

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 150/2012

SHRI SUDAM GOPAL PEDNEKAR,
major, married, businessman,
residing at Bella Vista, Near
Gautam Hotel, Sangolda,
Bardez, Goa.

APPELLANT

Versus

1. LAND ACQUISITION OFFICER,
P.W.D.Cell, Althino,
Panaji, Goa.
2. THE EXECUTIVE ENGINEER,
W.D.XV (N.H.),
P.W.D. Ponda, Goa.

RESPONDENTS

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Shri A.R. Kantak, Advocate with Ms. R. Kantak, Advocate for the appellant.

Ms. Susan Linhares, Additional Government Advocate for the respondents.

**CORAM :NUTAN D.SARDESSAI, J.
RESERVED ON : 22/04/2016.
PRONOUNCED ON :06/05/2016**

JUDGMENT :

1] The original owner of the acquired land is in appeal questioning the validity of the judgment passed by the Reference Court dated 17.07.2012 consequent upon the remand of the file to the Reference Court by this Court setting aside the earlier judgment dated 13.12.2002 in First Appeal No.107/2003 and First Appeal No.136/2003 at the instance of the owner and the

Acquiring Department respectively. The Acquiring Department had pursuant to the Section 4 of the Notification issued under the Land Acquisition Act, 1894 ("The Act" for short hereinafter) had acquired the land for the purpose of a construction of the bypass road which was published in the Official Gazette at Sr. No.34 dated 25.09.1989. An area of 1110 sq. mts. was acquired from the property bearing no.239 of the village Ponda for the said purpose and the Land Acquisition Officer, ("LAO" for short hereinafter) fixed the compensation @ ₹250/- per square mt. The appellant claimed the enhanced compensation at ₹4000/- per sq. mt. in the application under Section 18 of the Act and the Reference Court awarded the compensation as that fixed by her predecessor in office at ₹308/- per sq.mt. being the market value of the acquired land on the date of Section 4 Notification.

2] The appellant had examined himself, produced documents in support of his case including the sale instances to support his claim for the enhanced compensation and besides claimed severance charges towards the balance area of 365 sq.mts. which remained unacquired and rendered useless on account of the said acquisition. Besides the appellant also examined the Valuer and the other witnesses in support of his case. The learned Reference Court was swayed by the reasonings rendered by her Predecessor that the Agreement at Ex.AW1/D

was not a genuine transaction by basing her finding taking into account the Sale Deed dated 1.3.1989 at AW 1/I and on the specious premise that this Court had not disagreed with the findings recorded by her predecessor, hastily concluded that she had no reason to hold otherwise and fixed the market rate of the acquired land at ₹308/- per sq.mt. and confining her reasons to the aspect of the additional issue on the severance charges alone.

3] Shri A. R. Kantak, learned Advocate for the appellant submitted at the outset that when the original judgment of 2002 was quashed and set aside by this Court by its judgment dated 14.10.2010 and remanded the matter to the Reference Court for fresh adjudication, there was no justification for the Reference Court to avoid giving a finding on the market value of the acquired land on the specious premise that the High Court had not set aside the findings rendered by her predecessor. On that premise alone, the impugned judgment justified interference in appeal.

4] Shri A. R. Kantak, learned Advocate for the appellant adverted to the plan to canvass a plea whether any construction was possible in the area left unacquired due to severance. The Reference Court had not considered the matter in its proper perspective and had mechanically recorded the reasons resulting

in an erroneous judgment which called for an interference. He adverted to the evidence on record and relied in **Shamba Sinai Budkule & Ors. Vs. Addl. Deputy Collector and Land Acquisition Officer and anr. [2012 (6) Bom.C.R. 254]** and **Mahesh Dattatray Thirthkar Vs. State of Maharashtra [2009 (11) SCC 141]** to conclude his argument that the rate fixed by the Reference Court was not adequate and which had to be suitably enhanced considering the potential of the land in question.

5] Ms.S.Linhares, learned Additional Government Advocate for the respondents contended that the judgment rendered by the Reference Court was reasoned and that the learned Judge had analysed every aspect while passing the impugned judgment. The learned Reference Court had properly appreciated the material on record, considered the sale-deed in question and that the Report of the Valuer could not be taken into consideration as he had carried out the valuation much subsequent to the Section 4 Notification. The Sale Deed referred to and relied upon by the appellant dated 29.06.1989 was rightly not considered as there was no comparability with the acquired land. Insofar as the severance charges were concerned, it was her submission that there was no material on record to award severance charges. The appellant had not brought forth any

material on record to show the extent of the set back required to be maintained. The area available was sufficient for construction even if the set back was maintained and in the absence of any loss by any cogent evidence, the appellant was not entitled to any severance charges.

6] i have considered the rival submissions and also perused the records.

7] A cursory perusal of the Reference Application would reveal that the appellant had claimed that his plot of land surveyed under no. 239 part admeasured an area of 1479 sq.mts. but the award was made in respect of an area of 1110 sq.mts. leaving the balance of 365 sq.mts. severed from the remaining area rendering it useless. He had also spelt out a case that the acquired land was fully developed and there was an appropriate Sanad issued in his favour by the Deputy Collector on 7.5.1985 apart from the no objection from the Southern Planning and Development Authority. He had earlier agreed to purchase the plot by an Agreement of Sale dated 22.12.1985 from one Mulla Ibrahim and his wife for the price of ₹800 per square mt. and had thereafter spent a lot of money on its development and therefore, considering the increase in the land rates over a period of time , the market value of the acquired land had risen to

₹4000/- per sq.mt.

8] It was also the case of the appellant in the Reference Application that the LAO could never conclude that the Agreement was fabricated since the Notification for acquisition came about only in September 1989 four years after the agreement of sale and that he had purchased the plot for constructing a building complex after obtaining the necessary conversion and no objection from the relevant statutory authorities. The appellant had examined himself in which he had narrated at length his case as set out in the application including his plea on the severance of an area of 365 sq.mtr. rendered useless for construction activity.

9] The learned Reference Court had not at all examined the evidence brought on record to assess the extent of the appellant's entitlement to the enhanced rate and had mechanically relying on the observations of her Predecessor had maintained the market value at ₹308/- per sq.mt. without assigning any reason whatsoever. The Reference Court was duty bound to independently assess the material on record and arrive at an independent finding which she failed to do. In the circumstances, therefore, this is a fit case for reappraisal of the material on record by the Reference Court. The findings rendered by the Reference Court also on the aspect of severance charges

would have to be reappraised since the learned Reference Court had not given any reasonable and rational basis for fixing the market value of the acquired land.

10] In view thereof, the impugned judgment and the award dated 17.07.2012 is quashed and set aside and the matter is remanded to the Reference Court for fresh adjudication in the light of the findings given hereinabove. The Reference Court shall also expeditiously decide the matter for which the parties are directed to appear before it on 13.06.2016 at 10.00 hrs. with a direction to dispose off the same within a month thereof.

NUTAN D.SARDESSAI, J

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