Deed dated 12th September, 2006 at Exhibit 15-C.

11. Since the valuation report of AW-2 is based on inspection carried out two years after the publication of notification under Section 4 of the L. A. Act, the same cannot be relied upon. But his evidence on location, topography of the land and existing amenities and facilities can be looked into and the same corroborates the version of AW-1.

12. AW-4 Shri. Mahadev Vithal Nagvenkar is one of the purchasers in the said Sale Deed at Exhibit 15-C. He deposed that there existed a property bearing survey No. 271/2 having an area of 12025 square metres situated in the village Sodiem, Siolim, Bardez – Goa and that he purchased a portion of the same admeasuring 325 square metres from Mr. Antonio Caitano Jose Dos Reis Do Rosario Rocha and others by Sale Deed dated 12th September, 2006. He stated that he purchased the said plot at the rate of ₹ 400/- per square metre. AW-4 further stated that he knows the properties of the applicant bearing survey Nos. 264/9, 262/2, 262/6, 262/9, 262/12 and 262/15, portions of which are acquired. He stated that the said properties of the applicant are situated at a distance of about 1 ½ kms. from his property. He added that though the properties of the applicant are situated in village Sodiem, however they are touching the municipal boundary of Mapusa city.

13. AW-3, the Town Planner has issued a certificate (Exhibit 26) to the effect that as per the regional plan for Goa, 2001 A.D., the area under survey no. 264/9 of Siolim village is earmarked partly in settlement zone, partly in cultivated land zone and partly in orchard zone whereas the area under survey nos. 262/2, 6, 9, 12 and 15 has been earmarked partly in cultivated land zone and partly in orchard zone.

14. Though the Sale Deed at Exhibit 15 is dated 12/09/2006 which date is about four months after the date of publication of notification under Section 4 of the L. A. Act, the said sale instance had preceded by an agreement of sale dated 22/12/1999 and as per the said agreement the said plot admeasuring 325 sq. mts. was agreed to be purchased for the price of Rs.1,30,000/- i.e. at the rate of ₹ 400/- per square metre. Therefore, the price of the Sale Deed plot in December, 1999 was ₹ 400/- per square metre. There is no much force in the contention of the learned Additional Government Advocate that since the said agreement was more than five years prior to date of publication of notification under Section 4 of the L. A. Act, the same cannot be considered. In the case of **“Gracinda Braganza”** (supra), a Division Bench of this Court has observed thus:

“16. The Apex Court in the Judgment reported in 2008 (17) SCC 133, in the case of Sardar Jogendra

Singh vs. State of U. P., has held at paras 10, 11, 12 and 13 thus;

'10. The question is whether the said marked value is excessive as contended by the Parishad or low as contended by the claimants.

11. This Court in a series of judgments has taken judicial notice of the fact that there is a steady increase in the market value of land and has adopted the procedure of increasing the market value in the relied – upon transaction, at a given rate per year.

12. In ONGC Ltd. vs. Rameshbhai Jivanbhai Patel this Court held that in regard to urban and semi-urban areas, in the absence of other acceptable evidence, a cumulative increase of 10% to 15% was permissible with reference to acquisitions in the 1990s. In the decades preceding 1990s, the quantum of increase was considered to be less than 10% per annum. This Court however observed that transactions beyond five years before the acquisition, should be considered with caution and may not always be a reliable guide.

13. These cases relate to an acquisition in the year 1979. The relied-upon award related to an acquisition of the year 1969. The general increase between 1969-1979 can be taken to be around 8-10% per annum. If the said increase is calculated cumulatively, we find that the total

increase for ten years would be around 100%. Therefore the assessment by the Tribunal affirmed by the High Court, does not suffer from any infirmity.'

17. Considering the Judgment of the Apex Court, we find that there is no bar to consider the price fixed in the year 1980 for determining the market value of the land acquired in the year 1997, by considering that there is steady increase in the market value of land in the outskirts of Mapusa City, as the Sale Deeds produced by the parties cannot form the basis to determine the market value of land in the present case. The question of the nature of land in both the acquisitions is not in dispute but we will have to consider that the acquired land was not adjoining a National Highway which would naturally enhance the value as well as the fact that the land was converted a few years prior to the Section 4 Notification. There are also restrictions in development of land adjacent to the Highways which will also have to be taken into consideration."

15. Therefore, even a transaction which is beyond five years prior to notification under Section 4 of the L. A., Act, can be considered. However, the same should be considered with caution. In the present case, there is no dispute about the genuineness of the Sale Deed dated 12/09/2006, at Exhibit 15-C.

16. The learned Reference Court has taken into account that the Sale

Deed pertains to a small plot having independent access. The learned Reference Court has also taken into account the fact that the said sale instance was of a developed plot. Appropriate deductions on these counts have been made. Since the said price of the Sale Deed was of the year 1999 and considering that there is annual increase in the land rates at 10% every year, such increase has been taken into consideration and finally the market value of the acquired land has been fixed at ₹ 201/- per square metre.

17. Considering the evidence on record, both oral and documentary, it can be said the acquired lands which were parts of bigger properties were touching the Municipal boundary of Mapusa city and the main tar road. They were therefore accessible by main road. All major amenities and facilities were available to the acquired land. The acquired lands were on the boundary of Mapusa City and thus had this advantage over the sale deed plot. I am of the view that the compensation awarded by the learned Reference Court is just and reasonable and no interference whatsoever is called for with the same.

18. In the result, the appeal is dismissed.

U. V. BAKRE, J.

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