

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 28 OF 2010

1. Special Land Acquisition Officer,
(MPT),
2. The Executive Engineer,
Works Division VI (R-S),
P.W.D., Fatorda,
Margao Goa. ... Appellants

V e r s u s

1. Tome Isidoro Carvalho,
2. Smt. Maria dos Anjo s
Rodrigues,
3. Savio Batisto Carvalho
4. Smt. Maria Aldina Saldanha
Carvalho
5. Dionisio Nicolau Francisco
Carvalho,
6. Smt. Sarina Manteiro
Carvalho
7. Smt. Maria Eulalia
Leopoldina Carvalho,
8. Edmundo Sahapur Nicolau
Carvalho and
9. Miss Chagas Pia Carvalho,
respondent nos. 2 to 9 are duly represented
by their power of attorney Antonio P.H.
Carvalho, resident of House No.116/4,
Nauta, Cortalim Goa ... Respondents

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

Mr. Jose Filipe Melo, Advocate for the respondents.

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CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 13.10.2015

JUDGMENT PRONOUNCED ON : 27.10.2015

J U D G M E N T :

The present appeal is preferred by the original respondents against the judgment and award passed by the learned District Judge-I, South Goa, Margao in Land Acquisition Case No. 23/2007 dated 29.04.2009, by which the learned District Judge has enhanced the compensation to the extent of Rs.170/- per square metre.

2. The parties are referred to their original status.
3. The brief facts of the case may be stated as follows :

The land of the petitioners/respondents bearing survey No.128/1 situated at Village Cortalim, to the extent of 1400 square metres was acquired for the purpose of realignment of NH-17-B. The Notification under Section 4 was published in the Government Gazette on 31.10.2002. The Land Acquisition Officer has awarded compensation to the petitioners/respondents to the extent of Rs.30/- per square metre. Being aggrieved and dissatisfied with the same, the petitioners/respondents filed reference under Section 18 of the Land Acquisition Act. Before the Reference Court, the

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petitioners/respondents have adduced their oral evidence by filing respective affidavits at Exhibits 16 and 27. Besides their oral evidence, they have relied upon several sale deeds vide Exhibits 17 to 23 dated 3.10.2000, 4.2.2002, 17.1.2003, 25.4.2003, 15.9.2003, 13.10.2003 and 16.03.2007. The learned Reference Court has not considered the sale deeds on the ground that the acquired land had no development potential and it was not possible to make use of the acquired land for any other purpose also. The Reference Court has observed that the land sold under the sale deeds of which true copies relied upon by the petitioners/respondents is not similar to that of the acquired land and such sale deeds cannot be taken into consideration for the assessment of the market value of the acquired land.

4. I have heard the arguments of Mr. P. Phaldesai, learned Additional Government Advocate appearing for the appellants/respondents and Mr. J. F. Melo, learned counsel appearing for the respondents/petitioners.

5. Considering the arguments advanced by both sides and evidence on record, the following point arises for my determination :

	<u>POINT FOR DETERMINATION</u>		<u>FINDING</u>
1	Whether the amount of compensation awarded by the Reference Court is excessive compared to the evidence on record ?		No

2	What Order ?		Appeal is dismissed
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6. On perusal of the reasons recorded by the learned Reference Court, it appear that in the Land Acquisition Case No. 44/2004 the amount of compensation of Rs. 30/- per square metre was awarded to the petitioners and the appeal filed against the said judgment and award was pending before this Court. That reference was in respect of the land surveyed under No. 128 and the present respondent no.5 namely Dionisio Nicolau Francisco Carvalho, was one of the petitioners in that reference. Now the appeal filed against the judgment and award passed in Land Acquisition Case No. 44/2004 has been decided by the Division Bench of this Court. On perusal of the said judgment, it appears that by the Notification dated 30.09.1991, a part of survey No.128 was acquired for construction of new BG line by the Konkan Railway Corporation and the Division Bench of this Court has determined and fixed the market price of land surveyed under no.128 admeasuring an area of 1400 square metres to the extent of Rs.200/- per square metre.

7. The subject matter of the present appeal/acquisition is the same survey No.128/1. Therefore, from the records, it is seen that even the Division Bench of this Court has determined the market price of the survey No.128 to the extent of Rs.200/- per square metre i.e. on the date of Notification under Section 4 published on 30.09.1991.

Notification under Section 4 in the present matter was published on 30.10.2002 about 11 years later. So in my opinion, the amount determined and awarded by the learned Reference Court is much less than the amount determined by the Division Bench of this Court.

8. Looking to the reasons recorded by the learned Reference Court, it appear that the learned Reference Court has not relied upon the oral as well as the documentary evidence on record. However, the learned Reference Court has relied upon the observations in the case of **Nelson Fernandes and others Vs Special Land Acquisition Officer, South Goa and others**, reported in **(2007) 9 SCC 447** and enhanced the compensation from Rs.30/- per square metre to Rs.200/- per square metre. However, there is no further reference that the land which was the subject matter before the Apex Court was adjacent or within the vicinity of the acquired land in the present matter. Therefore, based upon the judgment of the Division Bench of this Court, I am of the opinion that the compensation determined and awarded to the respondents/petitioners is just and reasonable. As such, there is no substance in the appeal. Accordingly, it is dismissed with costs.

K. L. WADANE, J

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