

IN THE HIGH COURT OF BOMBAY AT GOA.

**FIRST APPEAL NOS.321 OF 2007, 297 OF 2007, 298 OF 2007
AND 10 OF 2008.**

FIRST APPEAL NO.321 OF 2007

1. The Special Land Acquisition
Officer, Salaulim Irrigation
Project, Gogol, Margao, Goa.
2. The Executive Engineer,
Works Division XIV (I.D.)
Gogol, Margao, Goa. Appellants.

Versus

Shri Pauline Barreto alias Pual
Barreto, R/o. C/o Abhay and
Associates, 'Nest' St. Joaquim
Road, Borda-Margao, Salcete Goa. Respondent.

Ms. S. Linhares, Addl. Govt. Advocate for the appellants.
Shri M. P. Almeida, Advocate for the respondent.

**WITH
FIRST APPEAL NO. 297 OF 2007.**

1. The Special Land Acquisition
Officer, Salaulim Irrigation
Project, Gogol, Margao, Goa.
2. The Executive Engineer,
Works Division XIV (I.D.)
Gogol, Margao, Goa. Appellants.

Versus

Dr. Jaime Vilanova Barreto alias
Dr. Joaquim Barreto @ Dr. James
Barretto, Medical Practitioner, R/o
Velsao, Mormugao Taluka (Since
deceased, represented through
LR's)
Paul Angelo Gustavo Barretto,
Married to Michelle Colacco e
Barreto. Respondent.

Ms. P. Bhandari, Addl. Govt. Advocate for the appellants.
Shri M. P. Almeida, Advocate for the respondent.

WITH
FIRST APPEAL NO.298 OF 2007.

1. The Special Land Acquisition Officer, Salaulim Irrigation Project, Gogol, Margao, Goa.
2. The Executive Engineer, Works Division XIV (I.D.) Gogol, Margao, Goa. Appellants.

Versus

Dr. Jaime Vilanova Barreto alias Dr. Joaquim Barreto @ Dr. James Barretto, Medical Practitioner, R/o Velsao, Mormugao Taluka (Since deceased, represented through LR's)
Paul Angelo Gustavo Barretto, Married to Michelle Colacco e Barreto. Respondent.

Shri N. Jamadar, Addl. Govt. Advocate for the appellants.
Shri M. P. Almeida, Advocate for the respondent.

WITH
FIRST APPEAL NO.10 OF 2008.

1. The Special Land Acquisition Officer, Salaulim Irrigation Project, Gogol, Margao, Goa.
2. The Executive Engineer, Works Division XIV (I.D.) Gogol, Margao, Goa. Appellants.

Versus

Shri Pauline Barreto alias Pual Barreto, R/o. C/o Abhay and Associates, 'Nest' St. Joaquim Road, Borda-Margao, Salcete Goa. Respondent.

Ms. P. Kamat, Addl. Govt. Advocate for the appellants.
Shri M. P. Almeida, Advocate for the respondent.

CORAM : NUTAN D. SARDESSAI, J.
Reserved on:-4th August, 2016.
Pronounced on:-1st September, 2016.

JUDGMENT:

Heard

2. Admit.

3. Shri M. P. Almeida, learned Advocate waives notice on behalf of the respondents in all the appeals.

4. These are the appeals at the instance of the Special Land Acquisition Officer ("the LAO" for short hereinafter) coming up for disposal today challenging the Judgment and award passed by the learned Reference Court dated 31.7.2007 pursuant to which the learned District Judge-I as the Reference Court had partly allowed the reference and fixed the market rate in respect of the acquired area at ₹68/- per square metre alongwith all the statutory benefits under the Land Acquisition Act, 1894 ("the Act" for short hereinafter) and the costs of the proceedings. The Parties would be referred to in their original status for brevity's sake hereinafter.

Brief Facts of the First Appeal No.321/2007

5. Admittedly the Government had acquired the land belonging to the respondent bearing Survey No.164/6 admeasuring 435 square metres pursuant to the Notification issued under Section 4 of the Act for the construction of the branch canal of the Salaulim Irrigation Project at Navelim. The LAO vide his award dated 3.1.1996 had awarded the compensation at ₹5/- per square metre and being aggrieved thereby the original applicant had filed a reference under Section 18 of the Act claiming the enhanced compensation at the rate of ₹350/- per square metre and which was enhanced to ₹68/- per square metre.

Brief Facts of the First Appeal No.297/2007

6. The Government had acquired the land of the respondent bearing survey no.175/4 admeasuring 90 square metres under the Notification issued under Section 4 of the Act for the same purpose. The LAO vide the award dated 3.1.1996 had awarded the compensation at the rate of ₹5/- per square metre and aggrieved thereby the original applicant filed a reference under Section 18 of the Act claiming the enhanced compensation at the rate of ₹350/- per square metre. The Reference Court enhanced the compensation to ₹68/- per square metre being the market value at the time of Section 4 Notification of the Act.

Brief facts of First Appeal No.298/2007

7. The Government had acquired for the very same purpose the land of the original applicant bearing Survey Nos.170/3 in an area admeasuring 50 square metres, Survey No.170/4 admeasuring 25 square metres, Survey No.170/5 admeasuring 625 square metres, Survey no.175/2 admeasuring 475 square metres and survey no. 175/4 admeasuring 125 square metres for the same purpose consequent to the Notification issued under Section 4 of the Act published in the Official Gazette dated 17.12.1992. The LAO vide the award dated 18.1.1996 awarded the compensation at the rate of ₹7/- per square metre and being aggrieved the original applicant filed the reference under Section 18 of the Act claiming the compensation at the rate of ₹350/- per square metre. The learned Reference Court enhanced the compensation at the rate of ₹68/- per square metre being the market value at the time of Section 4 Notification of the Act.

Brief facts of the First Appeal No.10/2008

8. The Government had acquired the applicant's land for the very same purpose from the Survey No.164/5 admeasuring 550 square metres and Survey No.164/6 admeasuring 775 square metres vide the Notification issued under Section 4 of the Act. The LAO vide his award dated 18.1.1996 fixed the compensation at the rate of ₹7/- per square metre and being aggrieved the applicant filed the reference for enhancement of the compensation under Section 18 of the Act claiming

at the rate of ₹350/- per square metre. The learned Reference Court fixed the market value of the acquired land as on the date of Section 4 Notification at ₹68/- per square metre.

9. Ms. S. Linhares, learned Addl. Govt Advocate came to be heard on behalf of the appellant/original respondents in the First Appeal No.321/2007, Ms. P. Bhandari, learned Addl. Government Advocate came to be heard on behalf of the appellants in the First Appeal No.297/2007, Ms. P. Kamat, learned Addl. Govt. Advocate for the appellants in the First Appeal No.10/2008, Shri A. Jamadar, learned Addl. Govt. Advocate for the appellants in the First Appeal No.298/2007 and Shri M. P. Almeida, learned Advocate on behalf of the respondent/original applicant in all the appeals.

10. Ms. S. Linhares, learned Addl. Govt. Advocate submitted that the acquired land was a strip of land which was getting inundated and the Reference Court had not made any deduction in that regard. The rate fixed by the learned Reference Court was on the higher side and therefore it had to be reduced and the appeal be allowed.

11. Shri M. P. Almeida, learned Advocate for the respondent/original applicant in each of the appeals adverted to the evidence and submitted that the learned Reference Court had rightly considered the Sale Deed a year prior to the acquisition apart from the evidence on

record and submitted that there was basis to interfere with the judgment of the Reference Court and the appeals had to be dismissed.

12. i would consider their submissions in the light of the evidence brought on record coupled with the submissions of Shri M. P. Almeida, learned Advocate for the respondent in each of the cases and decide the appeals appropriately.

13. A cursory perusal of the evidence on record would reveal that the respondents had relied upon three sale instances but the learned Reference Court had relied upon one of such Sale Deeds which was a year prior to the acquisition in 1992 and on that basis had fixed the compensation. The respondent had examined himself, spelt out the location of the acquired land, the various amenities and facilities available to it such as the water, electric supply, a well equipped market, a church, a Higher Secondary School being available since the year 1980 and that an area of the property on which there were some houses of mundkars was sold by him to a Partnership Firm in April, 1991 at the rate of ₹62/- and paise 13 per square metre and admeasuring 34,575 square metres. The area notified for the acquisition was identified as tenanted paddy field, untenanted paddy field, tenanted pond and untenanted pond in respect of which the LAO was pleased to hold the market rate at ₹7/- per square metre in respect of the untenanted paddy field and ₹5/- per square metre in

respect of the tenanted paddy field and ₹2/- per square metre for the pond area.

14. He had further stated that the market value of the landed property was ₹700/- per square metre in the year 1992 but he was claiming the enhanced compensation of ₹350/- per square metre. He was unshaken during his cross examination that the property was partly settlement, partly ponds, partly coconut groves and apart from being partly barren and that some houses were existing therein. It was in an undeveloped condition when he had sold to Dessai Real Estate and the same was subsequently developed by the means of roads, open spaces and road widening area when he sold the same to one Mandrekar by the Sale Deed dated 11.7.1994. In sum and substance he was materially not shaken on the nature of the property, the amenities available to it and the reliance on the sale transactions.

15. The learned Reference Court had considered the fact that the Notification of the acquisition was issued in the year 1992, when the two sale transactions were of the year 2000 and 1994 being subsequent to the Notification and therefore, considered an earlier sale instance which was prior to the acquisition being of the year 1991 and accepted it as the most comparable instance. The learned Reference Court accordingly duly considered the submissions on behalf of the learned Advocates and by considering 10% increase arrived at the

market rate of the acquired land at ₹68/- per square metre and fixed it accordingly holding the respondent's entitlement to all the statutory benefits under the Act. The appellants herein were not able to show that there was any error by the Reference Court in assessing the material and therefore, the impugned judgment in this appeal does not call for any interference.

16. In the reference giving rise to the First Appeal No.321/2007, the respondent had examined himself, produced the sale instances in support of his case of the year 2000, 1987 and 1991 executed in favour of Dessai Real Estate as also that executed in the year 1994 to peg his case for a higher compensation. The learned Reference Court considered that the subject matter of the acquisition was an area of 435 square metres and after making the necessary deductions in the Sale Deed nearest to the Section 4 Notification of the Act worked out the compensation at the rate of ₹68/- per square metre with all the statutory benefits in the respondent's favour. The learned Reference Court for that matter had also considered the fact that the area in question was undeveloped and so too the sale transaction land of 1991. The respondent for that matter had categorically denied the case of the appellants that the acquired land was low lying marshy land and/or getting inundated in the rainy season and maintained that it was not low lying, nor marshy nor getting inundated. The learned Reference Court therefore, considering the sale transaction of 1991 and giving 10% increase had worked out the market value of the acquired land at

₹68/- per square metre which again does not call for any interference in this appeal and therefore, the said appeal must fail on that count.

17. In the First Appeal No. 297 of 2007 arising out of the Reference No. 38/2000, the learned Reference Court had assessed the evidence of the respondent, the location of the acquired land vis-a-vis the availability of the various amenities and facilities and considering the sale transaction entered into by the respondent in 1991 with Dessai Real Estate being the most appropriate transaction vis-a-vis the acquired land had fixed the market value of the acquired land at ₹68/- per square metre with all the terminal benefits under the Act. The appellants have failed to show any disparity in the findings recorded by the learned Reference Court qua the evidence brought on record and to that extent it must be held that the appellants/State had failed to justify any interference with the award under challenge.

18. Lastly in the First Appeal No.10/2008 arising out of the reference 15/2000, the learned Reference Court had examined the evidence produced on record by the respondent, the availability of the various amenities and facilities to the acquired land brought out in the evidence and more particularly the sale transaction of the year prior to the acquisition and concluded that the market rate of the acquired land on the date of the Section 4 Notification of the Act was ₹68/- and granted in the respondent's favour. It had also considered the case set out by the appellants and put to the respondent during the course of

his cross examination. This appeal too does not call for any interference with the award passed by the Reference Court.

19. In the result, i pass the following:-

ORDER

All the appeals are dismissed confirming the judgment of the learned Reference Court with costs.

NUTAN D. SARDESSAI, J.

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