

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.38 OF 2011**

1. Land Acquisition Officer,
P.W.D. (Cell) Altinho,
Panaji, Goa.
 2. Executive Engineer,
Works Division XIII, P.W.D. (R),
Mapusa, Goa.
- Appellants

V/s

Shri Jerry Braganza,
R/o. near St. Jerome's Church,
Mapusa, Goa.

.... Respondent

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

Shri Valmiki Menezes, Advocate for the Respondent.

CORAM : NUTAN D. SARDESSAI, J.

Reserved on : 6th JANUARY, 2017

Pronounced on : 13th JANUARY, 2017

JUDGMENT:

This is an appeal at the instance of the appellants-State challenging the judgment and award dated 9/02/2011 passed by the learned Reference Court, Margao pursuant to which the learned Adhoc District Judge enhanced the compensation from ₹59.58 (Rupees fifty nine and fifty paise) awarded by the Land Acquisition Officer ('LAO' for short) to ₹1235/- (Rupees one thousand two hundred and thirty five only) per sq. mt. Admittedly, no cross-appeal or cross-objection was filed at the instance of the

respondent challenging the quantum of the compensation so awarded by the learned Adhoc District Judge - 1, Fast Track Court, Mapusa which had enhanced the compensation to ₹1235/- (Rupees one thousand two hundred and thirty five only) per sq. mt. A reference is made thereto since in the course of the arguments it was contended on behalf of the respondent that the learned Reference Court had not granted the adequate compensation and that it had not considered the increase in the land rate at 10% per annum while so computing the compensation. Be that as it may, that aspect pales into the insignificance in the absence of any cross-appeal or cross-objection.

2. Admittedly the land of the respondent admeasuring 1132 sq. mts. bearing Survey No.144-5/1 situated at Mapusa City was acquired for the purpose of the construction of the market bypass road from Khorlim and joining the Mapusa Assagao road. Admittedly the LAO had fixed the rate of the acquired land at ₹59.58 (Rupees fifty nine and fifty paise) per sq. mt. as on the date of the Section 4 Notification dated 5/06/2002. The respondent had claimed the enhanced compensation of ₹2,000/- per sq. mt. which was disallowed by the Reference Court and it was only consequent to the judgment of this Court in Appeal From Order and the remand of the file to the Reference Court that in the second round, the Reference Court awarded the compensation of ₹1235/- (Rupees one thousand two hundred and thirty five only) per sq. mt. giving rise to

the present appeal at the instance of the State-Acquiring Department.

3. Ms. Susan Linhares, the learned Additional Government Advocate contended on adverting to the evidence on record that the learned Reference Court relied on the sale instance which was not at all comparable with the acquired land inasmuch as the sale instance land had houses, walls and structures and rents were received from the said structures while the acquired land was a paddy field, plain and with no structures. The sale land was bounded by the main road unlike the acquired land which was agricultural in nature apparent from the testimony of the respondent before the Reference Court. The Reference Court ought to have relied on the sale instance of 2002 and should have relied upon a sale instance where the land was not having houses, structures and walls and moreover there was no road providing access to the acquired land. Besides, the acquired land was at a lower level and in which context the Reference Court ought to have made necessary deductions while computing the quantum of the compensation to be awarded or enhancing the compensation from that awarded by the LAO. The learned Reference Court had unduly taken into consideration the ODP which was related to the developed plots. In short it was a fit case to allow the appeal and award the compensation which was reasonable and not that as enhanced by the learned Reference Court.

4. Shri V. Menezes, the learned Advocate for the respondent submitted at the outset that the learned Reference Court ought to have made a deduction of 20% at the highest considering that the acquired land was low lying. The Reference Court had accepted the sale instance (Exhibit 23) but had ignored granting a proportionate increase of 10% per annum while fixing the compensation at ₹1235/- (Rupees one thousand two hundred and thirty five only) per sq. mt. He too adverted to the evidence on record and submitted that there was no justification for the reversal of the quantum awarded by the learned Reference Court. Insofar as the plea of the acquired land being a paddy field and requiring conversion, he adverted to Section 134 of The Goa, Daman and Diu Town and Country Planning Act, 1974 which had an overriding effect and therefore there was no basis to defeat the respondent's claim for the compensation.

5. Shri V. Menezes also made a reference to the zoning regulations qua the maximum permissible coverage, the maximum permissible FAR and the maximum permissible height both in respect of the land located in S1 zone and C1 zone to support his case and the award passed by the Reference Court. A reference was also made to the report identifying the acquired land in the S1 and C1 zone apart from the Sale Deed (Exhibit 23) to belie the contention of Ms. Susan Linhares, the learned Additional Government Advocate that there were structures in the property by

adverting to the schedule and Form B showing otherwise read with the survey plan indicating the absence of any such structures therein. Besides, Form B in respect of the sale land would show that there were no structures existing therein which would also belie the contention of Ms. Linhares that it was not a comparable sale instance to the land under acquisition. There was no basis in the contention on behalf of the appellants that the sale instance was not a comparable instance and thus there was no basis to interfere with the award passed by the Reference Court.

6. The respondent had examined himself on affidavit and in the course of his cross-examination, no doubt, relented that the acquired land was a cultivable agricultural land being a paddy field and that it was cultivated from the time of his forefathers till 4 to 5 years back. He had also stated that the land was not under cultivation when the award was passed and it was bounded on one side by a bandh at the side of the nullah and a paddy field on its western side and a coconut grove on the northern side and another paddy field being on the southern side. He had further maintained in his cross-examination that the property of which the acquired land was a part was connected to a road while conceding that there was no road strictly touching the acquired property on being shown the plan B colly. At the same time he clarified that there was a bandh wide enough for a four wheeler to pass through and denying the suggestion to the contrary. It was also borne out

during his cross-examination that though the acquired land was not in the market area, nonetheless it was situated close to the market area.

7. The respondent had also admitted that the acquired land was at a lower level than the main road leading from Khorlim to Mapusa and there was a footpath on the bandh of the main road leading to Khorlim which was separating the road and the field by its side. He had for that matter remained unshaken in his testimony that the acquired land was close to the Mapusa Municipal Market and the distance from the main junction of the Mapusa Municipal market and the acquired land was 350 to 400 mts. while the Asilo hospital was close to his plot and the sale land (Exhibit 23) was touching the main road connecting Mapusa with Khorlim and right opposite the Police Station. He had otherwise admitted that there was no commercial building on either side of the newly constructed road nor were there any multistorey buildings on either side of the newly constructed road and there were only paddy fields and coconut grooves some of which were still under cultivation. This aspect of his testimony on the cultivation of the fields, the absence of commercial buildings and the level of the acquired land was adverted to by the learned Additional Government Advocate primarily to highlight that the acquired land had no building potential and that the Reference Court was in error to award the enhanced compensation. However, her contention would have to

be examined from the view point of the totality of the evidence both oral and documentary and last but not the least the law on the point in the matter of grant of and/or enhancement of the compensation.

8. The Sale Deed relied upon by the learned Reference Court was dated 14/05/1993 pursuant to which a plot of land from the larger property known as 'Karpotem' bearing Survey No.1 of P.T. Sheet No.145 of the City Survey Mapusa admeasuring 3363 sq. mts. was sold to M/s. Kamat Constructions Pvt. Ltd. for the total consideration of ₹41,53,305/- (Rupees forty one lakhs fifty three thousand three hundred and five only). The schedule to the said Deed as rightly contended by Shri Menezes, the learned Advocate for the respondent did not show the existence of any houses, walls or structures therein as to make the sale instance non-comparable with the land under acquisition. The respondent had relied on another sale instance dated 11/11/1996 pursuant to which the owner and the developer had entered into an Agreement of Sale and Finance which did not find favour with the learned Reference Court as a comparable instance and rightly so when there were structures erected in it. The third sale instance relied by the respondent Exhibit 25 was dated 11/06/2002 which was admittedly after the Section 4 notification dated 5/06/2002 and therefore rightly not considered by the learned Reference Court as the basis for computing the quantum of the enhanced compensation to be

awarded in favour of the respondent.

9. The respondent had examined a Civil Engineer who had drawn a report at his instance and confirmed that he had arrived at the value of the acquired land at ₹2,300/- (Rupees two thousand three hundred only) per sq. mt. based on the sale instance referred to by him in his report. It is another matter that he conceded that the Sale Deeds referred to the developed properties though some referred to undeveloped properties too but located in a commercial zone. The said witness had clearly indicated in his report that as per the zoning plan (OPD) of the Mapusa City, the acquired land fell in a commercial zone and conversion of the property from agricultural to non-agricultural use for commercial development was a routine matter subject to the payment of the conversion fees.
10. Dhuri (Aw3), a practicing Architect and Valuer examined on behalf of the respondent had fixed the market value of the acquired land at ₹2,200/- (Rupees two thousand two hundred only) per sq. mt. on the date of the Section 4 Notification. He had stated in detail what were the criteria adopted by him for arriving at such an amount and in the course of his cross-examination relented that the entire property including the acquired area was a paddy field having a bandh with coconut trees and it was an uncultivated agricultural land but falling in the commercial zone.
11. The acquiring department had examined Raikar (Rw1) who

asserted on oath that on considering the sale statistics in the vicinity, the LAO had fixed the rate at ₹40/- (Rupees forty only) per sq. mt. which was fair and just since the acquired land was agricultural land and where no development could be carried out. However, their own witness Ashok Kumar (Rw2) on being shown the plan confirmed that the acquired land was partly settlement, partly agricultural and partly commercial based on the ODP plan of the Mapusa City and which was followed for the last 15 years prior to 2006. He also confirmed that in case a plan for approval was put to PDA or Town Planning, the approval would be granted on the basis that the property was partly settlement, partly commercial and partly transportation. In that context a reading of Section 134 of the Town and Country Planning Act in particular would substantiate the case of Shri Menezes, the learned Advocate for the respondent that the provisions of the Act, Rules and Regulations made thereunder would have overriding effect in view of the non obstante clause. This is besides the point that he had confirmed that the acquired land could have been developed for various purposes as per the zone thereby belying the contention of Ms. Susan Linhares, the learned Additional Government Advocate for the appellants that the land was an agricultural land, incapable of conversion and lacking development potential.

12. The report drawn by the Member Secretary, North Goa, PDA as per the directions of the Reference Court also indicates that as

per the Outline Development Plan of Mapusa 2011, the property in question was partly earmarked as a settlement (S1), partly commercial (C1) zone and prior to 2006 a draft ODP was followed for the Mapusa City and as per the said ODP, the land in question was earmarked as partly settlement (S1), partly commercial (C1) and partly transportation (T1). This report too would substantiate the case of the respondent that the land was located in a settlement and commercial zone and was capable of conversion for building purposes and belying the contention on behalf of the appellants that it lacked building potential being an agricultural land. Moreover as per the zonal regulations to which due reference was made by Shri Menezes, the learned Advocate for the respondent, considering the land use zones, the regulations applicable in such zones would show that there would be a maximum permissible coverage of 50%, maximum permissible FAR of 100 and maximum permissible height of 14.2 mts. in S1 zone, while the regulations for commercial zone C1 provide a maximum permissible coverage of 40%, maximum permissible FAR of 200 and maximum permissible height of 20.8 mts. Thus taking all these aspects into consideration, there is no force in the contention of Ms. S. Linhares, the learned Additional Government Advocate for the appellants that the acquired land lacked building potential and that the Reference Court was in error to grant enhanced compensation on account of its acquisition.

13. The learned Reference Court had considered the sale instance of 1993 (Exhibit 23) whereby a plot of the paddy field admeasuring 6800 sq. mts. situated close to the acquired land was sold at the rate of ₹1235/- (Rupees one thousand two hundred and thirty five only) per sq. mt. The learned Reference Court had considered the other two sale instances but found that of Exhibit 23 the most comparable to the acquired land to determine the quantum of compensation. Besides, the learned Reference Court had also considered the fact borne out from the evidence on record that the acquired land was situated partly in S1 zone and partly in C1 zone with several amenities and facilities within the vicinity vis-a-vis the evidence brought on record on behalf of the present appellants who had supported the case of the respondent and clearly determined the market value at ₹1235/- (Rupees one thousand two hundred and thirty five only) per sq. mt.

14. For that matter the learned Reference Court had found two negative factors of the acquired land namely its level being below that of the main road apart from being an agricultural paddy field and considering that it was classified into settlement, commercial and transportation zone had fixed the market rate on the basis of the sale price contained in the Sale Deed (Exhibit 23). The learned Reference Court however had ignored the fact that the sale transaction was of 1993 and that the original applicant (now respondent) was entitled to a fair increase of 10% per annum since

then till the date of the Section 4 Notification and ought to have fixed the compensation at a rate much higher than ₹1235/- (Rupees one thousand two hundred and thirty five only) per sq. mt. which it failed to do. i would hasten to add that the respondent having failed to file a cross-appeal or cross-objection, that aspect of the matter recedes to the background and the respondent would have to be rest assured with the rate of ₹1235/- (Rupees one thousand two hundred and thirty five only) per sq. mt. granted by the Reference Court, the appellants-Acquiring Department having failed to show any discrepancy or anomaly in the impugned judgment granting such compensation in the respondent's favour.

15. In the result therefore i do not find any merit in the appeal which is hereby dismissed thereby confirming the award passed by the learned Reference Court dated 9/02/2011.

NUTAN D. SARDESSAI, J.

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