

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.99 OF 2012**

1. Special Land Acquisition Officer (N),
Irrigation Department,
Mapuca, Bardez, Goa.

2. The Executive Engineer,
Works Division-VI,
Irrigation Department,
Colvale Road, Bardez, Goa.

.... Appellants

V/s

1. Smt. Gracinda Braganza,
major of age,
resident of House No.E5/9,
Xetia, Duler, Mapuca, Bardez, Goa.
(since deceased through LR's)

1(a) Fatima Braganca e Antao,
major of age,
residing at House No.294,
Nachinola, Bardez, Goa.

1(b) Antonio Bonfilio Braganca,
major of age,
residing at House No.4/5,
Shetyavaddo, Mapuca,
Bardez, Goa.

1(c) Maria Annette Braganca e Pinto,
major of age,
residing at Gracinda Apartments,
Rajwaddo, Mapuca, Bardez, Goa.

1(d) Aleixo Jerenimo Braganca,
major of age, residing at 1/5,
Shetyavaddo Duler,
Mapuca, Bardez, Goa.

1(e) Maria Amalia Braganca e Rodrigues,

major of age,
residing at House No.1468/2,
Anjuna, Bardez, Goa.

1(f) Miguel Arcanjo Francisco,
Xavier Braganca, major of age,
residing at S-2, Gracinda Apartments,
Rajwaddo, Mapuca, Bardez, Goa.

1(g) Victor Savio Braganca,
residing at House No.4/5,
Shetyawaddo, Mapuca,
Bardez, Goa.

.... Respondents

Ms. Priyanka Kamat, Additional Government Advocate for the
appellants.

Shri Valmiki Menezes, Advocate for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 13th June, 2018

Pronounced on: 6th July, 2018

JUDGMENT :

The acquiring department has challenged the judgment and award passed by the learned Reference Court dated 10/02/2012 upon remand of the file to it by this Court vide the order dated 10/06/2011 passed in the First Appeals No.18/2006 and 310/2005. The parties would be referred to as the appellants and the respondents for brevity's sake hereinafter.

2. Admittedly, the appellants had issued a Notification under Section 4 of the Land Acquisition Act, 1894, Act for short hereinafter for acquiring the land from the Survey No.58/32 at Cunchelim, Bardez Taluka in an area of 570 square metres for the Tillari Irrigation Project. The Land Acquisition Officer (LAO), North Irrigation Department, Mapusa, LAO for short, had awarded the total compensation of ₹22,800/- at the rate of ₹40/- per square metre in respect of the acquired land. The learned Reference Court passed the judgment and award disposing off the reference filed by the respondent enhancing the compensation from ₹40/- to ₹50/- per square metre and also awarded ₹3,000/- towards the severance charges. The parties aggrieved by the said award preferred appeals being the First Appeal No.18/2006 and First Appeal No.310/2005. This Court passed orders in the said appeals and quashed and set aside the award remanding the matter to the learned Reference Court to decide it afresh after permitting the parties to lead evidence for establishing the comparability of the suit land and the land acquired and forming a part of the judgment dated 05/08/2010. The learned Reference Court however, passed the impugned judgment and award and enhanced the compensation to

₹500/- per square metre with the other consequential reliefs without any basis.

3. The appellants challenged the award on the grounds that there was absolutely no material evidence brought on record by the respondents for granting such unjustifiable enhancement of compensation. The learned Reference Court grossly erred in expanding the scope of the remand made by this Court vide its order dated 10/06/2011 passed in the First Appeal No.18/2006 and First Appeal No.310/2005. While remanding the matter this Court by its order dated 10/06/2011 had directed the Reference Court to decide the reference afresh after allowing the parties to adduce evidence for establishing the comparability of the suit land and the land acquired and forming a part of the judgment dated 05/08/2010. The learned Reference Court was also directed to consider the sale instances produced by the respondents so as to ascertain whether they could form the basis for fixing the market value.

4. The learned Reference Court failed to appreciate that no directions were issued by this Court to consider the sale

instances produced by the respondents herein and which were earlier considered by its predecessor in office while disposing the reference vide its order dated 16/09/2005. The learned Reference Court failed to appreciate that in terms of order of remand by this Court, there was no occasion for it to expand the scope of remand and to consider the sale instances produced by the respondents and more particularly the Sale Deed dated 11/11/1996. The learned Reference Court grossly erred in granting enhanced compensation from ₹40/- per square metre to ₹500/- per square metre and when the respondents had not even chosen to appear before the learned Reference Court and adduce any evidence in support of their claim for enhancement. The learned Reference Court fell in error on such and similar grounds taken in the appeal memo and therefore the impugned judgment and award had to be quashed and set aside.

5. Ms. P. Kamat, learned Additional Government Advocate came to be heard on behalf of the appellants who reiterated the grounds of challenge in her submissions and submitted that there was an error by the learned Reference Court to enhance the compensation from ₹40/- to ₹500/- per square

metre in the absence of any cogent material. The learned Reference Court had expanded the scope of remand and had to decide the reference afresh on the basis of the material on record. The learned Reference Court had fallen in error to grant enhanced compensation when there was no additional or new evidence produced by the respondents. She adverted to the order of remand passed by this Court dated 10/06/2011 and canvassed that despite the non-participation of the respondents and no new evidence being produced on record, the learned Reference Court was not justified in increasing the compensation awarded by the LAO from ₹40/- to ₹500/- per square metre. The appeal had therefore to be allowed and the impugned judgment had to be quashed and set aside. Besides, she placed the written synopsis of her arguments where she reiterated her original submissions and pressed for a reversal of the judgment in her favour.

6. Shri V. Menezes, learned Counsel for the respondent first adverted to Order XLI Rule 23 CPC dealing with the scope and extent of the remand and read through the order of this Court dated 10/06/2011 pursuant to which it had remanded the file to the Reference Court to substantiate his case. The learned

Reference Court had decided the matter afresh on the basis of the four sale instances and on a consideration of the material on record and had rightly enhanced the compensation from ₹40/- to ₹500/- per square metre. He adverted to the evidence on record to that effect apart from the relevant paragraphs of the impugned judgment and submitted that there was no basis to reverse the judgment under challenge. It was also his contention that the acquired land was not a forest land since the Karapurkar Committee was appointed much after the acquisition and submitted its report on 16/02/2002 unlike the sale instance relied by the respondent of 1996. There was no scope for reversal of the impugned judgment and therefore the appeal had to be dismissed.

7. i would consider their contentions in the context of the material on record, the order of remand passed by this Court and decide the appeal appropriately.

8. i would first advert to the order of remand in the First Appeal no.18/2006 and 310/2005 dated 10/06/2011 since as per the contention of Ms. P. Kamat, learned Additional Government Advocate for the appellants much turns on the

manner in which the learned Reference Court had understood the remand order and proceeded to decide the reference afresh. A learned Single Judge of this Court while disposing off both the appeals, one filed by the acquiring department and the other by the owner had quashed and set aside the judgment and award dated 16/09/2005 passed earlier by the Reference Court, restored the land acquisition case to the file of the Reference Court and directed it to decide the reference afresh in the light of the observations made above in accordance with law keeping all the contentions open. A learned Single Judge had found favour with the contention on behalf of the learned Government Advocate that the appellants were not entitled to rely upon the judgment passed by the Division Bench of this Court dated 5/08/2010 without establishing the comparability of the land acquired with the land which was the subject matter of the acquisition after considering the contention of the learned Advocate for the respondents herein that the lands were adjoining one another and the said fact being disputed by the learned Government Advocate.

9. Nonetheless, the learned Single Judge held that it was

incumbent upon the appellants to establish the comparability of the land acquired with the land which was the subject matter of the said acquisition and in that view of the matter remanded the matter to the Reference Court to decide the reference afresh after allowing the parties to adduce evidence, to establish the comparability or otherwise between the land acquired in the judgment dated 05/08/2010 and the land being the subject matter of the proceedings. The learned Single Judge also observed that the sale instances produced by the respondents would also have to be considered to ascertain whether they could form the basis for fixing the market value. The Reference Court accordingly was directed to permit the appellants to produce the judgment dated 05/08/2010 and adduce evidence to establish the comparability with the land acquired which was the subject matter of the land acquisition leaving the scope for the respondents to lead evidence in rebuttal. Therefore on a reading of the said judgment, it is apparent that the learned Single Judge of this Court gave enough latitude to the respondents herein to establish the comparability of the land in the judgment of the Division Bench dated 05/08/2010 with the acquired land and allowing the sale instances produced by

the appellants to be considered to ascertain whether they could form the basis for fixing the market value. It was nowhere indicated in the said direction that the learned Reference Court could not look into the sale instances earlier relied upon by the respondents while deciding the reference afresh. Therefore the contention of Ms. P. Kamat, learned Additional Government Advocate for the appellants would have to be dealt with appropriately while dealing with her submissions that there was no material at the instance of the respondent to establish her case.

10. It is an admitted position that subsequent to the order of remand, the respondents did not appear before the learned Reference Court nor led any additional evidence in support of their case and which finds due reference in para 7 of the impugned judgment. It is equally a matter of record that the present appellants too had not led any evidence. The learned Reference Court therefore proceeded to examine the evidence produced on record by the respondents alongwith the supporting documents to consider whether a case was made out for any enhancement. The learned Reference Court examined the evidence brought on record on behalf of the

respondents, found that the land acquired was located in an inhabited area, that there were schools, highway, grounds, various complexes within a radius of 1-3 kilometres, that the sale instance of 11/11/1996 was an undeveloped land sold at the price of ₹1120/- per square metre and that the subject matter of the Sale Deeds dated 15/10/1991 and 25/08/1992 were on a steep gradient and the project therein had to be done on stilts and at different levels, 1.5 kilometres away from the Mapusa Market and the suit acquired land was a plain land ideal for development and located within 2.5 kilometres from the Mapusa Market.

11. The Reference Court had then considered another sale instance dated 11/06/1996 in an area of 441 square metres sold at the rate of ₹1072.50/- per square metre and observed that though it was situated in Xelpem, it was similar to the acquired land, considered its location and distance from Mapusa city and unlike the acquired land was a forest area which would require clearance from the Central Ministry of Environment and Forests apart from obtaining the other regular licenses. The learned Reference Court examined the evidence of the respondents and found that another sale

instance dated 14/05/1993 was a low lying land located opposite to the Mapusa Police Station being a paddy field lying fallow and that it would require extensive filling to the level of the road and was not very conducive for development purpose and did not have commercial value.

12. The Reference Court found that the land in the Sale Deed dated 14/05/1993 was situated within a distance of 200 metres from the Mapusa bus stand and the market locality. The Civil Court was 500 metres away while the Dhuler junction was at a distance of about 1.5 metres from the Court and to reach the acquired land one had to proceed from the Dhuler junction along the Siolim road and turn right. In short, the acquired land was situated within a distance of 2 to 2.5 kilometres from the the Centre of Mapusa City. The sale land of 1993 was lying on the same side of the market area and the suit acquired land on the other side at a distance of 2.5 kms. He had also considered the fact that there was no public transport to the acquired land and the nearest public transport was available at a distance of 1 km. Also there were no shops or the other commercial shops within the vicinity of the acquired land.

13. The learned Reference Court had examined the testimony of a Civil Contractor who was conversant with the acquired land, stated its location qua the various amenities and facilities apart from the topography of the land and further considered the testimony of the Civil Engineer who had carried out the assessment of the property, found that it was a housing site with coconut grove and being ideally suited for residential purposes as it was an elevated land, within walking distance from St. Anthony's High School, Dhuler Football ground and the National Highway 17, 3 kms from Peddem and 2.5 metres from the town. The learned Reference Court considered that the sale land of 11/11/1996 had a steep gradient requiring terracing, filling and excavation unlike the acquired land which did not require levelling, filling and terracing. On his assessment of the material therefore the learned Judge found that the acquired land fell within the municipal and not the village area.

14. The learned Reference Court had considered the evidence brought on record by the appellants and finally concluded that the acquired land fell within the Mapusa

Municipal area which was accessible with a two wheeler if not by a four wheeler and had all the necessary amenities required for it apart from being located in a residential area. In that context the learned Judge found that the acquired land did have the development potential as established by the original applicants/respondents. At the same time, he had on the basis of the material at large before him found that the Sale Deed dated 11/07/1996 exhibit 25 was similar to the acquired land and took it as a comparative sale instance for computing the quantum of compensation to be awarded in favour of the respondents. The contention of Ms. P. Kamat that this land was a forest area and had no comparison with the acquired land cannot be countenanced when the Karapurkar Committee was constituted much subsequent to the Sale Deed and the report certifying it as the forest area was drawn only in the year 2002.

15. The learned Reference Court therefore on appreciating the evidence brought by the respondents and the appellants found that the sale instance land dated 11/07/1996 was comparable to the acquired land and that the acquired land was better situated than the suit land dated 11/07/1996 and

in that view of the matter and after making due deduction on the aspect that there was no access to a four wheeler, fixed the market value of the acquired land at ₹500/- per square metre. This finding of the learned Reference Court does not at all call for any interference unlike the contention of Ms. P. Kamat, learned Additional Government Advocate to the contrary. It was not as if the evidence which was earlier brought on record by the respondents stood wiped off the record consequent to the setting aside of the judgment and award of 2005 and the remand of the file by this Court vide its order dated 10/06/2011. Therefore there is no basis in the contention of Ms. P. Kamat, learned Additional Government Advocate for the appellants that the learned Reference Court had expanded the scope of remand by considering the sale instances produced by the respondent and more particularly that dated 11/07/1996.

16. There is also no basis in her contention that the learned Reference Court had grossly and manifestly erred in going beyond the scope of the remand nor that it could not have awarded higher compensation than that earlier fixed by the Reference Court. The fact that the respondents had not

appeared before the Reference Court nor led any additional evidence did not wipe off the evidence led before the Reference Court by the parties and the learned Reference Court was not at all in error in properly construing the remand order and appreciating the material afresh in the light thereof and finally granting the enhanced compensation at ₹500/- per square metre in the respondents favour. The learned Reference Court had all the material before it and it is not as if a failure on the part of the respondents to appear before it could weigh with the the Reference Court not to appreciate the material on record while passing the judgment under challenge, afresh. There is also no basis in the contention of Ms. P. Kamat, learned Additional Government Advocate that the impugned judgment and award calls for an interference or that the respondents at the highest are entitled to the compensation at ₹40/- per square metre. There is no merit in the case carved on behalf of the acquiring department and therefore i pass the following

O R D E R

The appeal fails and is accordingly dismissed with no order as to costs. The impugned judgment and award is

accordingly confirmed.

NH

NUTAN D. SARDESSAI, J.