

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 255 OF 2009**
WITH
CROSS OBJECTIONS NO. 3 OF 2010

Shri Ankush Pandurang Halarnkar
Power of Attorney, through legal heirs of
Pandu Y. Kubal's namely:

1. Savitri Vishram Tandel,
Daughter of Pandu Y. Kubal,
2. Shri Uday Vishram Tandel,
son of Vishram Tandel,
3. Kum. Leena Vishram Tandel,
Daughter of Vishram Tandel,
4. Smt Vanita Krishna Dholye,
Daughter of Vishram Tandel,
5. Shri Krishna Ganpat Dholye,
son-in-law of Vishram Tandel,
6. Smt. Sugandha Ramchandra Chodankar,
Daughter of Pandu Y. Kubal,
7. Shri Ramchandra Dhondur Chodankar,
Son-in-law of Pandu Y. Kubal,
8. Smt. Subhadha Sadanand Bandekar,
Daughter of Pandu Y. Kubal,
9. Shri Sadanand Y. Bandekar,
Son-in-law of Pandu Y. Kubal,
10. Smt. Anita Ankush Halarnkar,
Daughter of Pandu Y. Kubal,

11. Shri Ankush Pandurang Halarnkar,
 Son-in-law of Pandu Y. Kubal.
 All major of age and represented by
 their Constituted Attorney
 Shri Ankush P. Halarnkar,
 Resident of H.No.330,
 Pandurang Niwas,
 Sangaowada, Ozarim,
 Pednem Goa 403 513. ... Appellants

Versus

The Managing Director,
 Goa State Infrastructure
 Development Corporation Limited,
 E.D.C. House,
 7th Floor, Panaji Goa. ... Respondent

Shri G. Shirodkar, Advocate for the appellants.

Shri D. J. Pangam, Advocate for the respondent.

Coram:- NUTAN D. SARDESSAI, J.

Judgment reserved on :- 28th August, 2017

Judgment pronounced on:- 31st August, 2017

J U D G M E N T

This is an appeal at the instance of the original applicants seeking further enhancement of the compensation from ₹45/- per square metre awarded by the learned

Reference Court by the impugned judgment dated 31.08.2009 with all the statutory benefits. The land in an area of 6300 square metres was acquired by the Government pursuant to the Section 4 Notification dated 17.06.2004 for the purpose of an approach road to Ozorim bridge. The Land Acquisition Officer had awarded the compensation of ₹39/- per square metre pursuant to his Award dated 08.01.2007. The learned Reference Court in the Section 18 reference enhanced the compensation to ₹45/- per square metre by the impugned judgment and award dated 31.08.2009.

2. Shri G. Shirodkar, learned Advocate for the appellants contended that the Land Acquisition Officer ("the LAO" for short hereinafter) had collected the data and on that basis considered the sale deed dated 30.04.2002 and after recording his findings on the existence of various amenities and facilities to the acquired land and holding that it fell in the settlement zone, had awarded the compensation of ₹39/- per square metre. The Government had issued the Notification dated 05.02.2009 pursuant to which the rate fixed in Pirna village was ₹250/- per square metre. The

learned Reference Court had come to a finding at para 7 of the impugned judgment that the land was level with some houses and besides that it was situated in Bardez Taluka but had granted the enhancement by a meagre amount of ₹6/- per square metre by enhancing the compensation to ₹45/- per square metre. He placed reliance in **Lal Chand vs. Union of India [2009 ALL SCR 2400]** and pressed for the enhanced compensation of ₹100/- per square metre.

3. Shri D. Pangam, learned Advocate for the respondents submitted that based on the case of the applicant himself which in turn was by placing reliance on the sale statistics procured by the Mamlatdar at the instance of the LAO, the rate shown for Pirna village was ₹30/- per square metre. There was no basis for the applicant to advert to the Notification of 2009. The LAO had given enhancement by 30% though he had recorded 10% increase while taking the sale instance of 30.04.2002. There was no basis to fall back on the Notification which was primarily for collecting the revenue. It was his further contention that in case the sale deed of 2002 was considered, then considering the vastness

of the acquired land, a deduction of 30% was required to be made and in which event the market rate of the acquired land would be below ₹39/- per square metre as awarded by the LAO. His argument in the alternative was that the rate fixed by the Government Notification in Pirna area at ₹250/- per square was restricted to an area of 1000 square metres. He next adverted to the Appendix to such Notification and inviting attention to the different zones submitted that there was required a deduction ranging from 15% to 35% depending on the settlement zone in which the land was situated as S1, S2, S3 or S4.

4. The learned Reference Court had observed that some portions of the acquired land was in orchard zone and some area was in the settlement zone but the appellant had failed to satisfy how much area was in each of these zones. It was his contention further that in case the acquired land was located in the orchard zone, then for an area upto 10,000 square metres, a deduction had to be made in the base value by 60% and in which event the appellant would not be entitled to the enhanced compensation as claimed by

him. This was besides the fact that the appellant had not led any evidence on the zone in which the land was located. There was no fault in the findings of the learned Reference Court at para 7 of the impugned judgment and hence the appellant was not entitled to any enhanced rate and quite on the contrary the amount awarded had to be reduced proportionately. He placed reliance in **K. S. Shivadevamma and others vs Assistant Commissioner and Land Acquisition Officer and another [(1996) 2 SCC 62]** and in **Krishi Utpadan Mandi Samiti vs Bipin Kumar and another [(2004) 2 SCC 283]**.

5. Shri Shirodkar in reply placed reliance in **Trishala Jain and Another vs State of Uttaranchal and Another [2011 (6) SCC 47]** and submitted that even assuming without admitting that the acquired land was located in the orchard zone the rate had to be reduced by 60% of the base price in respect of the acquired area of 6300 square metres, in which event the applicant was still entitled to the compensation of ₹100/- per square metre. In the backdrop of their submissions, i would now advert to the material on

record and the judgments relied upon by both of them to better appreciate their case.

6. There was no singular dispute on the area acquired being 6300 square metres from the survey No.37/0 of Pirna village and for the stated purpose. Admittedly, the LAO had considered the sale instance dated 30.04.2002 where the land admeasuring 250 square metres was sold at the rate of ₹30/- per square metre and on that basis and as per his assessment by giving 10% increase he had fixed the market value of the acquired land at ₹39/- per square metre pursuant to his award dated 08.01.2007. He had also considered the various amenities and facilities to the acquired land and observed so at paras 12, 13, 14 and 15 of his award and fixed the market rate at ₹39/- per square metre.

7. Admittedly, the appellant as rightly observed by the learned Reference Court had neither produced any sale deed on record nor examined an expert witness to advance his case for the enhanced compensation from that awarded

by the learned LAO. In that context, what virtually remained for determination is the extent of guess work which the learned Reference Court has resorted to, to fix ₹45/- per square metre from that awarded by the LAO at ₹39/- per square metre. Apparently, the learned Reference Court had not shown what were the measures adopted by him to compute such compensation accepting the settled position that some amount of guess work was required to arrive at the determination of the market value of the acquired land. Nonetheless the learned Reference Court had not at all revealed his mind of what was the guess work done by him to give a meagre increase of ₹6/- per square metre to the appellant accepting for a moment that he was entitled to the enhanced compensation as was the contention of Shri Shirodkar, learned Advocate for the appellants.

8. In **Lal Chand** (supra), the Hon'ble Apex Court observed at para 16 as below :

“**16.** It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value

Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees. These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the member secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination of the market value of agricultural lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.). The

rates assessed by the committee are required to be published inviting objections/suggestions from the members of public. After considering such objections/suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We however hasten to add that the guideline market value can

be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may. We have referred to this aspect only to show that there are different categories of Basic Valuation Registers in different states and what is stated with reference to the stamp law in Andhra Pradesh or Uttar Pradesh, may not apply with reference to other states where state stamp laws have prescribed the procedure for determination of market value, referred to above."

9. In **Trishala Jain** (supra), the Hon'ble Apex Court held at paras 27 and 28 as below :

"**27.** Guess as understood in its common parlance is an estimate without any specific information while calculations are always made with reference to specific data. Guesstimate is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same

time guess cannot be treated synonymous to conjecture. Guess by itself may be a statement or result based on unknown factors while conjecture is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. Guesstimate is with higher certainty than mere guess or a conjecture per se.

28. The concept of guesswork is not unknown to various fields of law. It has been applied in cases relating to insurance, taxation, compensation under the Motor Vehicles Act as well as under the Labour Laws. All that is required from a Court is that such guesswork has to be used with greater element of caution and within the determinants of law declared by the Legislature or by the Courts from time to time.....”

10. In **K. S. Shivadevamma** (supra), the Hon'ble Apex Court observed at para 5 as below :

“**5.** From this, the question is what would be the reasonable market value that the lands would command in open market?.

The appellants themselves have placed on record the sale deed of an extent of 133' x 99' under Ex.P-18 dated 30.05.1974 which fetched consideration of Rs. 41,000 per acre. The High Court was not inclined to accept in to this sale deed. But it held that it provides guidance in determination of the market value. Though the appellants have relied upon the Government Circular determining the value of the lands for the purpose of fixing stamp duty and registration fee and also the Commissioner's report regarding the valuation assessed by him, the High Court rightly has not accepted them. This Court also had held that the circulars issued by the Government under Section 47A of the Stamp Act for fixation of stamp duty and the registration fee would not form basis to determine the compensation unless evidence is adduced as regards the prevailing market value of the land in the locality possessed of similar advantageous features. Even Commissioner's assessment is his "best judgment assessment". Therefore, it cannot form the basis to determine the market value."

11. In **Krishi Utpadan Mandi Samiti** (supra), the Hon'ble Apex Court observed at para 7 as below :

“7. It has been held by this Court in the case of *Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A. P. and Ors.* [1994 (4) SCC 595] that market value under Section 23 of the Land Acquisition Act, 1894 cannot be fixed on the basis of a basic valuation register maintained by the registering authority for collection of stamp duty. Therefore, the reliance by the Reference Court on the values of land fixed by the District Magistrate for stamp duty purposes is clearly erroneous. For the purposes of Land Acquisition Act the market value must be determined on the basis of sale deeds of comparable lands. In this case the Land Acquisition Officer had taken note of one such sale deed where the price was Rs.15.37 per sq. yard. The Reference Court also had before it the sale deed by which the respondent purchased a portion of the acquired land. As stated above the sale deed was for Rs.15.40 per sq. yard. Section 92 of the Evidence Act precludes a party from leading evidence contrary to the terms of

a written document. It was, therefore, not open to the respondent to urge that, even though his sale deed showed a price Rs. 15.40 per sq. yard the real market value was Rs.120 per sq. yard. To permit a party to so urge would be to give a premium to dishonesty. Parties who undervalue their documents, for purpose of payment of stamp duty, cannot be allowed to then claim that their own documents does not reflect the correct market value. Therefore as per sale instances of the comparable lands the market value, on dates of sales, were in the region of Rs.15.37 to Rs.15.40 per sq. yard."

12. Both these judgments relied upon by Shri Pangam were to buttress his plea that the applicant could not rely upon the Notification of February, 2009 to advance his case and seek for the enhanced compensation based on the said Notification. However, the judgment latter in point of time in **Lal Chand** (supra) substantiates the contention of Shri Shirodkar in that context that once such Notification has been subjected to public scrutiny and objections called for, it

can be considered for fixing the market value of the acquired land on the date of the Section 4 Notification. Besides in any event, it is not disputed that some element of guesswork is required in computing the quantum of compensation to be awarded in favour of the party whose land has been acquired and in that context it is to be seen whether in this case the appellant has able to show that it is a fit case for enhancement of compensation awarded by the learned Reference Court or conversely whether the compensation enhanced by the learned Reference Court was not appropriate and some deductions was required as is the case of the respondents in their cross objections.

13. At the cost of repetition, the LAO had considered the sale instance dated 30.04.2002 pertaining to an area of 250 square metres sold at ₹30/- per square metre as the basis for working out the compensation in respect of the acquired land. For that matter he was seized of the fact that on inspection of the acquired land, it was two kilometres away from the said land and that it had facilities like road, water supply, electricity etc., that it was located in the

settlement and orchard zone and that the land had potential for being converted for residential purpose. On that premise he had given 10% enhancement and arrived at figure of ₹39/- per square metre in respect of the appellant's land. Coming now to the Notification which is the bone of the contention between the appellant and the respondent, it was not in dispute that the Notification was issued as a draft pursuant to the Notification dated 19.06.2003 for minimum land rates under the Goa Stamp (Determination of True Market Value of Property) Rules, 2003. These were supposed to be the base value applicable to S1 zone and up to an area of 1000 square metres and depending upon the zone and area involved, the base values would change as indicated in the Appendix. A cursory perusal of the Appendix would reveal that for an area ranging between 4001 to 10,000 square metres there would be 15% less value in S1 zone, 20% in S2 zone, 30% in S3 zone and 35% in S4 zone while in the orchard zone, it would 60% less than the base value.

14. Therefore, based on the evidence led by the appellant and the findings recorded both by the LAO and the learned Reference Court that the acquired land fell partly in the settlement zone and orchard zone and taking at the highest that it fell in the orchard zone and then making a deduction of 60% in the base value of ₹250/- per square metre in respect of the land of Pirna, the market value of the acquired land as in 2009 would be ₹100/- per square metre. The Notification for acquisition was issued in 2004 and therefore by making appropriate deduction, the market value of the acquired land would work out to ₹50/- per square metre. In the circumstances, therefore, the appeal is partly allowed whereby the impugned judgment fixing the market value of the acquired land at ₹45/- per square is quashed and set aside and the market value is enhanced to ₹50/- per square metre alongwith all the statutory benefits to which the appellant is entitled in terms of Section 23(1A) of the Act and interest thereon in terms of Section 28 of the Act. It would follow that the Cross Objections on behalf of the respondent would not survive in view of the appeal being partly allowed and accordingly the Cross Objections are

hereby dismissed with no orders as to costs.

NUTAN D. SARDESSAI, J.

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