

IN THE HIGH COURT OF BOMBAY AT GOA***FIRST APPEAL NO.87 OF 2015***

1. Smt. Mohini T. Gad,
wife of late Tukaram Gad
Major of age,
 2. Shri Chandrakant Gad, (deceased)
major of age,
Through L.Rs of applicant No.2
 1. Pushpavati Chandrakant Gad (widow)
 2. Suvarna Chandrakant Gad (Daughter)
 3. Mousami Chandrakant Gad (Daughter)
 4. Atmaram Chandrakant Gad (Son)All resident of H.No.94/54, Picaan Ponxem,
Tivim, Bardez Goa.
 3. Shri Gurudas Gad
Major of age,
 4. Shri Santosh Gad
Major of age,
 5. Shri Vishwas Gad
Major of age,
All resident of H. No.4610,
Khorlim, Mapusa,
Bardez Goa.
- ... Appellants

Versus

The Deputy Collector,
Land Acquisition Officer,
Panaji Goa.

.... Respondent

Mr. J. P. Mulgaonkar, Advocate for the Appellants.

Mr. S. Dhargalkar, Additional Government Advocate for the Respondent.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 5 October 2018.

Oral Judgment (Per N. M. Jamdar, J)

By this appeal, the Appellants have challenged the judgment and award passed by the District Judge-1, North Goa, Panaji, dated 28 April 2015, in the Land Acquisition Case No.37/2010.

2. The Appellants had sought a reference against the award dated 5 July 2010 passed by the Deputy Collector, Panaji in LAC No.1/2/73/DC(LA)(2006) to the District Court, Panaji. The land of the Appellants was acquired for the bus stand at Mapusa. The property bearing PT Sheet No.162, Chalta Number 4/2 situated at Mapusa admeasuring 4164 square metres was sought to be acquired by the acquiring Authority. The Collector made a reference to the District Court on 29 October 2010. From the reference, it appears that the dates of declaration of public notices under Section 4 of the Land Acquisition Act were 12 June 2006 and 14 August 2008. The

notification was published under Section 6 of the Act on 3 August 2009. The Land Acquisition Officer rendered an award on 5 July 2010 and the possession was taken on 10 August 2010.

3. In the reference, the Appellants relied upon a sale deed dated 3 May 2010, which according to the Appellants was a comparable sale instance, since this property was situated in the same locality and though it was after the relevant date, it was a germane piece of evidence to determine the correct market value. The Appellants also relied upon an award dated 13 August 1996 which according to the Appellants was in respect of the property located in the same area and it was comparable. The learned District Judge by the impugned judgment partly allowed the reference and enhanced the compensation to Rs.500/- per square metre.

4. The learned District Judge in the judgment has narrated the facts and thereafter framed an issue and has rendered the impugned decision. Not only there is no satisfactory discussion, but the learned District Judge has reproduced the facts not of the present reference but of the award which was cited as evidence by the Appellants. The learned Judge has narrated the facts as under:

“This is a reference under Section 18 of the Land Acquisition Act, 1894.

2. By virtue of notification under Section 4 of Land Acquisition Act, 1894 and by invoking Urgency clause under Section 17 of the Land Acquisition Act dated 28 January 1994 published in the Official Gazette dated 31 March 1994 a land was acquired admeasuring 2913 square meters belonging to the applicants from Chalta No.4/2 of P.T. Sheet No.162 of City Survey of Mapusa.

3. By Award dated 13 August 1996 an amount of 5 Rupees per square meter was awarded to the acquired land.

4. Dissatisfied with the same present reference came to be filed seeking enhancement at the rate of Rs.10,000/- per square meter.”

There is a complete non-application of mind. These are not the facts of the present reference at all.

5. It is clear that the learned District Judge has proceeded on the basis of completely wrong facts and even though in the body of the judgment he makes a reference to the date of the reference, it is not discernible as to what extent he was guided by the wrong facts. In such state of affairs the judgment and award rendered by the learned District Judge cannot be said to be arrived at after considering the facts on record. This exercise is vitiated and the error is inseparable

from the rest of the discussions in the award.

6. Therefore, we are left with no other option but to set aside the award and restore the reference to the file of the learned District Judge, North Goa, Panaji to be considered afresh. The parties have already led their evidence.

7. Accordingly, the appeal is allowed. The judgment and award dated 28 April 2015, is quashed and set aside. The Land Acquisition Case No.37/2010 stands restored to the file of the learned District Judge, North Goa, Panaji.

8. The reference be decided on its own merits as per law preferably within a period of six months from today.

9. Parties will appear before the learned District Judge on 22 October 2018 at 10.30 a.m. No costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.