IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.127 OF 2003
WITH
STAMP NUMBER (APPLN.) NO.2819 OF 2017

FIRST APPEAL NO.127 OF 2003

Fr. Alcantra Cinio A. Fernandes,
resident of Binnsa, Cuncolim,
Salcete, Goa.
(Since deceased)
through his legal representative
Mr. Edgar Lourenco, aged 42 years,
Indian National,
resident of Biunsa,
Cuncolim, Salcete, Goa. ... Appellant

V e r s u s

1. Special Land Acquisition Officer,
South Goa, K.R.C.L., Amey Guest
House, Davorlim Road, P. O.
Navelim, Salcete-Goa, 403 707.

2. The Chief Engineer,
Konkan Railway Corporation Limited,
4th Floor, Souza Towers,
Church Square, Panaji-Goa 403 001. ... Respondents

Mr. P. Sawant, Advocate for the Appellant.

Mr. E. Afonso, Advocate for the Respondents.

STAMP NUMBER (APPLN.) NO.2819 OF 2017

1. Special Land Acquisition Officer
Konkan Railway Corporation Limited,
Konkan Railway Station, Margao,
Margao, Goa.

2. Regional Engineer
Konkan Railway Corporation Ltd.
Shirwad-Karwar. ... Cross
Objectors/Applicants

V e r s u s

Fr. Alcantra Cinio A. Fernandes,
Represented through his legal
Representativ Mr. Edgar Lourenco,
Resident of Biunsa Cuncolim,
Taluka, Salcete, Goa. … Respondents

Mr. E. Afonso, Advocate for the Cross-Objectors/Applicants.

Mr. P. Sawant, Advocate for the Respondents.

Coram :- C. V. BHADANG, J.
Reserved for Judgment on :- 23rd August, 2019.
Judgment pronounced on :- 28th August, 2019

JUDGMENT

1. The challenge in this appeal is to the judgment and award dated 27.03.2003 passed by the learned District Judge, South Goa, at Margao in Land Acquisition Case no.124/1995. The appellant is aggrieved by the inadequate enhancement of compensation granted by the Reference Court, in a matter of reference under Section 18 of the Land Acquisition Act 1894, (Act, for short).

2. The brief facts are that by a notification dated 02.01.1992, under Section 4 of the Act, an area admeasuring 3950 square metres from out of survey no. 255/6 ~~no.256/6~~ of Village Cuncolim, in which the original appellant late Fr. Alcantra Fernandes had a half share, was acquired for the purpose of

Corrections carried out as per order dated 18.10.19 in MCA No.962/19 laying of broad gauge line by the Konkan Railway Development Corporation (Corporation, for short). The Land Acquisition Officer (LAO), by an award dated 06.05.1994, awarded compensation at the rate of ₹ 4/- square metres.

3. Feeling dissatisfied by the compensation granted, Fr. Alcantra Fernandes, raised a reference under Section 18 of the Act. Before the Reference Court, the appellant examined his attorney Mr. Edgar J. Lourenco (Aw.1) along with a valuer Mr. Vikas Dessai (Aw.2). The Corporation did not lead any evidence. The Reference Court as against a claim of Rs.500/- per square metres, made by the appellant, enhanced the compensation to ₹50/- per square metre. Feeling aggrieved, this appeal is filed.

4. It may be mentioned that the corporation has filed a cross objection, Stamp Number (Appln.) No.2819 of 2017 on 31.08.2017 seeking restoration of the award of the LAO.

5. I have heard Mr. P. Sawant, the learned Counsel for the appellant and Mr. E. Afonso, the learned Counsel appearing for the respondent-Corporation. Perused record.

6. It is submitted by Mr. Sawant, the learned Counsel for the appellant, that the acquired land falls in settlement zone and within the jurisdiction of the Cuncolim Municipal Council and the acquired land is about 200 metres from the Cuncolim-Sanvordem road and the Industrial Estate. It is submitted that there is a market, bank, cinema hall and other civic amenities including a school and college within a distance of 1.5 kilometres to 2 kilometres from the acquired land and there is electricity and water supply as well as telephone lines available in the vicinity. It is submitted that although the Reference Court has relied upon the Sale Deed dated 13.02.1992 (Aw.1/B), the Reference Court erred in making a deduction of 80% on account of the largeness of the acquired land. In short, it is contended that the deduction to the extent of 80% is unjustified. In the submission of the learned Counsel for the appellant, the deduction has to be maximum to the extent of one-third in the present case. On behalf of the appellant, reliance is placed on the decision of the Supreme Court in the case of **Maya Devi (Dead) through legal representatives & Ors. Vs. State of Haryana & Ors. (2018) 2 SCC 474,** in order to submit that normally such deduction has to be one-third. It is submitted that the land having been acquired for laying broad gauge line of the

Konkan Railway does not require any development as such or setting apart of open spaces, etc.

7. Insofar as the Cross Objection is concerned, it is contended that it is barred by limitation as the Corporation had put in appearance in the First Appeal which pertains to the year 2003 and the Cross Objection is sought to be filed in the year 2017. It is submitted that the Corporation had earlier filed MCA No.623 of 2003 for condonation of delay which was dismissed on 30.01.2004 in pursuance of a conditional order passed on 12.12.2003. It is submitted that in any case, there is no scope for any reduction of the compensation from what is granted by the Reference Court.

8. Mr. E. Afonso, the learned Counsel for the respondent-Corporation, has placed reliance on the decision of the Supreme Court in the case of **Mahadev Govind Gharge & Ors. vs. Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka (2011) 6 SCC 321,** in order to submit that there was no notice of actual date of hearing received by the Corporation and, as such, the limitation for filing Cross Objection never commenced. Insofar as the merits are concerned, the learned Counsel for the respondent-Corporation has relied upon the decision of this

Court in **First Appeal No.80/1999 (Special Land Acquisition Officer and anr. vs. Rui Fernandes),** decided on 11.02.2005 and **First Appeal No.170/2001 and First Appeal No.85/2002 (Shri Arvind Shuka Acharya vs. Special Land Acquisition Officer)** decided on 24.06.2011, in order to submit that this Court has granted compensation at the rate of ₹ 21/- per square metre in an acquisition arising out of the same Notification under Section 4 of the Act.

9. I have considered the submissions made.

10. The original appellant Fr. Alcantra Fernandes, expired on 12.03.2007 and his representative Mr. Edgar Lourenco has been brought on record in pursuance of the order dated 08.07.2016 in MCA No.468 of 2014 and Stamp Number (Appln.) No.938 of 2014. This was on the basis of a Public Will executed by Fr. Alcantra Fernandes on 13.07.2005. Be that as it may, during the lifetime of Fr. Alcantra Fernandes, the present appeal was filed by Mr. Edgar Lourenco, as a Power of Attorney holder and was also examined as Aw.1. He produced the following four Sale Deeds as comparable sale instances :

Sr. No.	Exbt. No.	Dated	Area	Price	Distance	Nature of Land
1	A.W.1/B	13.2.1992	375 sq.mtrs.	Rs.253.33 psm	1.5 km.	Coconut garden

2	A.W.1/C	22.2.1991	575 sq.mtrs.	Rs.455 psm	1.8 km.	-do-
3	A.W.1/D	03/04/91	300 sq.mtrs.	Rs.222 psm	2.5 km.	-do-
4	A.W.1/E	23.8.1989	2055 sq.mtrs.	Rs.218 psm	3.0 km.	-do-

11. The Reference Court has relied upon the Sale Deed (Exhibit Aw.1/B) dated 13.02.1992, where under a land admeasuring 375 square metres was sold for ₹253.33 per square metre. The said land was a coconut garden and was at a distance of 1.5 kilometres from the acquired land. The proximity of the acquired land with the land which was subject matter of Sale Deed (Exhibit Aw.1/B), has prompted the Reference Court to rely upon the said Sale Deed. The Reference Court has also considered the evidence of the valuer (Aw.2), who had visited the acquired land in the year 1992, 1995 and in 1997 and had given his report dated 12.09.1997 estimating the market value of the acquired land at ₹250/- per square metre, taking into account the Sale Deed dated 13.02.1992, the location of the land and the facilities available. The Reference Court has refused to accept the evidence of Aw.2 to the effect that the market value of the acquired land was ₹ 450/- per square metre which the Reference Court found to be inconsistent with the market value set out in the valuation report. The Reference Court has then referred to the decision of the Supreme Court in the case of **Smt. Kaushalya Devi Bogra vs. Land Acquisition**

Officer, AIR 1984 SCC 892, in which the Supreme Court has held that transaction in respect of small properties do not offer a comparable sale instance to determine the compensation of large tracts of land and there has to be a reasonable deduction made on account of development, by sub-division in plots and by providing of roads, etc. The Reference Court after weighing the positive and negative factors has found in para 27 of the judgment that a deduction of 80% has to be made vis a vis the price of ₹250/- and has arrived at a compensation of ₹50/- per square metre. The question is whether the deduction so made is just and proper.

12. Before considering that, it is necessary to dwell upon the cross objection filed by the respondent-Corporation. The record discloses that the First Appeal was admitted on 19.06.2003 even before a notice was issued to the respondent-Corporation. The record further discloses that the respondent-Corporation was served as per the office report dated 19.06.2006 and subsequently the respondent-Corporation entered appearance. It is also a matter of record that the respondent-Corporation had filed MCA No.623 of 2003 for condonation of delay in filing an appeal challenging the impugned order in which this Court passed the following order on 12.12.2003 :

> "The Office Note indicates that the service report is still awaited. In the event, report is not received within one week from today, the applicants to take steps to serve the respondent and file affidavit of service within four weeks from today, failing which, the application to stand dismissed for non-prosecution without further reference to the Court."

13. In pursuance to the said order, the application came to be dismissed on 30.01.2004 which order has attained finality. The contention on behalf of the respondent-Corporation is that there being no notice of a specific date of hearing being issued in the appeal, the Cross Objection filed is within limitation. The contention is that the limitation for filing the Cross Objection has not commenced. For this, strong reliance is placed on the decision of the Supreme Court in the case of **Mahadev Govind Gharge** (supra). The Supreme Court in para 13 of the judgment has noticed the decision of the Division Bench of the Delhi High Court in the case of **Union of India vs. Shibu Ram Mittal (1999) 49 DRJ 166,** in which it is held thus :

> "A bare perusal of the relevant provisions contained in Sub-Rule (1) of Rule22 of Order XLI C.P.C makes it clear that the limitation would begin to run from the date of service of notice on the respondent or his pleader of the day fixed for hearing of the appeal. A notice informing the respondent that an appeal has

been admitted against him and intimating a Farzi (tentative) date of hearing cannot be taken as the notice envisaged under this provision. The provision is specific-"notice of the date fixed for hearing the appeal". A Farzi date cannot be said to be the date fixed for hearing the appeal. Simply because a counsel appeared for the respondents does not displace the requirement of service of notice of actual date of hearing of appeal. The emphasis on the words "notice of date fixed for hearing an appeal" cannot be allowed to be diluted. The provision ensures that the appellant has advance notice before the hearing of the appeal about the cross objections by the respondent."

14. The Supreme Court has also noticed a contrary view taken by the Rajasthan High Court in the case of **East India Hotels Ltd. vs. Mahendra Kumari AIR 2008 Rajasthan 131.** However, in para 55 of the judgment, the Supreme Court has held that the view taken by the Delhi High Court is more in line with the intent of the provisions of Order 41 Rule 22 of the Civil Procedure Code while the decision of the Rajasthan High Court turned on its own facts and cannot be treated to be stating a proposition of law. The Supreme Court has summarised the principles, in para 60 as under :

"60. Having analytically examined the provisions of Order 41 Rule 22, we may now state the principles for its applications as follows:

(a) The respondent in an appeal is entitled to receive a notice of hearing of the appeal as contemplated under Order 41 Rule 22 of the Code.

(b) The limitation of one month for filing the cross-objection as provided under Order 41 Rule 22 of the Code shall commence from the date of service of notice on him or his pleader of the day fixed for hearing the appeal.

(c) Where a respondent in the appeal is a caveator or otherwise puts in appearance himself and argues the appeal on merits including for the purposes of interim order and the appeal is ordered to be heard finally on a date fixed subsequently or otherwise, in presence of the said respondent/caveator, it shall be deemed to be service of notice within the meaning of Order 41 Rule 22. In other words the limitation of one month shall start from that date."

15. The contention on behalf of the respondent-cross objector is that no notice of "specific date of hearing", having been received, the period of limitation to file the Cross Objection never commenced. On the contrary, reliance is placed on behalf of the appellant on the observations of the Hon'ble Supreme Court in para 44 of the judgment in the case of **Mahadev Govind Gharge** (supra) which read thus :

> "44. The language of Order 41 Rule 22 of the Code fixes the period of limitation to be computed from the date of service of notice of hearing of the appeal upon the respondent/cross objector and within one month of such date he has to file cross-objections. Thus, the crucial point of time is the date on which the notice of hearing of the appeal is served. <u>This could be a notice for actual date of hearing or otherwise</u>."
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> (Emphasis supplied)

The contention is that the notice as contemplated under Order 41 Rule 22 of CPC could be a notice of the actual date of hearing or "otherwise". It is submitted that thus the law does not require any notice of hearing of a specific or a fixed date. It is also contended that the Cross Objection cannot be entertained once the respondent-Corporation had allowed the order dated 30.01.2004 dismissing Misc. Civil Application No.623 of 2003 having attained finality. I find considerable force in the submission of learned Counsel for the appellant that once MCA No.623 of 2003 filed by the respondent was dismissed on 30.01.2004, which order has attained finality, the respondent cannot now be allowed to raise the Cross

Objection. Nonetheless, in order to give a quietus to the matter, I propose to consider the Cross Objection on its own merits. The respondent-Corporation has placed reliance on the decision of this Court in the case of **Rui Fernandes** (supra) and **Arvind Shuka Charya** (supra), in which the compensation was granted at the rate of ₹ 20/- per square metre. It is necessary to look into the said judgments which have been delivered subsequent to the award of the Reference Court in this case and whether the decisions would be of relevance while determining the compensation in the present case.

16. In the case of **Rui Fernandes** (supra), the Notification under Section 4 of the Act was issued on 20.01.1992. The area acquired in that case was 8350 square metres from out of land survey no.272/1 (part) of Cuncolim Village. The Special Land Acquisition Officer by his award dated 06.05.1994, had awarded a compensation of ₹ 4/- per square metre for an area of 8275 square metres and ₹ 2/- per square metre in respect of 75 square metre of nallah. The Reference Court had enhanced the compensation to ₹ 40/- per square metre. Before the Reference Court, the respondent-claimant produced two Sale Deeds dated 23.08.1988 out of which by the Sale Deed at exhibit Aw.1/E, an area of 428

square metres was sold at ₹12,840/- and by another Sale Deed at exhibit Aw.1/F, two plots admeasuring 382 and 422 square metres were sold for ₹24,240/- i.e. at the rate of ₹ 30/- per square metre. This Court having regard to the fact that the acquired land was a large tract of land admeasuring 8350 square metres, found it appropriate to make a deduction of 50% and applying the same came to the conclusion that in August 1988, the value of the acquired land was ₹15/- per square metre. This Court allowed an increase of 10% per annum and arrived at the market price of ₹20/- per square metre. From the perusal of the said judgment, it is not clear whether the acquired lands were within the municipal limits and whether there were any civic amenities available in the vicinity as in the present case. In my considered view, a distinction has to be made between the acquisition of a compact piece of land for instance for a playground or erection of any public utility and amenity and the acquisition for a railway line, as in the present case, which essentially involves acquisition of a linear piece of land, (over a long distance) the facilities and amenities in respect of which may differ to a large extent. Even so far as the decision of this Court in the case of **Arvind Shuka Charya** (supra) is concerned, it is not shown that the lands which were subject matter of the appeal were within the municipal limits or not and what were the civic amenities available to the said land in the vicinity. Thus, the present case in hand is distinguishable where there is specific evidence of the land being within the municipal limits and having all the civic amenities available in the vicinity. The sale instances which have been produced in this case, including the Sale Deed, Exhibit Aw.1/B, on which reliance is placed by the Reference Court, were not before this Court in First Appeal Nos. 80/1999 and 85/2002. Thus, it is not possible to place reliance on the judgments in the aforesaid appeals. Thus, I find that there is no merit in the Cross Objection, which deserves to be dismissed.

17. This takes me to the case of enhancement in the appeal. The Reference Court, as noticed earlier, has placed reliance on the Sale Deed dated 13.02.1992 wherein an area of 375 square metres has been sold for a price of 253.35 per square metres. That the land is said to be a coconut garden and is at a distance of 1.5 kms from the acquired land. The Reference Court in its discretion has made a deduction of 80% which, according to the appellant, is on the higher side. According to the appellant, the deduction has to be to the extent of 33.33 percent and for the said purpose, reliance is placed on the decision of the Supreme Court in the case of **Maya Devi** (supra). In that case, an area admeasuring 40

kanals and 8 marlas (equivalent to approximately 13,657 square metres), was acquired for construction of a warehouse/go-down vide Notification dated 12.02.1988. The High Court made a deduction of 67.5% over the comparable sale instance which the Supreme Court found to be on a higher side. In the facts and circumstances of the said case and considering exemplar dated 26.05.1983 was for small extent of land and further having regard to the fact that the acquired land was required to be developed for construction of a warehouse, the Supreme Court found that it would be appropriate to apply one-third deduction. It is now well settled that the deduction to be applied would be largely dependent on the facts and circumstances of each case. Although normally the deduction towards the development charges is allowed to the extent of 33.33 percent, there are cases where deduction of more than fifty percent has been upheld. For instance in the case of **Chandrasekhar vs. Land Acquisition Officer (2012) 1 SCC 390**, a deduction of 70 percent was upheld. It is necessary to note that this deduction is on account of the development charges. The deduction is also required to be made on account of the fact that normally a large tract of land may not fetch a price equivalent to a small piece of land. In the present case in hand, it is true that there may not be any reduction of land on account of the requirement of setting up of open spaces or internal roads as the land was acquired for laying a railway line. At the same time, the land acquired is admeasuring about 3950 square metres while the comparable sale instance which has been relief upon by the Reference Court is of a land admeasuring 375 square metres which is at a distance of 1.5 kms from the acquired land. A reasonable guesswork is necessary, if not inevitable, in the matter of fixation of compensation. Considering the over all circumstances, I find that the deduction made by the Reference Court to the extent of 80% is on the higher side. In my considered view, the deduction has to be to the extent of 67%. Thus, applying 67% deduction over ₹253/-, the market value of the acquired land would come to ₹84/- per square metre.

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

ORDER

(i) The appeal is partly allowed.

(ii) The impugned Judgment and Award is modified.

(iii) The appellant shall be entitled to a compensation at the rate of ₹ 84/- per square metre along with all statutory benefits and interest as has been allowed by the Reference Court.

(iv) The Cross Objection stands dismissed.

(v) In the circumstances, there shall be no order as to costs.

(vi) Decree be drawn accordingly.

C. V. BHADANG, J.

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