

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NOS. 313/2008, 314/2008 & 205/2009****FIRST APPEAL NO. 313 OF 2008**

1. Deputy Collector & Land Acquisition Officer, Sub-Division, Margao, Goa.
2. The Executive Engineer, WD-XIV (NH), PWD, Fatorda, Margao, Goa. Appellants

Versus

Shri Custodio Rosario Pobres Fernandes
alias Custodio Rosario Fernandes, resident
of H. No. 26, Gorvotti, Nuvem, Salcete, Goa. Respondent

FIRST APPEAL NO. 314 OF 2008

1. Deputy Collector & Land Acquisition Officer, Sub-Division, Margao, Goa.
2. The Executive Engineer, WD-XIV (NH), PWD, Fatorda, Margao, Goa. Appellants

Versus

1. Lourenso Santan Dias, s/o Joaquim Piedade Dias,
2. Smt. Valeriana Dias, d/o Joaquim Piedade Dias,
3. Roque Francisco Dias, s/o Novidade Dias,
4. Novidade Dias, s/o Pedro Manual Dias,
All resident of Gorvotti, Nuvem,
Salcete, Goa. Respondents

FIRST APPEAL NO. 205 OF 2009

1. Deputy Collector & Land Acquisition Officer, Sub-Division, Margao, Goa.
2. The Executive Engineer, WD-XIV (NH), PWD, Fatorda, Margao, Goa. Appellants

Versus

Adelina Esperanca Rego e Vaz, Resident of
H.No. 69, Povacao, Nuvem, Salcete, Goa. Respondent

Shri Vishwadh Sardessai, Additional Government Advocate for the Appellants in First Appeal Nos. 313/2008 and 314/2008.

Ms. Neha Kholkar, Additional Government Advocate for the Appellants in First Appeal No. 205/2009.

None for the Respondents.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 16th MARCH 2018

PRONOUNCED ON: 23rd APRIL 2018

COMMON JUDGMENT:

All these appeals, arise out of Land Acquisition Case No. 1/87, before the Land Acquisition Officer (LAO) at Quepem. As such, they are being disposed of by this common judgment.

2. The brief facts are that several lands were acquired from Village Nuvem, Salcete Taluka, for construction of the Margao Western By-Pass. The notification under Section 4 of the Land Acquisition Act, 1894 (Act, for short), was published in the Government Gazette on 21.11.2002. The LAO passed an award on 02.01.2007, granting compensation for the acquired land at different rates. Feeling aggrieved by the compensation granted, the respondents filed separate Reference, being Land Acquisition Case Nos. 5/2007, 6/2007 and 40/2006, for enhancement, under Section 18 of the Act, before the learned District Judge, South Goa, Margao.

3. The Reference Court by separate awards, granted certain enhancement. Feeling aggrieved by the enhancement granted, the State has come up in appeal.

4. I have heard Shri Sardessai, the learned Additional Government Advocate, who appears in First Appeal Nos. 313/2008 and 314/2008 and Ms. Kholkar, the learned Additional Government Advocate appearing in First Appeal No. 205/2009. There was no appearance on behalf of the respondents at the hearing of the appeal. With the assistance of the learned Additional Government Advocate, I have gone through the record.

5. It is submitted by Shri Sardessai, the learned Additional Government Advocate that admittedly, the land which is subject matter of acquisition in First Appeal No. 313/2008 is a tenanted land and as such, the compensation, which has been enhanced to Rs.15/- per square metre is excessive. It is submitted that the respondent (in First Appeal No. 313/2008) has not established the loss of agricultural income and in absence thereof, the compensation could not have been enhanced. The learned Additional Government Advocate has taken me through the cross examination of the original claimant Shri Custodio Fenandes, in order to submit that the claimants

have admitted that the land, which is subject matter of the sale deed Exhibit-C/16 is close to Kadamba bus stand, old Margao market, Courts, Banks, Government offices, as compared to the acquired land. It is thus submitted that the sale instance at Exhibit-C/16, cannot be said to be a comparable sale instance. It is submitted that an Expert from the Agricultural Department is not examined. It is submitted that the land, is subject to provisions of the Goa Land Use (Regulation) Act, 1991 (Act of 1991, for short), which prohibits the use of the land to any other purpose, other than agricultural purpose. He therefore, submits that the compensation enhanced, is exorbitant.

6. Insofar as First Appeal No. 314/2008 is concerned, it is submitted that although, it is a freehold land, the enhancement granted, is on a higher side.

7. Insofar as First Appeal No. 205/2009 is concerned, it is submitted by Ms. Kholkar, the learned Additional Government Advocate that the enhancement of compensation from Rs.8/- per square metre to Rs.15/- per square metre is unsustainable, particularly, in view of the fact that the land was tenanted land and under the Act of 1991, there is prohibition of putting the land to any use, other than for agricultural purpose.

8. I have carefully considered the circumstances and the submissions made.

9. The details of the lands acquired, the compensation granted by the LAO and enhanced by the Reference Court may be set out as under:

S. No.	First Appeal No.	LAC No.	Survey No.	Area Acquired	Compensation granted by the LAO (per sqm.)	Compensation granted by the Reference Court (per sqm.)	Remarks
1.	313/2008	05/2007	67/15	231 sqm.	Rs.8/-	Rs.15/-	Tenanted
			67/18	175 sqm.	Rs.8/-	Rs.15/-	
			67/28	110 sqm.	Rs.8/-	Rs.15/-	
2.	314/2008	40/2006	59/6	2900 sqm.	Rs.8/-	Rs.30/-	Freehold
			59/7	375 sqm.	Rs.5/-	Rs.20/-	
			60/4	1550 sqm.	Rs.70/-	Rs.100/-	
3.	205/2009	06/2007	21/12	931 sqm.	Rs.8/-	Rs.15/-	Tenanted

10. In all three land acquisition references, the claimants examined themselves along with Shri Mahendra Kakule, who is a Civil Engineer and a registered Valuer and Surveyor. The respondent-State did not lead any evidence in any of the references.

First Appeal Nos. 313/2008 and 205/2009:

11. There are four survey numbers, which are subject matter of these appeals being Survey Nos. 67/15, 67/18, 67/28

and 21/12. All these four survey numbers are owned by the Comunidade of Margao, in which, the respondent, Custodio Fernandes (in First Appeal No. 313/2008) and the respondent, Adelina Rego e Vaz (in First Appeal No. 205/2009) are shown to be tenants. The respondent, Custodio Fernandes claimed that it is a paddy field, which lies within Village Panchyat Nuvem and the area, where the lands are situated is having civic amenities, such as commercial establishments, hospitals, schools, colleges, SGPDA market, Kadamba bus stand, churches, civil and criminal Court, District Court, Government offices, showrooms etc. He claimed that he was taking mixed crops in the said paddy field, which was cultivated twice annually and the fields are fertile and was getting a good yield. According to the appellants, the fair market price is Rs.300/- per square metre.

12. On behalf of the respondents, reliance was placed on an award passed in Land Acquisition Case No. 1/1987 (Exhibit-C/16), on 29.05.1989, where the compensation was granted in the range of Rs.40/- per square metre to Rs.50/- per square metre. The respondents, however, admitted in the cross examination that the lands, which are subject matters of acquisition in the award Exhibit-C/16, are closer to the Kadamba bus stand, old market, Government offices etc. than those which

are subject matter of the present appeals. It may also be noted that the acquisition and the award Exhibit-C/16, was prior to coming into force of the Act of 1991, where under, there is prohibition of use of land vested in a tenant for a purpose other than agricultural purpose.

13. The Reference Court found that in the acquisition of 1987, compensation was granted in the range of Rs.40/- per square metre to Rs.50/- per square metre and thus, the compensation at the rate of Rs.8/- per square metre paid was inadequate and therefore, enhanced the same to Rs.15/- per square metre. I do not find that the enhancement can be said to be excessive or exorbitant by any standards. Shri Kakule, who is a registered Valuer and Surveyor had inspected the land in January, 2002 and in the opinion of Shri Kakule, the fair market rate in the year 2001 would be Rs.130/- per square metre. It is true that the respondents did not lead any specific evidence of loss of agricultural income. However, it has come on record that the lands acquired are paddy fields, where the respondents were taking mixed crop twice annually. The fact that the lands which were subject matter of the award Exhibit-C/16 was closer to all civic amenities than the lands, which are subjects matter of the present appeals and further having regard to the fact that, when

the award Exhibit-C/16 was passed, the Act of 1991 was not in force, would require some discounting in price/compensation granted in award Exhibit-C/16. It may be noted in this regard that as against the compensation of Rs.40/- per square metre to Rs.50/- per square metre in the year 1987, the compensation which is enhanced in the present case is only Rs.15/- per square metre. It is trite that assessment of compensation involves a reasonable degree of guess work, which is inevitable. It is true that the Act of 1991 prohibits the use of the land (which has vested in a tenant, under the provisions of the Agricultural Tenancy Act) being put to any use, other than agricultural use. However, that does not mean that there is no escalation of the price of the agricultural land. I do not find that the compensation enhanced is exorbitant.

FA 314/2008:

14. Admittedly, the three properties in this appeal being Survey Nos. 59/6, 59/7 and 60/4 are freehold lands. Out of the said lands, 2,900 square metres of land from out of Survey No. 59/6, the compensation has been enhanced from Rs.8/- per square metre to Rs.30/- per square metre, while for 375 square metres of land, from out of Survey No. 59/7, the compensation is enhanced from Rs.5/- per square metre to Rs.20/- per square

metre and lastly, for 1,550 square metres from out of Survey No. 60/4, the compensation is enhanced from Rs.70/- per square metre to Rs.100/- per square metre.

15. The enhancement claimed before the Reference Court by the respondents was Rs.500/- per square metre for the land Survey No. 60/4 and Rs.400/- per square metre for the paddy fields i.e. land surveyed under Survey Nos. 59/6 and 59/7. Incidentally, the land bearing Survey No. 60/4 is a coconut grove, while the other two lands are paddy fields, situated at the outskirts of the Margao city. In the present case also, reliance was placed on the award of the year 1987, where the compensation was enhanced to Rs.40/- per square metre to Rs.50/- per square metre. The Reference Court has noticed that the sale deed produced shows the price of the land situated in the vicinity of the acquired land was around Rs.480/- per square metre. The Reference Court also found that the land had a potential for being used for commercial and residential purpose and the land was having civic amenities such as water, electricity, telephone, road etc. It has also been found that other amenities such as hospitals, Courts, schools colleges, banks etc. are available within a radius of one kilometre. The SGPDA market and the Kadamba bus stand of Margao are at a distance

of about 700 metres. The Reference Court had refused to go by the sale deed, where the land was shown to be sold for Rs.480/- per square metres, on the ground that the said price was offered for a developed plot. In that view of the matter, the compensation in respect of the Survey No. 59/6 was enhanced from Rs.8/- per square metre to Rs.30/- per square metre and in respect of land Survey No. 59/7, it was enhanced from Rs.5/- per square metre to Rs.20/- per square metre and lastly, in respect of the land Survey No. 60/4 (which is said to be a coconut grove and where the Reference Court found that no evidence was produced regarding the age and the yield of 100 coconut trees standing in the said land), the compensation was enhanced from Rs.70/- per square metre to Rs.100/- per square meter. As noticed earlier, all the three survey numbers in the present First Appeal No. 214/2008, are freehold lands and the compensation granted, cannot be said to be excessive by any standards.

In the result, the appeals are without any merit and are accordingly dismissed, with no order as to costs.

Decree be drawn accordingly.

C.V. BHADANG, J.

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