IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.79 OF 2008 WITH CROSS-OBJECTION NO.16 OF 2008

FIRST APPEAL NO.79 OF 2008

1 The Land Acquisition Officer,
PWD(CELL),
Altinho, Panaji – Goa.

2 Executive Engineer,
VII, PWD, Patto,
Panaji – Goa. ………. Appellants

Versus

1 Mr. Rajaram A. Bandodkar

(a) Smt. Snehaprabha Rajaram Bandodkar, Major of age, wife of Rajaram A. Bandodkar;

(b) Shri Nilesh Rajaram Bandodkar, major of age son of Rajaram A. Bandodkar;

(c) Shri Nitin Rajaram Bandodkar, major of age, son of Rajaram A. Bandodkar;

(d) Sou. Nisha Nitin Bandodkar, major of age, wife of Nitin Rajaram Bandodkar;

2 Mr. Somnath A. Bandodkar
Both r/o Dhargalim, Pedne, Goa ……… Respondents.

Ms. Suzan Linhares, Additional Government Advocate for the appellants.

Shri S. D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate for the respondents.

WITH

CROSS-OBJECTION NO.16 PF 2008.

1 Mr. Rajaram A. Bandodkar

2 Mr. Somnath A. Bandodkar
Both r/o Dhargalim, Pedne, Goa .... Original Respondents/ Appellants

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1 The Land Acquisition Officer,
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Shri S. D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate for the original respondents/ appellants.

Ms. Suzan Linhares, Additional Government Advocate for the original appellants/ respondents.

CORAM : NUTAN D. SARDESSAI, J.

Reserved on:- 11th August, 2017.

Pronounced on:-28th September 2017.

JUDGMENT:

1. This is a State appeal under Section 54 of the Land Acquisition Act,1894 (L.A. Act, for short) challenging the Judgment and Award dated 12/03/2007 passed by the Ad-hoc District Judge-3 (FTC), Mapusa-Goa pursuant to which the Reference Court had partly allowed the reference fixing the market value of the acquired land admeasuring

238 sq.mts. beneath the structures to ₹120/-per sq.mt. and had awarded an additional compensation of ₹12,000/- for the structure in the acquired land apart from granting statutory benefits in favour of the respondents.

2. The Government had acquired 3800 sq.mts. of the property bearing Survey No.210/1 in the Village of Dhargalim, Pernem Taluka and a compensation was awarded @₹15/-per sq.mt. The respondent/original applicant claimed the compensation at the enhanced rate of ₹300/- per sq.mt. and which was ultimately decided by the Reference Court partly enhancing the compensation to ₹120/- per sq.mt. restricting to an area of 238 sq.mt. beneath the structures and granting an additional compensation of ₹12,000/- towards the structure in the acquired land. The State challenged the impugned Judgment on the ground that the approach of the learned Reference Court was contrary to the settled principles governing the fixing of the market value of the acquired land. The learned Reference Court committed an error in relying upon the Sale Deed dated 19/05/1999 for the purpose of ascertaining the market value of the acquired land without considering the similarity. The learned Reference Court erred in granting additional sum towards the structure without any supporting evidence and failed to appreciate that the acquired land was not identical to that of the plot under Exhibit-9. The impugned Judgment and Award was therefore liable to be interfered with in appeal.

3. The original applicant as the present respondent had filed the cross-objection being aggrieved by the Judgment under challenge on the premise that the learned Reference Court partly rejected the reference. The impugned Award was unsustainable to the extent it did not award the compensation at least @₹200/-per sq.mt. for the entire land admeasuring 3800 sq.mts. The learned Reference Court had failed to appreciate that the major part of the acquired land stood converted for non-agricultural purposes by the existence of structures like residential house, the cow-shed, the fire storage shed, laterite stone boundary wall,etc. long before the coming into force of the Agricultural Tenancy Act and the Goa Land Users Act, 1990. Therefore, the market value of the acquired land could not be assessed on the basis that it was a tenanted, agricultural land. The learned Reference Court erred in holding that the land had ceased to be anagricultural land only to the extent of the portion which was beneath the structures and, therefore, erred consequently in restricting the Award of compensation to the extent of only 238 sq.mts.

4. The learned Reference Court had accepted the Sale Deeds dated 27/02/1997 and 19/05/1999 as being comparable instances and proceeded to deduct 40% of the sale price as the development cost for the purposes of arriving at the market value of the acquired land. The logic adopted by the learned Reference Court with regard to reducing the market value was ultimately fallacious. The learned Reference

Court erred in not considering that the land prices increase year after year and the Notification under Section 4 of the Act was published in the instant case on 18/02/2000 i.e. almost three years after the first Sale Deed and a year after the second one and a proportionate increase in the market value over the price as reflected in the Sale Deed at least @10% p.a. had to be awarded. There was no justification to deduct 40% of the sale price as and by way of development cost while arriving at the market value of the acquired land and, therefore, the impugned Judgment and Award to that extent warranted interference.

5. Ms. Linhares, learned Additional Government Advocate came to be heard on behalf of the appellant–State who submitted that the land had been acquired for road widening at Dhargalim pursuant the Section 4 Notification of 2000 and an area of 3800 sq.mts. was acquired from the Survey No.210/1. The Land Acquisition Officer (L.A.O.,for short) had awarded the compensation of ₹5,09,925.26 for the structures i.e. the house and the compound wall contrary to the claim of the respondent @₹300/-per sq.mt. The Reference Court had however awarded compensation @₹120/-per sq.mt. without any rhyme or reason even though the land was an agricultural, tenanted land purchased by the respondent and there were no comparable instances of any free hold land. She adverted to the evidence on record and submitted that there was no basis for the rate awarded by the L.A.O.

and therefore the impugned Judgment and Award had to be quashed and set aside.

6. Shri S.D. Lotlikar, learned Senior Counsel on behalf of the respondent submitted that the learned Reference Court had granted the compensation only in respect of the land beneath the structure i.e. 238 sq.mts. and which was enhanced to ₹120/-per sq.mt. In any event and in all fairness the respondent was restricting his claim to this area alone and the structures insofar as the enhanced compensation was concerned. There was also no dispute that the structures were existing prior to the Section 4 Notification or that the total area of the structure was 426 sq.mts. Therefore, he was entitled to the compensation in respect of the said area. The Reference Court had deducted 40% towards the development charges which it was not justified to do. The structures were existing in the bharad land next to the highway. There was no justification for deducting 40% in the first place even considering the sale instance of 1998 and 1999 when the acquisition was in the year 2000. Rather the respondent was entitled to 10% escalation towards the land rate by taking the base of the sale instances for computing the quantum of enhanced compensation. It was his next contention that the Government Valuer had valued the structures in the first report at ₹14,57,700/- unlike the second valuation report which was pegged at ₹3,90,699/- unlike the applicant's valuer who had valued the structure at ₹12,83,700/-. There was no

serious challenge to the applicant's valuation report. Therefore, the respondent was entitled to the compensation based on his valuation report apart from the enhanced compensation. The appeal had therefore to be dismissed and the cross-objection had to be allowed. i would advert to the evidence on record in the light of their contentions and decide the matter appropriately.

7. The original applicant no.2 had examined himself reiterating on oath the details of the acquired land, the existence of the dwelling house admeasuring 210 sq.mts. existing therein, a cow-shed admeasuring 100 sq.mts., a firewood store admeasuring 40 sq.mts. apart from the drinking water well being located in the acquired land. The acquired land bearing Survey No.210/1 was partly a paddy field and partly a bharad land and the portion towards the road in which the dwelling house as well as the other structure were situated, was the bharad portion of the land. The entire land was held by them as agricultural tenants and consequently they became the deemed purchasers in terms of the Agricultural Tenancy Act. The acquired land was fit for construction purpose. The acquired land was enclosed by a compound wall constructed by them which was materially comprised of laterite stones and besides there were fruit bearing trees. The acquired land was by the side of the road and was developed in the sense that there was construction carried out in the form of houses, cowshed, firewood store and a drinking water well. He had further revealed that

the plot of land belonging to Prakash Gopal Prabhudessai admeasuring 125 sq.mts. surveyed under No.7/1 situated at Dhargalim village was sold for ₹200/- per sq.mt. and in that regard produced the Sale Deed dated 19/05/1999. This was the price agreed by them about 4 years prior to the execution of the Sale Deed and which property was 150 mts. away from the acquired land. He produced another sale instance dated 16/04/2001 whereby another property situated at Dhargalim about 100 mts. away from the acquired land and of a similar nature was sold @₹443/- per sq.mt. being the prevailing market value at the relevant time. The acquired land was much better than the two sale instance land and, therefore, he was entitled to the enhanced compensation of ₹300/-.

8. Somnath (Aw1) had further revealed in his evidence that the Colavalem bridge was completed and thrown open to the public in the year 1995 and there was a lot of heavy traffic going from Goa to Mumbai being diverted along the said road. The acquired land was closer to the road with a Health Centre situated at 200 mts. distance, high school about 150 mts away and a middle and primary school about 100 mts away from the acquired land. The Temples of Shanta Durga and Kalabhairav were situated 250 mts and 300 mts away from the acquired land. Besides, the Industrial Estate was located at a distance of about 300mts from the acquired land. The compensation awarded in respect of the structures was ridiculously low. The Valuation

Officer appointed by the L.A.O. for ascertaining the market value of the structures had originally valued the same at ₹14,57,700/- which was later reduced to ₹5,09,925.76.

9. He produced the sale instance of 1999 and of the subsequent year to support his case apart from the valuation report. It was revealed during his cross-examination that the acquired land had a width of 40mts. and a length of about 70 to 80 mts. and that about 1,500 to 2,000 sq.mts. was the paddy field portion. He admitted that no construction could be done on a highway in the setback area and that both the sale instances relied upon by him were in respect of the sub-divided plots. It was further revealed during his examination that all the structures existing in the acquired land were present even prior to the Section 4 Notification. He mentioned further that the property sold by the Sale Deed dt.16/04/2001 was at a distance of 200 mts. away from the acquired land but he could not give the boundaries thereof. There was also another admission at his instance that the sale land of 1999 pertained to a sub-divided plot but denied the suggestion that it was not comparable to the acquired land. Otherwise, in all respects there was no rebuttal of his testimony on the amenities and facilities and the proximity of the sale land of 1999 to the acquired land.

10. The original applicant had examined Anant Dhargalkar who stated

that his house was 300–350 sq.mts. away from that of the original applicants and that the portion of their property had been acquired by the Government for the purpose of road widening. He confirmed the existence of the houses belonging to the applicants, a cow shed and a firewood store and drinking water well being located in the acquired land which was enclosed by a compound wall, consisting of laterite stones, constructed by the original applicants. He corroborated the version of Somnath(Aw1) that the acquired land was partly a paddy field and partly a bharad land which was fit for construction purpose. He also confirmed the existence of the fruit bearing trees like mango trees, cashew trees and jack fruit trees located within the acquired area. There was escalation in the land prices in the village and the acquired land was closer to the road and there was a Health Centre at 200 mts, high school about 150 mts and high school about 150 mts away from the acquired land. Industries like Vishwas Steel plant, Link pen and chemical industries etc. were situated at a distance of about 250 to 350 mts from the acquired land and development taken place in the vicinity prior to the Section 4 Notification. Anant (Aw2) too admitted that no construction activity was permissible near the highway and also in the tenanted properties and confirmed that the total area acquired by the Government from the original applicant's property was 3800sq.mts. He categorically denied the suggestion that the acquired land was not fit for the construction purpose and maintained his statement that there was good value for the land and that it had all the facilities within the proximity of 300-350 sq.mts.

11. The original applicant examined the Government Valuer Vikas Desai who stated that he was a Government Registered Valuer. He had visited the original applicant's property initially on 17/04/2000 and twice thereafter and carried out the inspection of the acquired land, houses, storerooms, cowshed, rubble compound wall and well situated therein. The property had been acquired for the purposes of widening the National Highway No.17 in Dhargalim village. He had carried out the site inspection to determine the market value of the acquired land on the date of publication of the Section 4 Notification and drawn the Valuation Report dated 21/05/2000. He had considered the relevant factors such as the location of the landed property, zone, accessibility, means of communication, commercial potentialities, level of land, proximity to civic amenities and services available, present use for commercial and residential purpose, prevailing market prices of similar types of land in the vicinity and then prepared his Report.

12. Vikas(Aw3) confirmed that he had visited the property on three different occasions at the instance of the applicants and had personally measured the structure, the distances and had made comparison also with the sale instance land. He admitted in fairness that he had not shown the location of the shop in the plan accompanying the Valuation Report to confirm the total area of the house and the shop was 262

sq.mts. He also relented that he was not able to give its length and breadth since it was not in regular rectangular in shape and it had 8 sides. He categorically denied the suggestion that he had not visited the site on 17/04/2000 and twice thereafter but maintained that he had stated in his Report that the house was constructed in 1978 and renovated in 1994 based on the information given by his client.

13. Vikas (Aw3) too admitted that the construction was generally not permissible within the setback area but confirmed the existence of structures in the setback area. He denied the suggestion that the store room was barely ₹11,040/- in value or that the valuation of the cowshed was just ₹15,525/- or that the rubble stone compound wall could not be valued at ₹13,548/-. He also denied the suggestion that the valuation of the mud portion of the house was ₹1,09,156/- and the renovated portion was ₹1,55,435/- and on the contrary revealed that there was no mud portion to the house. Besides, the Government had made valuation on the basis of the Goa Schedule of Rates unlike the actual market value of the structure. He volunteered that there was a difference between the cost and the value under both the categories. Last but not least, he categorically denied the suggestion that he had shown inflated rates at the convenience of the parties.

14. The appellants as the original respondents had examined Sunil Karekar (Rw1) who confirmed that the acquisition was for widening of

the road in Dhargalim village. The L.A.O. had inspected the properties connected with the sales statistics as well as the land under acquisition to ascertain the advantages and disadvantages of the land and fixed the market value at ₹15/- per sq.mt. which was proper. The acquired land was falling within the setback area of the highway road. The Engineer attached to their office had correctly done the valuation of the acquired property unlike the private Engineer of the original applicant to suit the case of the original applicant. A portion of the acquired land was agricultural and had no building potential and was not fit for any development purpose. The original applicant was therefore not entitled to any enhancement. His cross-examination had borne out that he personally not visited the acquired land nor was he had aware that the L.A.O. had visited the acquired land. Subsequently, he corrected himself to state that he had visited the acquired land for the purpose of valuation of the structure and found that it was close to the National Highway. He admitted that various development activities were going on around the property and there was an industrial estate near the property apart from the schools and temples and there was a lot of accessibility to the acquired land. Yet at the same time, he categorically denied the suggestion that the acquired land was worth ₹550/- per sq.mt. and that the rate of ₹15/-per sq.mt. awarded by the L.A.O. was very low.

15. Sunil Karekar (Rw1) claimed that he did not know the date of the

Valuation Report prepared by the Junior Engineer on the premise that he was personally not involved in that work. He relented that the valuation was made on the basis of Goa Schedule of Rates but did not know how much the construction of the well would cost. Surprisingly, he admitted that their Executive Engineer Chimulkar had given a Valuation Report fixing the value as ₹14,57,700/- being of the structure and not of the land. He also admitted that since the land was bharad land it had no potential for construction purposes and that the construction of a farm house for residential purposes was permitted in the property. Last but not the least he did not rule out the possibility that the land in the vicinity had been sold at ₹200/- per sq.mt.

16. Koriakose T. Xavier (Rw2) reiterated on oath that he had done the valuation of the structure by adopting the prevailing plinth area rates approved by the Government and relented that Chimulkar had done the detailed valuation of the structures. The Valuation Report prepared by the original applicant's Engineer was incorrect and false as he had shown inflated rates. It was revealed during his cross-examination that he was personally not aware about the acquisition and the issuance of the Section 4 Notification qua the land in acquisition. He had not done any valuation of the land but had done valuation of the structure. He was only a Diploma holder in Civil Engineering but denied the suggestion that the person with a Degree in Engineering and having

practiced at least for 10 years was competent to issue a Valuation Certificate. He stated that he had given a valuation of ₹14,57,700/- and that his valuation was not accepted. It was further brought out in his cross-examination that the house in question was an ancestral house and a portion of which was renovated and rebuilt. He had further considered the age of the house as 60 years. He found that the structure of the ancestral house was not satisfying the standards of the modern pakka construction and had done the valuation. He further admitted that the structure which was near the highway would have more value than a structure which was located at an interior place and that the structure calculated on the basis of the GSR rate they would have a different value. In any event, the Valuation Report by him of ₹14,57,700/- would stand when there was no explicable reason as to why the valuation would not be accepted.

17. The learned Reference Court had before him the two sale instances one dated 19/05/1999 whereby land in Dhargalim village was sold @₹200/- per sq.mt. and other again in village Dhargalim where the land was sold by the Deed on 16/04/2001 @₹443/- per sq.mt. Shri S.D. Lotlikar, learned Senior Counsel conceded that he was restricting the compensation at the enhanced rate only in respect of the area beneath the structures i.e. to an area of 238 sq.mts. In view of the fair concession made by him, the reasoning of the learned Reference Court that the land was a tenanted agricultural land or that it could not

be used for non-agricultural purpose and or that there was no comparision with the sale instances and finally there was no evidence of the agricultural income arising out of the acquired land would pale into insignificance. i am fortified in this conclusion not only on the basis of the fair concession of Shri S.D. Lotlikar, learned Senior Counsel but also the findings of the learned Reference Court that the land beneath the structure could not be considered an agricultural property. Having come to such a finding, there was no justification for the learned Reference Court to enhance the market rate to only ₹120/-per sq.mt. and that too by deducting 40% towards the development cost. Hence, i would considere the sale instance land of 1999 where the land in village Dhargalim and within 200 mts. of the acquired land was sold at ₹200/- per sq.mt. for computing the enhanced compensation. Besides, the area in respect of which the compensation was to be enhanced was restricted to 238 sq.mts. which was equivalent to a smaller developed plot like a plot in the sale instance of 1999. Therefore, making a deduction of 40% towards the development charges would be unduly excessive. Hence, considering 20% towards the development cost the value of the land would be ₹160/-per sq.mt. The sale transaction was of 1999 while the acquisition was in the year 2000, a year later and therefore by giving a 10% increase the market value of the said area of 238 sq.mts. would be ₹176/-per sq.mt. Accordingly, the market value of the acquired land beneath the structure in an area of 238sq.mts. is enhanced from ₹120/- per sq.mt.

awarded by the learned Reference Court to ₹176/- per sq.mt. The learned Reference Court however gave no justification for awarding ₹5,09,925/- for the value of construction unlike ₹14,57,700/-claimed by the original applicants. Not only the original applicants examined an expert giving the valuation of the structures, the respondent through its witness Xavier (Rw2) too had admitted that he had valued the structure at ₹14,57,700/-. The original applicants would therefore be entitled to ₹14,57,700/- as compensation towards the structures in the acquired land. There was no basis for the learned Reference Court despite the evidence on record to conclude that ₹12,000/- should be an additional compensation for the structure over and above ₹5,09,925.76 fixed by the L.A.O. despite the overwhelming evidence on record. Hence considering the evidence on record, the original applicants i.e. the respondents are held entitled to the enhanced compensation @₹176/-per sq.mt. in respect of an area 238 sq.mts. beneath the structures and ₹14,57,700/- towards the structures apart from the statutory benefits in terms of Section 23(1A), 23(2) and interest to which the original applicants are entitled in terms of the Act. In view thereof and as the appellants have failed to justify interference with the impugned order in terms prayed and finding with the case of the respondent, i pass the following

O R D E R

The appeal filed by the State is dismissed and the cross-objections are allowed inasmuch as the respondents are held entitled to the enhanced compensation at ₹176/- per sq.mt. for an area of 238 sq.mts. and the compensation of ₹14,57,700/- towards the structure apart from solatium and interest as due under the Act apart from the costs of the cross-objections.

NUTAN D. SARDESSAI, J.

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