

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 271 OF 2002**

1. State of Goa,
through the Dy. Collector
(Dev.) & L.A.O, Panaji,
Collectorate of North District,
Panaji.

2. Executive Engineer,
Works Division ((R & D),
P.W.D., Panaji.

.... Appellants.

V e r s u s

1. Smt. Sitadevi alias
Jaya Raghuraj Deshprabhu,
r/o Pernem, Goa (deceased)
(Amendment carried out as per order
dated 10.6.2016 Lrs are already
on record.)

2. Shri Devandra Raghuraj Deshprabhu
r/o Pernem, Goa.

3. Smt. Sunita Devandra Deshprabhu,
r/o Pernem, Goa.

4. Shri Jitendra Raghuraj Deshprabhu,
r/o Pernem, Goa.

5. Smt. Rupa Jitendra Deshprabhu,
r/o Pernem, Goa.

6. Smt. Shilpa Satish Ugrankar,
r/o Ram Mahal J. N. Tata Road,
Churchgate Bombay.

7. Dr. Satish Shripad Ugrankar,
aged about 41 years home work

r/o Ram Mahal J.N. Tata Road,
Churchgate, Bombay.

8. Smt. Devikar Dilip Kurkarni,
r/o 'OM' Bungalow Carter Road,
Bandra, Bombay

9. Shri Dilip Mahabal Kulkarni,
r/o 'OM' Bungalow Carter Road,
Bandra, Bombay.
(Respondent no.8 and 9 are unserved
Hence vide Id. Registrar order dtd.
16/1/2014, matter stands dismissed)

All represented by their duly constituted
Attorney Shri Atmaram Rabi Sinai Dessai,
r/o Mauswado, Pernem, Goa.

..... Respondents

Above address is the registered address of the
Respondents.

Ms. Susan Linhares, Additional Government Advocate for the Appellants

Shri J. P. Mulgaonkar, Advocate with Adv. A. Gaonkar for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 6th September 2018.

Oral Judgment:

The appellants/State is challenging the judgment and award dated 29/6/2002 passed by the Reference Court in L.A.C No.2/1993. By the impugned judgment, the price of the acquired land has been enhanced and fixed at Rs.100/- per sq.mtr., as against a claim of Rs.150/- per sq.mtr. by the respondents/interested parties.

2. An area of 250 sq.mtrs from out of survey number 126/8 (Part) situated at Virnora village, Pernem Taluka along, with some other lands totally admeasuring 27,475 sq.mts. was acquired for construction of the National Highway No.17. The Notification under section 4 of the Act was issued on 30/10/1986. The Land Acquisition Officer (LAO) awarded a compensation at the rate of Rs.10/- per sq.mtr. . Feeling aggrieved, the respondents sought enhancement of the compensation in a reference under section 18 of the Act which was registered as LAC No.2/1993. The respondents sought compensation at the rate of Rs.150/- per sq.mtr.

3. Before the Reference Court the respondent no.4 Jitendra Deshprabhu was examined who claimed that the acquired land had a commercial value as also building potential. There was a retail outlet of Bharat Petroleum near the acquired land and was less then 500 sq.mtrs. from Malpem temple and a primary school which was at a distance of 200 sq.mtrs. In short, it was claimed that the land was close to civic amenities and the compensation granted by the LAO was on a lower side. On behalf of the respondents a sale deed dated 28/11/1985 (Exhibit 16) executed between Rajendra Deshprabhu and others was relied upon whereunder a land admeasuring 160 sq.mtrs. was shown to be sold at the rate of Rs.300/ per sq.mtr.

4. On behalf of the appellants Mr. K. Xavier was examined who was working as a Junior Engineer with the PWD (road section).

5. The Reference Court placing reliance on section 51 A of the Act found that the sale deed can be taken into consideration for the purpose of looking into a comparable sale instance for determining the fair market value of the acquired land. However, the reference court found that the necessary deduction will have to be made looking to the fact that the sale transaction was in respect of an area of 160 sq.mtrs. unlike the acquired land which was admeasuring 250 sq.mtrs. Thus notwithstanding the fact that in the sale instance at Exhibit 16 the land is shown to be sold at the rate of Rs.300/- per sq.mtr., the reference court in its wisdom has granted compensation at the rate of Rs.100/- per sq.mtr.

6. I have heard Ms. Linhares, the learned Additional Government Advocate for the appellants and Mr. Mulgaonkar, the learned counsel appearing for the respondents. With the assistance of the learned counsel for the parties I have gone through the record and the judgment and award passed by the reference court.

7. Ms. Linhares, the learned Additional Government advocate has raised

a solitary contention. It is submitted that the area in the sale deed (Exhibit 16) was only 160 sq.mtrs. and as such, the sale deed could not have been reckoned as a comparable sale instance. Except this, there is are no other contention raised.

8. Shri Mulgaonkar, the learned counsel for the respondents on the contrary has supported the impugned judgment. It is submitted that the reference court has granted compensation at the rate of Rs.100/- per sq.mtr. which is one third of the price for which the land admeasuirng 160 sq.mts. in the vicinity has been shown to be sold. It is thus submitted that the reference court has made the necessary allowance for the purpose of arriving at a fair market price.

9. I have carefully considered the circumstances and the submissions made. It is not disputed that the acquired land is situated in the vicinity of civic amenities such as a school, health facility etc.. There is also no much of a dispute that the land which is subject matter of sale deed (Exhibit 16) is in the vicinity of the land which is acquired. The only question is about the necessary allowance being made in view of the fact that the sale deed is only in respect of the land admeasuring 160 sq.mtrs. The reference court had indeed adverted to this aspect and has found that the compensation granted at

the rate of Rs.10/- per sq.mtr. was quite meagre looking to the facilities/infrastructure, value and the potentiality of the land. The reference court has also considered the fact that the sale instance is in respect of a land admeasuring 160 sq.mtr. only and therefore has granted the compensation which is one third of the amount for which the land which is subject matter of sale deed (exhibit 16) is sold. In that view of the matter I do not find that the market price as determined by the reference court can be said to be excessive. The appeal is without any merit and it is accordingly dismissed with no order as to costs. The amount of compensation deposited before this court along with interest, if any shall be paid to the respondents, after a period of three months from today. A Decree be drawn accordingly.

C. V. BHADANG, J.

Ap/-