

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 102 OF 2009**

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| 1. Deputy Collector & S.D.O. Ponda Sub-Division, Ponda-Goa. | |
| 2. The Executive Engineer, Division, XV (NH), P.W.D., Ponda-Goa. | Appellants |
| Versus | |
| 1. Shri Abhay Jairam Shet Vernekar | |
| 2. Shri Hemant Jairam Shet Vernekar | |
| 3. Shri Anant Jairam Shet Vernekar | |
| 4. Shri R. Parmeshwaran Nair, } <i>Abated as per Order dated 08.09.2011</i> | |
| All residents of Bazarmol, Ponda, Goa. | |
| 4(a) Radha Nair, resident of Bazarmol, Ponda, Goa. | Respondents |

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

CORAM:- C.V. BHADANG, J.

DATE:- 10th JANUARY, 2019.

ORAL JUDGMENT:

This appeal can be disposed of on a short count, being a covered matter.

2. As per notification dated 25.01.1991, under Section 4 of the Land Acquisition Act, 1894 (Act, for short), the Government had acquired land for widening of two lanes and improvement of Geometrics on national highway no. 4A. This included land admeasuring 3,400 square metres, belonging to

the respondents from out of Survey No. 82 (part) of village Curti, Tehsil Ponda. By an award dated 15.03.1994, the Land Acquisition Officer (LAO) awarded a compensation of Rs. 8/- per square metre.

3. Feeling aggrieved by the inadequate compensation granted, the respondents filed a reference under Section 18 of the Act, being Land Acquisition Case No. 64/2005, on the file of the learned Principal District Judge, North Goa. The respondents claimed compensation at the rate of Rs. 300/- per square metre.

4. Before the Reference Court, the respondent no. 2, Hemant Shet Vernekar examined himself as AW-1 alongwith Shri Subhashchandra Bhobe, an Architect and registered valuer as AW-2. The appellants examined Shri Vijay Mardolkar, Assistant Engineer, PWD, Works Division XV(NH), Ponda as RW-1.

5. The learned Reference Court by a judgment and order dated 30.12.2008, enhanced the compensation to Rs.150/- per square metre, which is subject matter of challenge in this appeal.

6. I have heard Ms. Linhares, the learned Additional Government Advocate for the appellants. None for the respondents. With the assistance of the learned Additional Government Advocate, I have gone through the record.

7. Ms. Linhares, the learned Additional Government Advocate for the appellants has submitted that the acquired land was abutting a national highway and there is restriction of development of such land. In the submission of the learned Additional Government Advocate, as set back to the extent of 40 metres has to be maintained from the centre of the highway and in as much as the acquired land falls within the said set back, the compensation could not have been awarded on the basis of the market value of the land and more particularly, on the basis of the sale deed dated 18.06.1990. It is submitted that in respect of a similar land, the compensation at the rate of Rs.30/- per square metre has been confirmed by this Court vide judgment and order dated 02.08.2007 in First Appeal No. 93/2007. It is submitted that the Reference Court could not have relied upon the sale deed dated 18.06.1990 and the compensation as granted in Land Acquisition Case Nos. 48/1995 and 36/1998. Except this, there are no other contentions raised.

8. On hearing the learned Additional Government Advocate and on perusal of record, I do not find that any case for interference is made out. It is a matter of record that the State has acquired the adjoining land for construction of Ponda by-pass belonging to the respondents and one Gopal Gaudo, wherein the Reference Court had enhanced the compensation from Rs.71/- to Rs.154/- per square metre in Land Acquisition Case No. 36/1998, by judgment and order dated 30.03.2002. The notification under Section 4 of the Act, out of which, Land Acquisition Case No. 36/1998 arose was published on 14.02.1991, whereas the notification in the present case is dated 25.01.1991. A perusal of the impugned judgment shows that in Land Acquisition Case No. 36/1998, while enhancing the compensation to Rs.154/- per square metre, the Reference Court had relied upon the decision in Land Acquisition Case No. 48/1995, in which the compensation was granted on the basis of a comparable sale instance in the form of sale deed dated 18.06.1990.

9. It is undisputed that the appellants had challenged the judgment and award dated 30.03.2002, passed in Land Acquisition Case No. 36/1998, before this Court in First Appeal

No. 242/2002, which was dismissed on 06.08.2008. Similar contentions have been raised in this appeal, which were also raised before the Division Bench in First Appeal No. 242/2002 and they have been negatived. In fact, the judgment and order dated 06.08.2008 in First Appeal No. 242/2002 would show that this Court had enhanced the compensation granted in Land Acquisition Case No. 48/1995 to Rs.200/- per square metre. This Court found that negative factors, if any, have been adequately taken care of. In view of the fact that in respect of the adjoining land belonging to the appellants and Gopal Gaud, the enhancement of compensation to Rs.154/- has been confirmed by this Court, I do not find that any exception can be taken to the impugned judgment and award of the learned Reference Court. It is not even claimed that the judgment of the Division Bench in First Appeal No. 242/2002 was carried further in appeal. I have carefully gone through the impugned judgment and award. The learned Reference Court on careful perusal of the oral and documentary evidence has rightly granted the compensation of Rs.150/- per square metre, which does not call for any interference.

10. Insofar as reliance placed on the order dated 02.08.2007 in First Appeal No. 93/2007, it is not shown as to

whether, it arises out of a notification under Section 4 of the Act, which is contemporary to the notification under Section 4 of the Act, as in the present appeal. It is evident that the compensation has to be granted on the basis of the market price, prevailing as on date of issuance of notification under Section 4 of the Act. In that view of the matter, no case for interference is made out. The appeal is without any merit and is accordingly dismissed, with no order as to costs.

Decree be drawn accordingly.

C. V. BHADANG, J.

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