

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.16 OF 2012**

1. Gomati alias Tima Gaude,
(Since deceased) through
Lrs. 2 – 6)
2. Soku Tima Gaude,
3. Guna Tima Gaude,
4. Kashinath Tima Gaude,
5. Gopinath Tima Gaude,
6. Tulshi Tima Gaude,

All r/o. Dhavali,
Near Tip-Top Bridge,
Ponda.

... Appellants

V e r s u s

1. Dy. Collector & S.D.O.,
Ponda Sub-Division,
Ponda-Goa.
2. The Executive Engineer,
Division XVIII (Roads)
Public Works Department,
Ponda-Goa.

... Respondents

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Kenny, Advocate
for the Appellants.

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

Coram :- C. V. BHADANG, J.

Reserved for Judgment on : 17th July, 2019

Judgment Pronounced on : 22nd July, 2019.

JUDGMENT

1. By this appeal, the appellants are seeking enhancement of compensation.

2. By a Notification dated 06.11.1991, published in the Official Gazette dated 07.11.1991, under Section 4 of the Land Acquisition Act, 1894, (Act, for short), the Government had acquired an area of 2700 square metres from out of land survey no.30 of Village Queula of Ponda Taluka, belonging to the appellants, for the purpose of construction of the Ponda by-pass road from Farmagudi to Dhavali.

3. The Land Acquisition Officer (LAO) fixed the market rate of the land @ Rs.15/- per square metre. Aggrieved by the same, the appellants made a reference under Section 18 of the Act for enhancement of compensation being Land Acquisition Case no.55/1996 claiming enhanced compensation @ 500/- per square metre. The learned reference Court by a judgment and award dated 06.01.2003 partly allowed the reference enhancing the compensation to Rs.23/- per square metre along with statutory benefits. Being dissatisfied with the enhancement granted, the appellants approached this Court in First Appeal No.137/2003. This Court allowed the appeal on 13.08.2010 and remanded the matter to the

reference Court in order to enable the appellants to produce the award in Land Acquisition Case No.89/1998 permitting the parties to lead further oral and documentary evidence.

4. The appellants adduced additional evidence in support of their claim. The respondents did not lead any evidence after the remand. The reference Court by a judgment and award dated 02.04.2011 has dismissed the reference. Hence this appeal.

5. It appears that this Court by a Judgment and order dated 20.08.2015, had partly allowed the appeal enhancing the compensation to Rs.45/- per square metre. The appellants filed Civil Application Review No.12/2017 for review of the said judgment on the ground that this Court while enhancing the compensation @ Rs.45/- per square metre had held that the land was a tenanted land when admittedly the land which is subject matter of acquisition is a freehold land. In that view of the matter, the application for review was allowed on 23.10.2018 and the appeal was restored to file.

6. I have heard Mr. S. D. Lotlikar, the learned Senior Counsel for the appellants and Ms. Linhares, the learned Additional Government Advocate for the respondents. With

the assistance of the learned Counsel for the parties, I have gone through the record.

7. The reference Court had framed the following issues on 11.06.2001 :

“1. Whether the applicants prove that the market value of the land acquired by the Government was Rs.500/- per sq.mtr. as on the date of the Notification under Section 4 of the Land Acquisition Act ?

2. What relief ? What order ?

8. The appellants examined Kashinath T. Gaude (Aw.1) along with Ramesh Verenkar (Aw.2), the Town Planner Mr. S.T. Pultraju (Aw.3) and Kalidas Marathe (Aw.4). The respondents examined Mr. Pundalik Tukaram Parker, (Rw.1).

9. The reference Court, by the impugned judgment and award dated 02.04.2011, has found that the compensation granted of Rs.15/- per square metre was just and proper and dismissed the reference.

10. Mr. Lotlikar, the learned Senior Counsel for the appellants submitted that the Reference Court was in error in holding that the land survey no.30 of Village Queula, Ponda

Taluka, was a tenanted land. It is submitted that indisputably, the said land is not tenanted but is a freehold land. The learned Senior Counsel has placed reliance on the award dated 10.03.2004 (exhibit 36) in Land Acquisition Case No.89/1998 in order to submit that the compensation in the said case which was arising out of the same Notification under Section 4 of the Act, was granted at the rate of Rs.187/- per square metre. It is submitted that although the land which was subject matter of the said reference was falling in residential area having all the civic amenities, even after making a reasonable deduction, the compensation in the present case needs to be substantially enhanced.

11. Ms. Linhares, the learned Additional Government Advocate, submitted that First Appeal No.5/2003 and 145/2007 arising out of the same Notification under Section 4 of the Act were referred to the Lok Adalat and as per the award dated 02.02.2008, the Government had agreed for a compensation at the rate of Rs.89/- per square metre. The learned Additional Government Advocate, in all fairness, did not dispute that the land which is subject matter of the present appeal is not a tenanted land. She, however, submitted that there is no parity in so far as the land which was subject matter of the Land Acquisition Case No.89/1998 is

concerned. It is pointed out that the said land was situated along the Ponda-Margao National Highway and was in a developed residential area having all basic amenities like water supply, electricity, telephone and transport and the land was accessible by asphalted panchayat road. It is pointed out that the land which is subject matter of Land Acquisition Case No.89/1998 was much smaller in area, than the land which is subject matter of the present Appeal and, therefore, there is no parity insofar as the market price of the said land with the land in this appeal.

12. I have carefully considered the rival circumstances and the submissions made. It is not in dispute that the land which is subject matter of this appeal is not a tenanted land. A compensation of Rs.45/- was earlier granted by this Court on the premise that the land was a tenanted land. In First Appeal no.145/2007 and 5/2003 before the Lok Adalat, the Government had agreed for a compensation at the rate of Rs.89/- per square metre. Albeit, that was not on the basis of any adjudication of the issue as to the market price. The appellant has placed strong reliance on the award passed in Land Acquisition Case No.89/1998. In that case, an area admeasuring 505 square metres belonging to the applicant Kalidas Marathe and 1135 square metres belonging to the

other applicants (Beheres from survey no.15/2) and an area of 2000 square metres from survey no.16 was the subject matter of acquisition. In that case, the acquired land was falling in the residential area where there were temples and residential houses and bungalows, unlike in the present case, where the land continues to be an agricultural land although not tenanted. It has however come in the evidence of Aw.3, S. T. Putraju, who is the Town Planner, that the survey no.30/0 is situated in the Settlement Zone since the year 1987. The market price of a land depends on several factors such as proximity to the road and other civic amenities such as electricity and water and also depends upon the potential of the land. It also depends upon the area of the land. The lands having smaller area normally would fetch higher price than the lands having a large area. The price of an unconverted land would also differ from the land which is converted for non-residential use for instance where a layout of plots for residential use has been approved. This mainly arises on account of two factors, (i) on account of statutory requirement of keeping open spaces and internal road which reduces the available area which can be used for residential purpose and, (ii) on account of the cost incurred for conversion.

13. I have carefully gone through the award passed by the reference Court in Land Acquisition Case No.89/1998 and, in my considered view, no parity as such arises in respect of the land which was subject matter of the Land Acquisition Case No.89/1998. A reasonable guesswork is necessary, if not, inevitable in the matter of assessment of compensation.

14. Considering the over all circumstances, I find that the compensation in the present case can be awarded at the rate of Rs.90/- per square metre with all statutory benefits.

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

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgment and award dated 02.04.2011 is hereby modified.

(iii) The appellants are held entitled for a compensation at the rate of Rs.90/- per square metre, along with all statutory benefits.

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

(v) Decree be drawn accordingly.

C. V. BHADANG, J.

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