

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 411 OF 2012**

Goa Industrial Development Corporation,
a Statutory Corporation established
under the Goa, Daman and Diu Industrial
Development Act, 1965, through its
Managing Director, having office at GIDC,
Plot No. 13A-2, EDC Complex, Patto
Plaza, Panaji-Goa.

.... Petitioner

Versus

1. Nita S. Panandikar;
2. Ramesh V. Shirvaikar;
Legal Heirs of Ramesh Shirvaikar
- 2(a) Smt. Suchita alias Sucheta Ramesh
Shirwaikar (since deceased)
- 2(b) Shri Sushant Ramesh Shirwaikar
- 2(c) Smt. Aparna Jaiwant Surlakar
- 2(d) Shri Jaiwant Ratnakar Sinai
Surlakar
All residents of Quepem, Ambaulim
Road, Quepem, Goa.
3. Olinda Faleiro,
4. Elizer Faleiro;
5. Jayesh Mehta;
6. Jyoti Mehta;
7. Manish Mehta;
8. Rajesh Kamdar;
9. Geeta Kamdar;
10. Raul Pereira;
All major in age,
All residents of Quepem, Ambaulim
Road, Quepem-Goa.
11. The Deputy Collector (LA),
Collector of South Goa District,
Margao-Goa.

.... Respondents

Mr. H.D. Naik, Advocate for the Petitioner.

Mr. S.S. Kakodkar, Advocate for the Respondent Nos. 2(b) to 2(d).

Mr. R.G. Ramani with Mr. Pranav Kakodkar, Advocates for the Respondent Nos. 1 and 3 to 10.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 27th February, 2019

PRONOUNCED ON: 5th March, 2019

JUDGMENT:

By this petition, the petitioner is challenging the judgment and order dated 23.05.2011, passed by the learned Deputy Collector/Land Acquisition Officer (LAO, for short) at Margao, under Section 28-A of the Land Acquisition Act, 1894 (Act, for short).

2. The Government had initiated land acquisition proceedings for acquisition of certain land for establishment of an Industrial Estate at Cuncolim. The notification under Section 4 of the Act was published on 07.08.1987 and eventually, the LAO declared the award under Section 11 of the said Act on 17.08.1990. The LAO, for the purpose of determining the compensation to be awarded, had classified the land in four categories as under:

- (i) Paddy field.
- (ii) Bharad land.

- (iii) Stone quarry and
- (iv) Nallah.

3. The LAO awarded Rs.1.50 per square metre in respect of the paddy field, Re.1/- per square metre in respect of the bharad land and in respect of land classified as stone quarry and nallah, the LAO granted 0.50 paise per square metre.

4. Mr. Mahadev Chandru, one of the interested parties, feeling aggrieved by the inadequate compensation granted made a reference under Section 18 of the Act, seeking enhancement of the compensation. Mahadev Chandru claimed compensation at the rate of Rs.40/- per square metre, in respect of land owned by him, which was a paddy field. The reference was registered as Land Acquisition Case No. 317/1992 and by a judgment and order dated 31.08.2001, the Reference Court enhanced the compensation to Rs.14/- per square metre, alongwith statutory benefits and interest.

5. This judgment was not challenged by the petitioner and has attained finality. It appears that there was yet another reference being Land Acquisition Case No. 318/1992 by another interest party. The judgment and award in the said case was unsuccessfully challenged by the petitioner before this Court in

First Appeal No. 82/2002, which was dismissed on 24.09.2010.

6. Be that as it may, the respondents, filed separate applications before the LAO seeking re-determination of the compensation under Section 28-A of the Act on the basis of the award of the Reference Court in Land Acquisition Case No. 317/1992.

7. The petitioner resisted the said applications, mainly on the ground that the applications were barred by limitation and that the award of the Reference Court, on the basis of which, re-determination was sought, was subject matter of challenge before this Court and thus, had not attained finality. The LAO by the impugned award dated 23.05.2011 has re-determined the compensation on the basis of the award dated 31.08.2001 in Land Acquisition Case No. 317/1992. Hence, this petition.

8. I have heard Mr. Naik, the learned Counsel for the petitioner, Mr. Ramani, the learned Counsel for the respondent nos. 1 and 3 to 10 and Mr. Kakodkar, the learned Counsel for the respondent nos. 2(b) to 2(d). Perused record.

9. Mr. Naik, the learned Counsel for the petitioner has raised three contentions as under:

(i) That the applications, which were of the year 2010 were clearly barred by limitation, in as much as the award of the Reference Court, on the basis of which, the re-determination was sought was dated 31.08.2001. Reliance is placed on the decision of the Supreme Court in the case of **Popat Bahiru Govardhane & Others Vs. Special Land Acquisition Officer & Another, (2013) 10 SCS 765**, in order to submit that the applications have to be filed within limitation, as prescribed under Section 28-A of the Act and there is no power to condone the delay.

(ii) It is submitted that the petitioner was not afforded an opportunity to contest the applications.

(iii) The learned Counsel however, fairly concedes that the ground about the challenge to the award of the Reference Court under Section 18 of the Act, does not survive in view of the disposal of First Appeal No. 82/2002.

10. Mr. Ramani, the learned Counsel for the respondent nos. 1 and 3 to 10 and Mr. Kakodkar, the learned Counsel for the respondent nos. 2(b) to 2(d) have supported the impugned award. It is submitted that the order of the Reference Court in

enhancing the compensation to Rs.14/- per square metre has attained finality and therefore, the LAO was justified in re-determining the compensation on the basis of Land Acquisition Case No. 317/1992. Insofar as limitation is concerned, the learned Counsel for the respondents have referred to the separate applications filed by the respondents alongwith the endorsement from the office of the Collector, South Goa, Margao, which were filed in the year 2001 in order to submit that the respondents have already sought re-determination in October/November 2001, which was well within limitation.

11. I have carefully considered the circumstances and the submissions made. At the outset, it is necessary to note that the impugned order does not show that, the LAO has properly dealt with the rival contentions as raised by the parties. After setting out in details the contentions, there is no proper consideration of the matter and therefore, at one stage, I was inclined to send the matter back to the LAO. However, the learned Counsel for the parties submitted that the land acquisition pertains to the year 1987 and even the award of the Reference Court, on the basis of which re-determination is sought is of the year 2001 and therefore, this Court may decide the issue of re-determination on its own merits as the material,

on which the re-determination is sought is there on record. I find that the learned Counsel for the parties are right. Normally, this Court would be slow in remanding the matter back to the LAO, at this distance of time, particularly when the material on which re-determination is sought is there on record.

12. I would first propose to deal with the aspect of limitation as it goes to the root of the matter. There cannot be any manner of dispute with the proposition that re-determination has to be sought within the limitation as provided under Section 28-A of the Act, and as held by the Hon'ble Supreme Court the provisions of Section 5 of the Limitation Act do not apply. The learned Counsel for the respondents have produced the copies of the following applications filed by the respondents:-

- (i) Application by Smt. Nita Panandikar dated 08.11.2001, which is received in the office of the LAO on 15.11.2001.
- (ii) Application by Ramesh Shirvaikar dated 31.10.2001, which is received in the office of the LAO on 09.11.2001.
- (iii) Application by Mrs. Olinda Faleiro and Mr. Eliazar Faleiro dated 30.11.2001, which is received in the office of the LAO on 05.12.2001
- (iv) Application by Mr. Manish Mehta through his legally constituted attorney, Mr. Raul Pereira

dated 23.11.2001, which is received in the office of the LAO on 28.11.2001.

- (v) Application by Mr. Raul Pereira on his own behalf dated 23.11.2001, which is received in the office of the LAO on 28.11.2001.
- (vi) Application by Jayesh Mehta and Jyoti Mehta through their legally constituted attorney, Mr. Raul Pereira dated 23.11.2001, which is received in the office of the LAO on 28.11.2001.
- (vii) Application by Rajesh Kamdar and Geeta Kamdar, through their legally constituted attorney, Mr. Raul Pereira dated 23.11.2001, which is received in the office of the LAO on 28.11.2001.

13. Under sub-section (1) of Section 28-A of the Act, the application for re-determination has to be filed within three months from the date of the award of the Court. As per the proviso appended thereto, the date on which the award was pronounced and the time requisite for obtaining the copy of the award is liable to be excluded. In the present case, the Court had passed the award on 31.08.2001 and thus, all the applications filed in November, 2001 can be said to be well within limitation.

14. The material dispute was regarding the application filed by Mrs. Olinda Faleiro and Mr. Eliazar Faleiro, which

application although is dated 30.11.2001, is filed in the office of the LAO on 05.12.2001. However, the certified copy of the award of the Court shows that the copy was applied for on 18.09.2001 and it was delivered on 28.09.2001. Thus, if this period for obtaining the certified copy is excluded, the last date for filing the application would be 28.12.2001. In that case, the said application also can be said to be filed within time. Thus, the contention of the petitioner that the applications were barred by time, to my mind cannot be accepted. Although, the impugned award mentions the date of the applications as 22.11.2010, the initial applications seeking re-determination were filed within limitation. Once the re-determination was sought in November/December 2001, within the period as prescribed under Section 28-A of the Act, it cannot be accepted that the claim for re-determination was barred by limitation.

15. The ground about the pendency of the first appeal before this Court also does not survive, in as much as the appeals have been decided. The award in LAC No. 317/1992 was in fact never challenged as has been noticed by the LAO. It appears that there were three other appeals namely, First Appeal Nos. 14/2002, 82/2002 and 256/2007, which were said to be pending before this Court, which are also now decided.

First Appeal Nos. 14/2002 and 82/2002 have been decided by a common judgment dated 22.11.2013. These appeals arise out of the acquisition of the lands of village Cuncolim, under a notification dated 28.05.1987, which is contemporary to the notification in the present case, which is dated 07.08.1987. A perusal of the said common judgment would show that the award of compensation at the rate of Rs.14/- per square meter has been confirmed. The land which was subject matter of acquisition in First Appeal No. 14/2002 was admeasuring 2,250 square metres, while in First Appeal No. 82/2002 it was 43,175 square metres. In First Appeal No. 256/2007, which was decided on 21.07.2010, the Division Bench of this Court has found in para 8 of the judgment, that Land Acquisition Case No. 317/1992 (on the basis of which re-determination is sought in this case), arises out of the same notification under Section 4 of the Act, out of which First Appeal No. 256/2007 arose. The Division Bench of this Court has taken note of the fact that the decision in Land Acquisition Case No. 317/1992 would certainly afford the basis for arriving at the market value of the land in First Appeal No. 256/2007. However, in that appeal the land acquired was more than one lakh square metre and therefore, 20% deduction was made and the compensation was reduced to Rs.11.20 per square metre.

16. As noticed earlier, the LAO has classified the land in four categories. We are presently concerned with three categories namely, the paddy field, bharad land and stone quarry. The lands which are subject matter of acquisition, belonging to the respondents, fall in these three categories and therefore, the compensation cannot be uniformly granted at the rate of Rs.14/- per square metre, in as much as the land which was subject matter of Land Acquisition Case No. 317/1992 was a paddy field. The LAO has granted compensation at the rate of Rs.1.50 to the paddy field, Re.1/- to the bharad land and 50 paise to the stone quarry. In my considered view, it would be appropriate that the lands/portion of the lands, which are shown as paddy fields, is awarded compensation at the rate of Rs.14/- per square metre, bharad land at the rate of Rs.10/- per square metre and stone quarry at the rate of Rs.5/- per square metre.

17. Mr. Kakodkar, the learned Counsel for the respondent nos. 2(b) to 2(d) has placed reliance on the decision of this Court in the case of **State of Goa & Another Vs. Murlidhar Nadkarni AIR 2006 BOMBAY 12**, in order to submit that re-determination of compensation does not

presuppose total identity and similarity of the land. It is submitted that the compensation needs to be determined on the basis of the overall similarity of the land in Land Acquisition Case No. 317/1992. The contention in my considered view cannot be accepted.

18. Reliance placed on the decision in the case of **Murlidhar Nadkarni** (supra) to my mind is misplaced. In that case, the question was whether, on account of the trees standing in the land being different, whether the land in question can be said to be dissimilar. It was held that merely because the trees standing in the land are different, two lands cannot be said to be dissimilar. It can thus be seen that the case clearly turned on its own facts. In the present case, the LAO has classified the land in four categories and the re-determination is sought on the basis of the order of the Reference Court, which pertains to the paddy land. Thus, it cannot be uniformly applied to the bharad land and stone quarry.

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

O R D E R

- (i) The petition is partly allowed.

- (ii) The impugned order/award is hereby modified.
- (iii) The compensation in respect of the acquired land is assessed at the rate of Rs.14/- per square metre, for paddy field, at the rate of Rs.10/- per square metre, for bharad land and Rs.5/- per square metre, for stone quarry.
- (iv) The amount so assessed shall be payable alongwith all statutory benefits.
- (v) The amount deposited before this Court alongwith interest, if any, shall be made over to the office of the Deputy Collector (LAO) at Margao. The Deputy Collector (LAO), Margao, shall distribute the amount in accordance with the present order, after hearing the parties.
- (vi) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.