

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO.288 OF 2008 & 70 OF 2009

FIRST APPEAL NO.288 OF 2008

M/s. Vikas Nursery through
its sole proprietor (Ramchandra
Uttam Prabhu Dessai), H.No.226,
Talewada, Dhargali, Pernem, Goa.
(since deceased) through Legal Representatives,

1(A) Vaishali Ramchandra Prabhu Dessai,

1(B) Mr. Mandar Ramchandra Prabhu Dessai,

1(C) Devyani Mandar Prabhu Dessai,

1(D) Vikas Ramchandra Prabhu Dessai,

1(E) Pooja Vikas Prabhu Dessai,

1(F) Pradnya Pravin Pai Lotlikar,

1(G) Pravin Narsinva Pai Lotlikar,

All having their address at office no.6,
Facility Block Sapna Garden,
Choogam Road Porvorim-Bardez, Goa.

....Appellants

V/s.

1. Land Acquisition Officer,
PWD (Cell), Altinho, Panaji, Goa.

2. The Executive Engineer,
W.D. VII (NH), PWD, Panaji.

3. Uttam Ramchandra Prabhu Dessai,
since deceased through his legal heirs:

(a) Shri Ramchandra Uttam Prabhu Dessai,

(b) Smt. Vaishali Ramchandra Prabhu Dessai,

(c) Smt. Pramila Yeshwant Tilve,
since deceased through legal heirs:

- a. Mrs. Sharmila Mahesh Apte,
- b. Mr. Mahesh Apte,
Both r/o. Parijat Society,
Flat No.99, Near Welcome Hotel,
Thane Naka, Panvel, Mumbai 410 206.
- c. Mrs. Pornima Ganeshprasad Bhat,
- d. Mr. Ganeshprasad Bhat,
Both r/o. Abhesheak Housing Co-op.
Society, Near Ashodham High School,
Goregaon East, Mumbai 63.
- e. Mrs. Radha Ketan Kamat,
- f. Mr. Ketan Kamat,
Both r/o. 11, Sudarshan Building,
17th Road, Siddarth Nagar,
Goregaon West, Mumbai 104.
- g. Mrs. Rekha Saiprasad Nadkarni
- h. Mr. Saiprasad Nadkarni,
Both r/o. 34, Ashirwad Building,
New Bombay Dying Spinning Mills,
J.D. Amberkar Nagar, Naigao,
Mumbai 14.
- d) Shri Yeshwant Manguesh Tilve,
- e) Smt. Rajani Ramesh Pandit
- f) Shri Ramesh Rajaram Pandit
- g) Smt. Radha Subhodh Rangnekar
- h) Shri Subhod Dinanath Rangnekar

- i) Smt. Arundhati Arun Prabhu Zantye
All major, Indian Nationals and
through their constituted power
of attorney respondent
no.3(a) Shri Ramchandra Uttam
Prabhu Dessai.

.... Respondents

Shri Nitin Sardessai, Senior Advocate with Shri Vibhav Amonkar, Advocate for the Appellants.

Ms. Susan Linhares, Additional government Advocate for the Respondents No.1 & 2.

AND

FIRST APPEAL NO.70 OF 2009

1. Land Acquisition Officer,
PWD (Cell), Altinho, Panaji, Goa.
2. The Executive Engineer,
W.D. VII (NH), PWD, Panaji.

....Appellants

V/s

M/s. Vikas Nursery,
through its sole proprietor
(Ramchandra Uttam Prabhu Dessai),
H.No.226, Talewada, Dhargali,
Pernem, Goa. (since deceased)
through Legal Representatives,

- 1(a) Smt. Vaishali Ramchandra
Prabhu Dessai, widow of late
Ramchandra Prabhu Dessai,
Major of age,
- 1(b) Shri Mandar Ramchandra
Prabhu Dessai, son of late
Ramchandra Prabhu Dessai,
major of age and his wife,
- 1(c) Smt. Devyani Mandar Prabhu Dessai,
wife of Mandar Prabhu Dessai,
major of age,

- 1(d) Shri Vikas Ramchandra Prabhu Dessai,
Son of late Ramchandra Prabhu
Dessai and his wife,
- 1(e) Smt. Pooja Vikas Prabhu Dessai,
wife of Vikas Prabhu Dessai, major
- 1(f) Smt. Pradnya Pravin Pai Lotlikar,
and her husband
- 1(g) Shri Pravin Narcinva Pai Lotlikar, major
All having their address at office no.6,
Facility Block Sapna Garden,
Choogam Road Porvorim-Bardez, Goa.
- (a) Shri Ramchandra Uttam Prabhu Dessai,
- (b) Smt. Vaishali Ramchandra Prabhu Dessai,
- (c) Smt. Pramila Yeshwant Tilve,
since deceased through legal heirs:
 - a. Mrs. Sharmila Mahesh Apte,
 - b. Mr. Mahesh Apte,
Both r/o. Parijat Society,
Flat No.99, Near Welcome Hotel,
Thane Naka, Panvel, Mumbai 410 206.
 - c. Mrs. Pornima Ganeshprasad Bhat,
 - d. Mr. Ganeshprasad Bhat,
Both r/o. Abhesheak Housing Co-op. Society,
Near Ashodham High School,
Goregaon East, Mumbai 63.
 - e. Mrs. Radha Ketan Kamat,
 - f. Mr. Ketan Kamat,
Both r/o. 11, Sudarshan Building,
17th Road, Siddarth Nagar,
Goregaon (West), Mumbai 104.

- g. Mrs. Rekha Saiprasad Nadkarni,
- h. Mr. Saiprasad Nadkarni,
Both r/o. 34, Ashirwad Building,
New Bombay Dying Spinning Mills,
J.D. Amberkar Nagar, Naigao, Mumbai 14.
- d) Shri Yeshwant Manguesh Tilve,
- e) Smt. Rajani Ramesh Pandit
- f) Shri Ramesh Rajaram Pandit
- g) Smt. Radha Subhodh Rangnekar
- h) Shri Subhod Dinanath Rangnekar
- i) Smt. Arundhati Arun Prabhu Zantye

All major, Indian Nationals and
through their constituted
power of attorney respondent
no.2(a) Shri Ramchandra Uttam
Prabhu Dessai.

.... Respondents

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

Shri Nitin Sardessai, Senior Advocate with Shri Vibhav Amonkar,
Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.
Reserved on : 13th JUNE, 2017
Pronounced on:21st September,2017

JUDGMENT :

The First Appeal No.288 of 2008 is at the instance of the
original applicant before the Reference Court seeking the
enhanced compensation from that awarded by the learned
Reference Court while the First Appeal No.70/2009 is by the

acquiring department seeking the reduction in the amount awarded by the Reference Court. The parties would be referred to as the applicant and the respondents for brevity's sake hereinafter to avoid confusion.

2. Briefly the respondents no.1 & 2 had issued the Notification under Section 4 of the Land Acquisition Act, 1894 ('Act', for short hereinafter) on 18/02/2000 followed by another Notification under Section 6 dated 16/02/2001 in respect of the applicant's land acquired for widening of the road NH-17 at Dhargalim in Pernem Taluka bearing the distinct Survey Nos.233/2, 224/3, 223/3 and 259/1. The Land Acquisition Officer had fixed the rate of the land at ₹15/- per sq. mt. regarding the bharad/cashew/pond type of land and ₹4.50/- per sq. mt. for the tenanted rice land. The learned Reference Court had enhanced the compensation for the bharad land under Survey No.223/2 at ₹60/- per sq. mt. and the garden land under Survey No.224/3 and 259/1 at ₹80/- per sq. mt. The applicant assailed the judgment and award on the grounds that they were entitled to the compensation at the rate of ₹650/- per sq. mt. for the land and ₹20,00,000/- as the value for the house and the shop existing in the Survey No.223/2, ₹3,00,000/- towards the standing crops and ₹2,50,000/- towards the existing compound wall in the Survey

No.224/3, 223/2 and 3. The learned Reference Court ought to have held in favour of the applicant and awarded the compensation for the amount claimed and having failed to do so, the impugned judgment and award was perverse as it did not consider the building potential and the learned Reference Court committed an error in accepting the subsequent valuation by ignoring the material placed on record by the applicant.

3. The State assailed the judgment and award on the premise that it was contrary to law and the evidence on record, and the learned Reference Court had erred in enhancing the compensation from ₹15/- to ₹60/- per sq mt. in respect of the bharad land and ₹80/- per sq. mt. in respect of the garden land. The learned Reference Court had relied on the award passed by the District Judge in the Land Acquisition Case No.85/2003 in respect of an adjoining piece of land despite an appeal being filed before this Court to challenge the award and the operation of the award being stayed by this Court. The learned Reference Court fell in error to consider that the land fell within the 40 mts. road widening area or that it was a tenanted paddy field and had no building potential. The impugned judgment and award had therefore to be quashed and set aside and the rates reverted to those fixed by the learned Land Acquisition Officer.

4. Shri N.N. Sardesai, learned Senior Counsel contended on

behalf of the applicants that the learned Reference Court did not consider the Sale instance which was the best evidence relied upon by the applicants and instead relied on the judgment of the District Court in the Land Acquisition Case No.85/2003 to award the compensation at the rate of ₹60/- per sq. mt. in respect of the bharad land and ₹80/- per sq. mt. in respect of the garden land. The learned Reference Court had missed out the survey holding 223/2 while granting the enhanced compensation. There was a report of the Government valuer valuing the structure at ₹16,00,000/- and that of another valuer valuing the structure at ₹11,00,000/-. There was no basis despite the evidence on record for the learned Reference Court to consider the second report. The learned Reference Court had ignored the Sale Deed on the premise that the acquired land was located in the setback area and did not possess building potential and secondly that it was a tenanted agricultural land. He next adverted to the evidence on record and the impugned judgment apart from the evidence led on behalf of the respondents and relied in **State of Goa & Anr. V/s. Gopal Baburao Gaudo & Ors.** [(2009) 10 SCC 686], **Mr. Rameshchandra Govind V/s. Dy. Collector (L.A.) & Land Acquisition Officer** [2008 (2) GLR 499] and **ONGC Ltd. V/s. Sendhabhai Vastram Patel & Ors.** [(2005) 6 SCC 454]. He further contended in reply that there were no tenants in respect of

the said survey holdings nor any claim was raised assuming without admitting that there were tenants in the said land. It was his clear assertion that there were no tenants in the Survey No.233/2, 224/3, 223/3 and 259/1. The applicants were therefore entitled to the enhanced compensation both in respect of the market value and the value of the structures and therefore the appeal had to be allowed.

5. Ms. Susan Linhares, learned Additional Government Advocate for the respondents submitted that the acquired land was an agricultural tenanted land and located within 40 mts. of the road widening land and therefore lacked building potential. The Reference Court had relied on an award of the District Court which had awarded enhanced compensation in respect of the adjoining area. The Sale Deed referred to by the applicants could not be relied upon being of a smaller plot admeasuring 400 sq. mts. of a sub-divided plot with setbacks, unlike the acquired land which was a vast area. She adverted to the award and submitted that the applicants were not entitled for any escalation on the garden land. The lands were located on the interior side of Pernem and did not possess any building potential. The State appeal had therefore to be allowed and the judgment of the Reference Court had to be quashed and set aside. I would consider their submissions in the light of the evidence and the judgment relied upon by Shri N.N. Sardesai, learned Senior Counsel for the applicants and hence

proceed to decide the appeal.

6. The learned Reference Court had formulated issues for determination casting the burden on the applicants to prove the market value of the acquired lands, that of the house and the shop, their entitlement to the damages in respect of the standing crops and trees and the existing compound wall. In that context, the applicants had examined Ramchandra Aw1 who had reiterated his case in the affidavit evidence that an area of 11,000 sq. mts. under various survey holdings was acquired pursuant to the Section 4 Notification of the respondents alongwith the office, residential house, water tank, well, pump house, overhead tank, compound wall and the landscape areas in different areas. The acquired land had all the features of a developed plot in which he was running the nursery business and falling in the settlement zone. He next highlighted the existence of the various amenities and facilities to the acquired land apart from the existence of the electricity, tap water and irrigated water as also the telephone connection. The rates of the land in the vicinity at the relevant time were more than ₹60/- per sq. mt. for similarly placed lands and therefore he too was entitled to the said enhanced rate being the market value prevailing at the relevant time apart from the other heads towards the compound wall, house, landscaping, etc. etc.

7. Ramchandra Aw1 had produced the survey records apart

from the letter dated 19/09/2001 from the Executive Engineer addressed to the Assistant Engineer showing the valuation of the acquired land, the Valuation Report, the photographs and the plan drawn by Engineer Vikas Dessai. He had also relied on the certified copy of the judgment and award dated 30/10/2006 in the Land Acquisition Case No.85/2003 with regard to the adjacent land and where the compensation had been enhanced to ₹60/- for bharad land and ₹45/- for the paddy field. He also relied on the three Sale Instances dated 27/02/1997, 29/02/2000 and 23/03/1998 to substantiate his case. He relented that the acquired land was abutting the National Highway-17 and that its breadth starting from the edge of the road would be around 40 mts. He conceded in fairness that he learnt later that the construction activity within 40 mts. from the centre of the National Highway was not permissible but otherwise his share in the acquired land 223/2 was 1/24th and there was no partition of the land amongst the co-owners. He however maintained that there was no tenant in respect of the Survey No.223/2 regarding his portion and denied the suggestion that there were tenants in respect of the said properties. By and large he was unshaken on his case but for these few concessions and maintained his claim for the enhanced compensation.

8. The applicants had relied on the Sale instance dated 27/02/1997 pursuant to which a sub-divided plot of the Survey

No.160/3 admeasuring 405 sq. mts. was sold @ of ₹200/- per sq. mt. and located at Dhargal, Pernem. The other Sale instance was dated 29/02/2000 of the land again in Pernem pursuant to which an area of 400 sq. mts. was sold at ₹200/- per sq. mt. They had examined Dhargalkar Aw3 who reiterated their case on oath on the nature of the land, the existence of the house, compound wall, pump house, landscaped area, etc. and that it had all the features of a developed plot and fell in the settlement zone. He also reiterated that the acquired land had great commercial value on account of the existence of the various facilities and amenities within near proximity and also the electricity, water and telephone facility which would fetch the market value of ₹650/- per sq. mt. on the date of the Section 4 Notification. He too admitted that the acquired land was touching the National Highway and that it was acquired for the purpose of road widening.

9. Dhargalkar Aw3 had categorically denied the suggestion that the acquired land was not falling within the settlement zone. He too relented that the width of the acquired land from the edge of the road would be around 30 mts. and admitted that no construction activity was permissible within a portion of 40 mts. on either side of the highway. The applicants had also examined one Crispino who stated that he was aware of the acquired land, had seen the survey records Form I & XIV of the Survey No.220/3 and

revealed that he had approached the applicants to purchase the plot to set up his crusher business. The applicants had demanded the rate at ₹900/- per sq. mt. whereas he had offered ₹650/- per sq. mt. and that the deal had failed on account of the difference. He had offered ₹50/- per sq. mt. more but as the deal could not materialise he had purchased a land in Torshem, Pernem. The acquired land was otherwise adjacent to their house, a leveled plot and abutting the National Highway. He too remained unshaken both on his business and on the offer made by the applicants towards the sale of the land in question and the deal not having materialised since he could not offer anything more than ₹650/- per sq. mt. to the acquired land.

10. The respondents had examined their Assistant Engineer Raghavan who produced a sketch showing the acquired land and that the applicant's nursery lay beyond the acquired land which had not been affected on account of the acquisition. No construction activity too was permissible in the acquired land as it fell within 40 mts. from the centre of the National Highway. The Land Acquisition Officer had granted just and fair compensation and therefore the applicants were not entitled to any enhanced compensation. He confirmed during his cross-examination that Chimulkar was the Executive Engineer at the time of the acquisition who had signed the report Exhibit 18. The learned Reference Court had considered

the evidence brought on record by the applicants but was carried away by the fact that the Survey Records Form I and XIV showed the names of different tenants with regard to the paddy fields and that these strips of land were adjacent to the existing National Highway. The learned Reference Court further proceeded at a tangent to hold that being tenanted paddy fields, they were not having any building potential and that they were prohibited from being put to non-agricultural use and the only method available for considering the valuation of the land was on the basis of the yield from such paddy fields. The learned Reference Court had gone still further and hastily concluded that the Sale instances could not be taken into consideration as they were in no manner comparable to the acquired land despite the clear assertion by the applicants that there were no tenants to the acquired land.

11. Shri Nitin Sardesai, learned Senior Counsel for the applicants invited attention to the survey records of the acquired land bearing the Survey Nos.223/2, 224/3 and 259/1 to show that they did not record the name of any tenant and yet the Reference Court had concluded otherwise. Therefore, the learned Reference Court was completely in error to deny the enhanced compensation to the applicants as claimed by them by relying on the Sale instances in the vicinity of the acquired land and proximate in point of time to the acquisition. The learned Reference Court kept out the best evidence of Sale instances and on the premise that the

acquired land was located in the setback area and lacked building potential and secondly on the premise that it was a tenanted agricultural land despite the survey records showing to the contrary.

12. In **ONGC Ltd.** (supra), the Hon'ble Apex Court held that the best method for determining the market value of the acquired land would be the amount as may be evidenced by the Deeds of Sale. In the absence of any direct evidence on the said point, the Court may take recourse to the other methods namely the judgments and awards passed in respect of the acquisition of lands made in the same village and/or the neighbouring villages. However, such a judgment and award in the absence of any other evidence like the Deed of Sale, Report of an expert and the other relevant evidence, however, would have only evidentiary value. The Apex Court held at paras 11 & 12 as below:

11. While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefor has to be ascertained. Although, there exist different modes for arriving at market value for the land acquired; the best method, however, as is well-known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by deeds of sale. In absence of any direct evidence on the said point, the court may take recourse to other methods; viz. judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighbouring villages. Such a judgment and award in absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value.

12. The Reference Court, it is trite, has to apply the comparable sales method as also the situation of the land which is to be appreciated upon considering the question as to whether acquired land is similar to any land sold in the vicinity.

13. **Rameshchandra Govind** (supra), was an appeal by the claimant who was aggrieved by the rejection of his reference under Section 18 of the Act by the Additional District Judge, Panaji claiming enhanced compensation of ₹500/- per sq. mt. against ₹18/- per sq. mt. awarded by the Land Acquisition Officer. He had relied on his evidence, that of the valuer and the Sale instances. It was contended on behalf of the respondent before the Reference Court that the Goa Land Use (Regulation) Act had come into force from 2/11/1990 and Section 2 thereof had a non-obstante clause and therefore the land could not be used for any purpose other than agriculture. That being the position, the land under acquisition had no construction potential and therefore the Sale instances could not be relied upon and the claim had to be rejected. It was contended on his behalf that the Land Use Act was a matter which had been raised merely to deny fair and just compensation for the acquisition of his lands which were acquired for setting up a Satellite Township. The Division Bench of this Court on a consideration of the contentions of the learned Counsels observed that it was well established that the special, though natural,

adaptability of the land for the purpose for which it was taken was an important element to be taken into consideration in determining the market value of the land. In such a situation land might have already been valued at more than its value as an agricultural land, if it had any other capabilities. However, only the reasonable and fair capabilities but not far-fetched and hypothetical capabilities were to be taken into consideration. The proximity of the land under acquisition to develop urbanised area was a relevant principle. In the ultimate it was held that rejecting the reference and the claim for an enhanced compensation only by placing reliance upon the Land Use Act was impermissible and allowed the appeals.

14. In **Gopal Baburao Gaudo** (supra), the acquisition proceedings were initiated with regard to the several lands including that belonging to the respondents under a preliminary Notification dated 14/02/1991. The Land Acquisition Officer awarded compensation at ₹7/- per sq. mt. which was increased by the Reference Court to ₹154/- per sq. mt. The High Court did not disturb the amount awarded by the Reference Court as it found that in an appeal arising from the award in Land Acquisition Case No.48/1995 relating to a comparable land, compensation at a higher rate had been awarded of ₹200/- per sq. mt. dismissing the appeal of the State giving rise to the leave to challenge the said

judgment. The main plank of argument on behalf of the petitioner State was that the acquired land admeasuring 2715 sq. mts. was a narrow strip which fell within the 40 mts. margin from the centre of the highway where constructions were prohibited and that as the acquired land could not be used for construction, it had to be considered as not having any development potential and could not be compared with the land which was the subject matter of the Land Acquisition Case no.48/1995.

15. In **Gopal Gaudo** (supra), the Hon'ble Apex Court held at para 5 as below:

"5. The contention that a land adjoining the highway should be treated as having no development potential (and therefore as land without much value except as ordinary agricultural land), while considering the lands to its rear which are farther away from the road, or other adjoining lands of the same extent, but having more depth (so as to extend beyond the 40 mts. margin) as having potential for development, is illogical and cannot be accepted."

Their Lordships further went on to demonstrate the absurdity of such a contention with reference to an illustration and observed at paras 6 & 7 as below :

"6. Let us take the example of a residential plot of land measuring 60' x 100'. Let us assume that the municipal bye-laws require a front (roadside) set-back of 20' for construction of houses in a plot of that size. Therefore, the owner would leave a twenty feet wide front strip in the said plot free of any construction while putting up the construction in the plot. Obviously, he cannot thereafter construct in that front strip. Let us further assume that the front strip is acquired for road widening. Can the acquiring authority deny compensation to that strip on the ground that the said 20' strip acquired for road

widening could not in any event be used for any construction purpose and therefore, was not of any value? Obviously not.

7. Therefore, the determination of the market value of the acquired land with reference to the value of the comparable land cannot be faulted."

The High Court had rightly decided the matter with reference to the facts of the case and the judgment did not call for any interference. The Special Leave Petition was therefore dismissed as having no merit.

16. The respondents through the Government valuer had valued the structure in the acquired land at ₹16,19,800/-. However, for no justifiable reason the learned Reference Court did not consider the Valuation Report Exhibit-18 nor awarded the amount in the applicants' favour. The applicants are therefore held entitled to ₹16,19,800/- towards the value of the structures as per the valuation done by the Government approved Valuer. The learned Reference Court ought to have considered the sale instance being the best evidence while determining the value of the acquired land. The learned Reference Court however had relied on the award of the L.A.O. in the Land Acquisition Case No.85/03 dated 30/10/2006 as the basis for computing the enhanced market value. To that extent the learned Reference Court was in error in ignoring the sale transaction of February 1997 where an area of 405 sq.mts. was sold @₹200/-per sq.mt. The learned Reference Court had ignored

the sale transaction on the premise that the land was in the setback area and it lacked building potential and secondly on the premise that it was a tenanted agricultural land. However, it is shown from the evidence on record including the Survey Records that there were no tenants in respect of the acquired land bearing the distinct Survey Nos.223/3 224/3 and 259/1. Moreover, considering the judgment in **Gopal Baburao Gaudo** (supra), the finding of the learned Reference Court that it was in the setback area cannot at all be countenanced.

17. The sale transaction was of the year 1997 unlike the acquisition which was of the year February 2000 i.e. three years later. Even considering the vastness of the area as 11,000 sq.mts and allowing necessary deductions towards the development cost, the market value of the acquired land in 1997 would be ₹120/- per sq.mt. Thereafter, giving a 10% escalation, the market value would work out to be ₹159.97 per sq. mt. which is rounded off to ₹160/- per sq.mt. being the market value of the acquired land at the time of the Section 4 Notification in February 2000. Considering the various judgments in the factual matrix and having arrived at a conclusion that there was an error of the learned Reference Court in assessing the material in respect of enhanced market value and also giving due weightage to the Valuation Report of the Government approved Valuer in respect of the structures, i find that the appellants have amply made out a case for the grant of

their appeal. It goes without saying that the respondent-State have failed to show on the basis of the same material on record that the award of the learned Reference Court was still required to be interfered with and the applicants were not entitled even to the rate enhanced by the learned Reference Court. As a consequence thereof, i pass the following:

O R D E R

The appeal of the original applicants is allowed whereby the market rate of the land under the Survey Nos.223/3, 224/3 and 259/1 is enhanced to ₹160/- per sq.mt. while the applicants are further held entitled to an amount of ₹16,19,800/- towards the value of the structures in the land. The original applicants are held entitled to 30% solatium on the value of the land in terms of the Section 23(2) and other statutory benefits in terms of Section 23 (1-A) of the Act and additional interest till payment in terms of Section 28 of the Act. It goes without saying that the cross-appeal filed by the Acquiring Department does not survive and is hereby dismissed.

NUTAN SARDESSAI,J.