

IN THE HIGH COURT OF BOMBAY AT GOA.

**FIRST APPEAL NO. 35 OF 2012**

The Executive Engineer,  
PWD, W.D. I (Bldg.), Patto,  
Panaji, Goa.

... Appellant.

Versus

Mr. Rondolfo Tolentino Xavier C. Veigas,  
R/o. 252, Cardoz Vaddo, Taleigao, Goa.

... Respondent.

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

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

**CORAM : NUTAN D.SARDESSAI, J.**

**RESERVED ON : 8<sup>th</sup> June,2017.**

**PRONOUNCED ON: 6<sup>th</sup> July,2017**

**JUDGMENT:**

This is an appeal by the State challenging the Judgment and Award dated 28/06/2011 passed by the Reference Court i.e. the District Judge-I, Panaji in the Land Acquisition Case No.84/2008 questioning the enhanced market rate of ₹210/- per sq.mt. awarded by the learned Reference Court from that awarded by the Land Acquisition Officer (L.A.O.,for short) at ₹20/- per sq.mt. in respect of the area admeasuring 63,110 of the Survey No.202 of village Taleigao pursuant to the Section 4 Notification under the Land Acquisition Act, 1894 (the Act, for short) dated 05/01/1982 for the purpose of developing an institutional complex at Curca, Bambolim, Calapur, Taleigao and Dona Paula. The L.A.O. had

awarded the market rate @ ₹20/- per sq.mt. while the respondent had claimed the market rate @ ₹310/- per sq.mt. The learned Reference Court enhanced the compensation to ₹210/- per sq.mt. relying on the Sale instance dated 22/12/1982 in respect of the sub divided plot admeasuring 442 sq.mts.

2. The appellant assailed the Judgment and Award as it was contrary to the facts, law and evidence on record and the learned Reference Court had misinterpreted and misapplied the provisions of the Act. The learned Reference Court erred in applying the principles laid by the Hon'ble Apex Court for the purpose of assessing the market value of the Land Acquisition Cases and grossly erred in enhancing the market value from ₹20/- per sq.mt. to ₹210/- per sq.mt. The learned Reference Court had failed to appreciate that the respondent had failed to produce any evidence on record to prove that the land involved in the sale instance dated 22/12/1982 was similar and identical in nature to the land under acquisition and there was no comparison between the two as the acquired land was agriculture in nature. The learned Reference Court had deducted only 30% towards the development even though the acquired land was vast, undeveloped land admeasuring 63,110 sq. mts. against 442sq.mts. of the sale land. The learned Reference Court had erred in discarding the Judgment dated

09/07/1999 passed by the District Judge in the L.A.C. No.5 of 1993 which was confirmed by this Court in the First Appeal No.107/1999. The impugned Award had therefore to be quashed and set aside.

3. Ms. S. Linhares, learned Additional Government Advocate came to be heard on behalf of the appellants who reiterated her case and submitted that the acquired area was vast and in respect of which the respondent was an agricultural tenant with three others. She relied on the Judgment of this Court in a bunch of appeals bearing First Appeal Nos.69/92, 70/92, 73/92, 86/92, 90/92, 91/93, 100/93, 66/93, 84/93, 90/93, 91/93, 94/93, 95/93, 96/93, 97/93, 98/93, 104/93, 8/94, 10/94 and 14/94 with the Cross-Objections to buttress her contention that the learned Reference Court had fixed the market rate of the land uniformly @₹6/- per sq.mt. in respect of the lands acquired pursuant to the Notification dated 25/01/1982 acquired for the purpose of Goa University where the Reference Court had enhanced the compensation to ₹35/- per sq.mt. and the Hon'ble High Court had reduced the market rate to ₹17.50 per sq.mt. She also relied in the judgment of this Court in the First Appeal No.107/1999 and Cross-Objection No.6/2000 where the State had assailed the judgment passed by the Reference Court in the Land Acquisition

Case No.5/1993 passed by the then District Judge enhancing the market value to ₹38/- per sq.mt. from ₹6/- per sq.mt. awarded by the Special Land Acquisition Officer and which was further increased in the Review Petition to ₹89.25 per sq.mt. and where ultimately the Division Bench of this Court by its Judgment dated 18/07/2005 had dismissed the appeal of the State and confirmed the Judgment and Award of the Reference Court fixing the compensation at ₹89.50 per sq.mt. and also dismissed the cross-objection filed by the respondents. She ultimately claimed that the appeal had to be allowed and the compensation awarded by the Reference Court had to be reduced to ₹17.50 per sq.mt. awarded by the Hon'ble High Court in the appeals.

4. Shri S.D. Lotlikar, learned Senior Counsel for the respondent submitted that the appeal had to be dismissed and fairly conceded that applying the Judgement of this Court in **State of Goa and another v/s. Agnelo Jose Augusto Pinto and another** (F.A. No.107/1999 with Cross-Objection No.6/2000), the compensation had to be fixed at ₹89.25 per sq.mt. by reducing it from ₹210/- per sq.mt. awarded by the Reference Court. He also adverted to the ground no.8 of the appeal memo and submitted that it was not open to the appellant to claim for the reduction of the compensation to ₹17.50 per sq.mt. from ₹210/- per sq.mt.

awarded by the learned Reference Court.

5. i have considered their submissions and in view of the Judgments of this Court, the short point which would arise for determination is whether the appellants are entitled to the reduction in the amount to ₹17.50 per sq.mt. as held by this Court in a bunch of appeals or whether the rate had to be fixed considering the judgment of this Court in **State of Goa and another** (supra) where the subject matter of the acquisition was the land bearing Survey nos.194(part) and 195(part) of Calapur village. In the instant case, though there was a publication of the preliminary Notification in terms of Section 4 of the Act in 1982, there was re-determination of the amount of compensation on the basis of the award of the Court in terms of Section 28A of the Act. The subject matter of the reference in the present case was the land bearing Survey No.202 of the village Taleigao in respect of which the L.A.O. had fixed the market rate at ₹20/- per sq.mt. and in reference u/s.18 was it enhanced to ₹310/- per sq.mt. by the Reference Court.

6. In **State of Goa and another** (supra), the Division Bench of this Court had clearly distinguished the judgment of the earlier Division Bench dated 08/08/1996 in a bunch of appeals even

though they were arising out of the same Notification dated 25/01/1982 as the claimants in those cases had not proved the Sale Deed on which reliance was placed and the Division Bench of this Court had not made a reference to the Sale Deed in the said cases. In that view of the matter, the Division Bench in **State of Goa and another** (supra), vide its judgment dated 18/07/2005 confirmed the compensation awarded by the Reference Court to ₹89.25 per sq.mt. and dismissed the State appeal as also the Cross-Objection filed by the respondents. This judgment would clearly apply to the case at hand considering that the re-determination under Section 28A of the Act was kept pending in view of the reference L.A.C. No.5/1993. Moreover, the State had also in its memo of appeal clearly referred to the judgment of the Reference Court and confirmed by the High Court in First Appeal No.107/1999 as not being referred to by the Reference Court while fixing the compensation and which is binding on the appellant/State. In view thereof and the fair concession of the learned Senior Counsel for the respondents, the appeal is partly allowed whereby the impugned Judgment and Award of the Reference Court fixing the market value of the acquired land at ₹210/- per sq.mt. is quashed and set aside and the market rate is fixed at ₹89.25 per sq.mt. in view of the Judgment of this Court in (FA 107/1999) alongwith all other consequential benefits in terms

of Sections 23(2) and 23(1A) of the Act and the costs of the proceedings.

**NUTAN D. SARDESSAI,J.**

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