

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.6 OF 2012
WITH
CROSS OBJECTION NO.7 OF 2012

FIRST APPEAL NO.6 OF 2012

1. Dy. Collector and S.D.O.
Ponda Sub Division
Ponda-Goa.
 2. The Executive engineer,
Div. XVIII ®, P.W.D.
Ponda-Goa.
- ... Appellants

V e r s u s

Shri Bhikaji Sardessai alias
Bhikaji Raghunath Sardessai
(through his legal Representatives)

1. Shri Raghunath B. Sardessai,
(deceased)
 - a) Widow – Smt. Shantabai R. Sardessai
 - b) Son- Girish R. Sardessai

Both residing Near New Water Tank,
House No.1000, New Vaddem,
Vasco da Gama, Goa, 403 802.

2. Mrs. Subodh Shashikant Sardessai
Saibaba Sadan,
Near Hotel Casino,
Porvorim-Goa.
3. Mrs. Anita Anil Sardessai
Behind Govt. High School,
Near Saibaba Temple,
New Vaddem,
Vasco da Gama, Goa.
4. Shri Ashok B. Sardessai (deceased)

a) Wife – Smt. Usha A. Sardessai

b) Daughter – Smt. Avthi Nadkarni

Both residents of Altess Manor,
Flat No.307 Block 'B' Caranzalem,
Panaji Goa.

5. Shri Dilip B. Sardessai,
GA/4, Ribandar Residency
Ribandar, Panvel, Goa.
 6. Shri Laxminarayan (Baban) B. Sardessai,
7, Municipal Complex,
St. Inez, Panaji, Goa.
 7. Mrs. Indira A. Raikar,
Laxmi Vihar,
Vasco da Gama,
Goa.
 8. Mrs. Nila Sanjguiri,
H. No.220, Sailant Sankaola,
Goa.
 9. Mrs. Sushita Nadkarni,
Housing Board Colony,
Margao, Goa.
 10. Mrs. Uttara Bale,
Near Progress Garage,
Ponda, Goa.
 11. Mrs. Anuradha R. Kamat,
C-7, Datta Apartment,
Behind Damianti,
Porvorim, Goa.
- ... Respondents

Ms. S. Linhares, Additional Government Advocate for the Appellants.

Mr. E. Dias, Advocate for the Respondent nos.2 to 6.

Mr. R. G. Ramani, Advocate for the Respondent nos.8 to 11.

WITH**CROSS OBJECTION NO.7 OF 2012**

1. Mrs. Nila Sanjgiri,
H. No.220, Sailant Sankaole,
Goa.
2. Mrs. Sushita Nadkarni,
Housing Board Colony,
Margao, Goa.
3. Mrs. Uttara Bale,
Near Progress Garage,
Ponda-Goa.
4. Mrs. Anuradha R. Kamat,
C-7, Datta Apartment,
Behind Damianti,
Porvorim, Goa.

...Cross Objectors/
Respondent nos.8,9, 10 & 11

V e r s u s

1. Dy. Collector & S.D.O.,
Ponda Sub Division,
Ponda Goa.
2. The Executive Engineer
Div XVIII (R), PWD
Ponda Goa.

...Respondents/
Appellants

Mr. R. G. Ramani, Advocate for the Cross Objectors.

Ms. S. Linhares, Additional Government Advocate for the
Respondents/Appellants

Coram :- C. V. BHADANG, J.
Reserved for Judgment on : 18thSeptember, 2019
Judgment Pronounced on : 23rd September 2019.

JUDGMENT

1. The challenge in this Appeal is to the judgment and award dated 29.04.2011 passed by the Reference Court in Land Acquisition Case No.90 of 1998 in which the respondents have raised a cross objection for further enhancement of the compensation.

2. The brief facts necessary for disposal of the appeal may be stated thus :

That 5900 square metres of land from out of survey no.204/2 of Village Ponda, belonging to the respondents was subject matter of acquisition for construction of the Ponda bye-pass from Farmagudi to Dhavali via Khadpaband and Kapileshwari (Phase -I). The notification under Section 4 of the Land Acquisition Act 1894 (Act, for short), was published on 07.11.1991. The respondents claimed compensation at the rate of Rs.225/- per square metre for the land and Rs.50,000/- for the trees. The Land Acquisition Officer (LAO) by his award dated 13.04.1992, granted compensation at the rate of Rs.45/- per square metre. Indisputably, the possession of the land has been taken on 14.12.1992.

3. Feeling aggrieved by the inadequate compensation granted, the respondents raised a reference under Section 18 of the Act which was registered as LAC No.90 of 1998.

4. The Reference Court framed the following points for determination :

1. Whether the applicant proves that the rate of compensation of the acquired land at the time of acquisition was Rs.225/- per sq. metres?

2. Whether the applicant proves that he is entitled for the compensation of Rs.50,000/- for the trees?

5. At the trial of the said reference, the respondents examined Raghunath Sardessai (Aw.1), Sanjeev S. Sardessai (Aw.2) and Subhashchandra Narayan Bhohe (Aw.3). The appellants did not lead any evidence.

6. The Reference Court by its judgment and award dated 13.10.2006, granted enhancement to the extent of Rs.144/- per square metres, which was challenged by the appellant-State before this Court in First Appeal No.156/2007. This Court by a judgment and order dated 09.08.2010, allowed the appeal and remanded the matter back to the Reference Court, with a liberty to the respondents to adduce further oral and documentary evidence on the judgment and award in Land

Acquisition Case No.91/1998 (Exhibit D-54). Liberty was also granted to the appellant to lead evidence in rebuttal, if any.

7. After the remand, the respondents examined Dilip B. Sardessai (Aw.4) and a Surveyor Mr. Surat S. Bhohe (Aw.5). The appellant did not chose to lead any evidence in rebuttal even after the remand.

8. The learned Reference Court after considering the oral and documentary evidence on record and placing reliance on the award, exhibit D-54 in LAC No.91/1998, retained the enhancement granted earlier i.e. at Rs.144/- per square metre. Feeling aggrieved, the appellants have filed this appeal in which the respondents have raised a cross objection, seeking enhancement.

9. I have heard the learned Counsel for the parties and perused record.

10. It is submitted by Ms. Linhares, the learned Additional Government Advocate, that the Reference Court erred in placing reliance on the Award, exhibit D-54, passed in LAC No.91/1998 in granting enhancement. The learned Additional Government Advocate has taken me through the said award in

order to submit that it cannot afford basis for granting such enhancement. The learned Counsel has placed reliance on the award passed by the Lok Adalat on 02.02.2008 in First Appeal No.5/2003 and 145/2007 in which the parties had agreed for a compensation at the rate of Rs.89/- per square metre in respect of lands which were subject matter of acquisition in the said land acquisition proceedings. She, therefore, submits that the enhancement granted needs to be appropriately reduced.

11. Mr. Ramani, the learned Counsel for the respondents-cross objectors has submitted that the award of the Lok Adalat which is passed by consent of parties cannot be a basis for determination of the compensation. It is submitted that there is no adjudication of the market price as such which is made before the Lok Adalat and the same cannot bind the respondents. He, therefore, submits that reliance placed on the award of the Lok Adalat is misplaced. The learned Counsel has taken exception to the impugned award passed by the Reference Court, refusing to place reliance on the various sale deeds produced on record. In particular, reliance is placed on the MoU dated 15.10.1991 (exhibit 24) between Dr. Shivaji Sardesai & Ors. and M/s. Kamat Constructions Pvt. Ltd., wherein a land admeasuring 16078 square metres (which was

touching the acquired land) was agreed to be sold for Rs.27,00,000/- at the rate of Rs.168/- per square metre. It is submitted that the Reference Court, was not justified in discarding the said MoU on the ground that it was unregistered particularly when the MoU had culminated into a sale deed. The learned Counsel has also taken exception to the Reference Court discarding the other sale deeds i.e. dated 10.08.1999 (Exhibit Aw.1/B), dated 08.04.1991 (Exhibit 46), 03.10.1988 (Exhibit 47), 23.05.1988 (Exhibit 48) and 05.04.1993 (Exhibit 49) on the ground that they pertain to smaller plots of land. It is submitted that it is not an universal rule that these exemplars in respect of smaller pieces of land had to be excluded if the lands are found to be otherwise comparable. The learned Counsel has placed reliance on the decision of the Supreme Court in the case of **A. Natesam Pillai vs. Special Tahsildar, Land Acquisition, Tiruchy (2010) 9 SCC 118, Lal Chand vs. Union of India & anr. (2009) 15 SCC 769, Raghubans Narain Singh vs. Uttar Pradesh Government, AIR 1967 SC 465, Atma Singh (Dead) through Lrs. & Ors. vs. State of Haryana & anr. (2008) 2 SCC 568.** Reliance is placed on the decision of the Supreme Court in the case of **Valliyammal & anr. vs. Special Tahsildar (Land Acquisition) & anr., (2011) 8 SCC 91** in order to submit

that the escalation in the price has to be appropriately considered.

12. It is submitted that the learned Reference Court was not justified in referring to grant enhancement beyond Rs.144/- per square metre on the ground that in the earlier round of litigation, the respondents have not chosen to challenge the award dated 13.10.2006. It is submitted that under Section 18 of the Act, the Reference Court is required to determine fair and just compensation and after the 1984 amendment to the Act, the cap on the maximum enhancement has been expressly omitted and in a given case, the Reference Court can also grant compensation in excess of what is claimed. For this purpose, reliance is placed on the decision of the Supreme Court in the case of **Ashok Kumar & anr. vs. State of Haryana (2016) 4 SCC 544**. It is submitted that even going by the award, exhibit D-54, in that case, the Land Acquisition Officer granted compensation at the rate of Rs.15/- per square metre which was enhanced to Rs.144/- and in the present case, the Land Acquisition Officer had granted compensation at the rate of Rs.45/- per square metre and, therefore, the compensation has to be appropriately enhanced beyond Rs.144/- per square metre.

13. Mr. Dias, the learned Counsel for the respondent nos.2 to 6, has submitted that where there are several exemplars with reference to the similar lands placed on record, the price in respect of highest of such exemplars has to be accepted, provided it is shown to be a bonafide transaction. For this purpose, reliance is placed on the decision of the Supreme Court in the case of **Mehrawal Khewaji Trust (Regd.), Faridkot & Ors. vs. State of Punjab & Ors., (2012) 5 SCC 432**. Mr. Dias has adopted the rest of the submissions made by Mr. Ramani, learned Counsel for the cross objectors.

14. I have considered the circumstances and the submissions made. Apart from the oral evidence, which has been noticed earlier, the respondents have produced the following documents on record:

Sr. No.	Description	Subject matter	Remarks
1	The Agreement of Sale dated 22.02.1991 (exhibit Aw.1/A)	By which an area of 19625 square metres from out of survey no.204/2 was agreed to be sold to M/s. Kamat Construction Pvt. Ltd. @ Rs.178/- per square metre and an amount of Rs.1 lakh was paid by cheque to Bhikaji Sardessai	However, before the Agreement could culminate into a Sale Deed, the Notification under 4 was issued and the Agreement was not acted upon and the amount of Rs.1 lakh was returned to

			Bhikaji.
2	MoU dated 15.10.1991, exhibit 24, between Dr. Shivaji G. N. Sardessai and M/s. Kamat Construction Pvt. Ltd. (Exh.24),	Whereunder a developed land admeasuring 16078 square metres from out of which survey no.204/3 and 204/5, which was adjacent to the acquired land was agreed to be sold for Rs.27 lakhs i.e. at the rate of Rs.168/- per square metre.	
3	Sale Deed dated 10.08.1999, exhibit Aw.1/B,	In respect of 364 square metres of developed land to one Hari Shankar Babnath Dubey for Rs.3,27,800/- i.e. approximately 900/- per square metre.	The sale deed refers to the MoU (Exhibit 24) dated 15.10.1991.
4	Sale Deed dated 08.04.1991, exhibit 46,	A plot of land admeasuring 314 square metres at Village Bandora, Ponda, about 1 km away from the acquired land was sold for Rs.75,000/- (i.e. Rs.239/- per square metre)	
5	Sale Deed dated 03.10.1988, exhibit 47,	A plot of land admeasuring 288 square metres along with a building standing thereon at Khandpabandh, Ponda, anout 500 metres away sold for Rs.1,20,000/- (i.e. Rs.417/- per square metre.	
6	Sale Deed dated 23.05.1988, exhibit 48,	By which a plot of land admeasuring 500 square metres of Ponda Village, which was about 500 square metres away from the acquired land was sold for	

		Rs.1,50,000/- (i.e. Rs.300/- per square metre)	
7	Sale Deed dated 05.04.1993, exhibit 49,	By which a plot land admeasuring 400 square metres at Curti Ponda about 2.5 kms away from the acquired land was sold for Rs.1 lakh (i.e. Rs.250/- per square metre).	
8	Award dated 13.11.1992, exhibit 66,	By the same Award compensation was granted at the rate of Rs.45/- per square metre from land survey no.204/2 of Village Ponda.	
9	The Award dated 21.04.2006 (Exhibit 67), in LAC No.91/1998,	by which the compensation was granted at the rate of Rs.144/- per square metre in respect of land admeasuring 2225 square metres from survey no.85 of Village Queula.	
10	Valuation report, exhibit 53, of Mr. S. N. Bhobe & Associates	By which valuation of the land was made at the rate of Rs.225/- per square metre.	
11	Valuation report of Surat S. Bhobe, exhibit 78, dated 24.02.2011.	By which, the acquired land was fixed at Rs.229/- per square metre.	

15. It is first necessary to deal with the submissions on behalf of the appellant-State. The challenge on behalf of the appellant is based on the award of the Lok Adalat dated 02.02.2008 in First Appeal Nos.5/2003 and 145/2007 where

the parties had agreed for a compensation of Rs.89/- per square metre. The reliance placed on the said award of the Lok Adalat, in my considered view is misplaced. The compensation which has been awarded by the Lok Adalat is not on the basis of any adjudication as such on the market price of the land, as obtaining on the date of the notification under Section 4 of the Act. The award of the Lok Adalat is passed on consent of the parties where the respondents in the two appeals had agreed for the compensation at the rate of Rs.89/- per square metre. Such agreement of the respondents in those appeals cannot bind the respondents in these appeals. Thus, merely because before the Lok Adalat the appellant had agreed for a compensation at the rate of Rs.89/-, is not a ground to reduce the compensation in this case. Considering the contention as raised on behalf of the appellants, it is not possible to hold that the compensation granted needs to be reduced.

16. This takes me to the cross objection. The Tribunal has refused to award compensation in excess of Rs.144/- per square square metre, inter alia, on the ground that in the earlier round of litigation where the compensation was similarly fixed by the award dated 13.10.2006, the respondents had not challenged the same, inasmuch as, it was

only the State, which had challenged the said award in First Appeal No.156/2007. The reason as articulated cannot be accepted. The Hon'ble Supreme Court in the case of **Ashok Kumar** (supra), has held that the cap on maximum compensation which can be granted, having been expressly omitted by the Amendment Act of 1984, the amount of compensation, that a Court can award is no longer restricted to the amount claimed by the applicant. It is held that it is the duty of the Court to award just and fair compensation, taking into consideration the true market value and other relevant factors irrespective of the claim made by the owner. It can thus clearly be seen that the Court is required to determine the true market price of the land acquired, as on the date of the notification under Section 4 of the Act and speaking for the present case, it would not be affected by the fact that in the earlier round of litigation, the respondent had not challenged the award dated 13.10.2006.

17. Let us now consider the question of market price on the date of the notification under Section 4 of the Act in the present case which is dated 07.11.1991. The Reference Court has refused to place reliance on the agreement dated 22.02.1991 (exhibit Pw.1/A) as it was not acted upon and the amount of Rs.1,00,000/- was returned back and further that

the document is not registered. By the said agreement which is about 9 months prior to the notification under Section 4 of the Act, 19625 square metres of land from out of survey no.204/2 was agreed to be sold to Ms. Kamat Construction Private Limited at the rate of Rs.178/- per square metre. The Reference Court has also discarded the Sale Deeds dated 10.08.1999, 08.04.1991, 03.10.1988, 23.05.1988 and 05.04.1993 on the ground that they pertain to a sale of a small area of land and thus did not offer comparable sale instances, while determining the market value of a large property.

18. The learned Counsel for the respondents has placed reliance on the decision of the Supreme Court in the case of **Atma Singh** (supra) in which it has been held that the exemplars pertaining to small pieces of land cannot be discarded, specially when exemplars in respect of large pieces of lands were not available. I find that in the present case, the exemplars in the form of the agreement of Sale dated 22.02.1991 and MoU dated 15.10.1991 (exhibit 24) are available, although they are not registered documents. Further having regard to the fact that the small pieces of land which were subject matter of the aforesaid Sale Deed (which have been discarded) were developed lands, no exception can

be taken to the Reference Court refusing to place reliance on the same. Although it is undisputed that the land which is subject matter of acquisition is falling within the jurisdiction of the Ponda Municipal Council, it was an undeveloped land. It is now well settled that in the matter of undeveloped lands, allowance has to be made both on account of the requirement setting apart open spaces and provision for internal roads as well as the development charges which are required to be incurred. Apart from these factors, a smaller piece of land has greater saleability, than a large tract of land. In the present case, I do not find any reason to place reliance on the Sale Deeds as aforesaid. The agreement of sale dated 22.02.1991 also cannot be relied upon for the reason that it never culminated in to a concluded sale and in fact the contract was abandoned by return of the amount of Rs.1,00,000/- as in the meantime the land was notified for acquisition. I find that the MoU dated 15.10.1991, (exhibit 24), can be relied upon for determining the price of the land in this case. By the said MoU, which is dated 15.10.1991, which is proximate to the date of notification under Section 4 of the Act , an undeveloped land admeasuring 16078 square metres from out of survey no.204/3 and 204/5 (which is adjacent to the acquired land namely survey no.204/2), was agreed to be sold for Rs.27,00,000/- i.e. at the rate of Rs.168/- per square

metre. The Reference Court has refused to place reliance on the said MoU on the ground that Aw.4 could not produce any document to show that Kamat Constructions had paid the consideration to his uncle's family and, secondly, with reference to the Sale Deed dated 10.08.1999, Aw.4 does not know how and when the money was paid to his uncle's family. I do not find that on such a basis the MoU which finds specific reference in the Sale Deed dated 10.08.1999 can be discarded. The said MoU has been specifically referred to in para 8 of the Sale Deed 10.08.1999 which shows that the confirming party i.e. Kamat Construction Private Limited had agreed to purchase the said Lote B for consideration as per the terms and conditions stipulated in MoU dated 15.10.1991 read with Addendum dated 29.03.1996. It does not appear that the said MoU was executed in contemplation of the proposed acquisition of the land or that it does not reflect a genuine transaction. Thus, in my considered view, the compensation needs to be enhanced to Rs.168/- per square metre in this case.

19. There is one more reason why the compensation needs to be enhanced in this case to a certain extent. The Tribunal has placed reliance on the award of the Reference Court in Land Acquisition Case No.91/1998 wherein the LAO had

granted compensation at the rate of Rs.15/- per square metre. It appears that the Land Acquisition Officer had granted compensation at various rates namely Rs.15/- per square metres to Rs.45/- per square metres. In the award in Land Acquisition Case No.91/1998, a land which was assessed by the Land Acquisition Officer at the rate of Rs.15/- per square metre was enhanced to Rs.144/- per square metre while in the present case the Land Acquisition Officer has assessed the compensation in respect of the land acquired at the rate of Rs.45/- per square metre. Although the compensation cannot be enhanced thrice the rate, there has to be a certain amount of enhancement albeit based on the evidence as obtaining on record which, in the present case, is in the form of the MoU dated 15.10.1991.

20. In the result, the following order is passed :

ORDER

- (i) The appeal is hereby dismissed.
- (ii) The cross objection is partly allowed.
- (iii) The impugned Judgment and Award of the reference Court is hereby modified.
- (iv) The respondents shall be entitled to a compensation at the rate of Rs.168/- per square metre along with all statutory benefits.

- (v) The rest of the Award stands confirmed.
- (vi) In the circumstances, there shall be no order as to costs.
- (vii) Decree be drawn accordingly.

C. V. BHADANG, J.

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