

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 608 OF 2014**

Corporation of the City of Panaji, through its
Commissioner, having office at Panaji, Goa. Petitioner

Versus

1. The Deputy Collector (LA) & Land Acquisition Officer, Collectorate, Panaji, Goa.
2. State of Goa, through its Secretary (Revenue), Government of Goa, Secretariat, Porvorim, Goa.
3. Mr. Roberto De Mendonca
4. Mrs. Fatima De Mendonca
5. Ms. Linda De Mendonca,
All r/o H. No. E-185, Opp. Community Hall, Dondrem, Taleigao, Tiswadi, Goa.
6. Real Estate Agencies, represented by Mr. Kedar Kakodkar, r/o D-8, Road No. 8, La Campala Colony, Miramar, Panaji, Goa.
All above are major of age.
7. La Marvel Residents Association, by its Secretary, La Marvel, Dona Paula, Goa. Respondents

Mr. Shivan Desai, Advocate for the Petitioner.

Mr. Raunaq Rao, Advocate for the Respondent Nos. 3, 4 and 5.

Mr. Nikhil Vaze and Mr. Luis Fernandes, Advocates for the Respondent No. 6.

Mr. Andrea Fernandes, Advocate for the Respondent No. 7.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 27th February, 2019

PRONOUNCED ON: 5th March, 2019

JUDGMENT:

By this petition, the petitioner-Corporation is challenging the award dated 08.07.2014, passed by the Land Acquisition Officer (LAO), under Section 48 of the Land Acquisition Act, 1894 (Act, for short). By the impugned award, the LAO has granted a compensation of Rs.1,76,108/- alongwith statutory benefits under Section 23(1-A) and Section 23(2) of the Act, to the respondent nos. 3 to 6.

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

That land admeasuring 3,000 square metres under chalta no. 1(P) of P.T. Sheet No. 188 of city survey of Panaji, situated at Dona Paula is subject matter of dispute. On the basis of a requisition made by the petitioner, land acquisition proceedings were initiated for acquisition of the said land for the purpose of a sanitary landfill site, to be established by the petitioner. The notification under Section 4 of the Act was issued on 15.01.2008, followed by a declaration under Section 6 of the Act on 11.11.2008.

3. The respondent nos. 3 to 5 claim to be the owners of the land, while the respondent no. 6 is the Developer, claiming

development rights over the said land, under an agreement dated 06.04.1966. The respondent no. 7, which is an Association, is also claiming ownership over the said land.

4. The respondent nos. 3 to 5 on one hand and respondent no. 6 filed claims before the LAO agreeing for apportionment of compensation in proportion of 40% (respondent nos. 3 to 5) and 60% to be received by the respondent no. 6. On the basis of the same, an award came to be passed by the LAO under Section 11 of the said Act.

5. The respondent no. 7 filed Writ Petition No. 569/2010 challenging the said award, claiming proprietary rights in respect of the said land and also claimed to be in possession of the same.

6. During the pendency of the said petition, the respondent no. 7 by a letter dated 30.08.2010 expressed willingness to hand over the said land (which according to the respondent no. 7 is an open space/abandoned quarry) for the purposes of a landfill site, on condition that the petitioner/Corporation restores the possession of the land after beautification, after its use as a landfill site. The petitioner by

letter dated 06.09.2010 accepted the proposal and decided to take the possession of the land, which according to the petitioner was in the interest of the petitioner as there was no financial burden on the exchequer. It appears that accordingly the land was handed over to the petitioner, somewhere in September, 2010 and after the land is used as a landfill site, the same has been restored by the petitioner, to the respondent no. 7 on 27.06.2014.

7. In view of the said development, this Court found that the grievance of the respondent no. 7 was redressed and thus, disposed of Writ Petition No. 569/2010 on 06.09.2010.

The respondent no. 6 filed a Civil Review Application no. 22/2010, for review of the order dated 06.09.2010 in Writ Petition No. 569/2010, which was dismissed by this Court on 25.10.2010, leaving the respondent no. 6 free to adopt such steps for protecting/enforcing its right, if there be any, in accordance with law.

8. In view of the fact that the respondent no. 7 had voluntarily offered to hand over the possession of the said land to the petitioner, which proposal was accepted by the petitioner, the petitioner wrote to the Government for

withdrawal from the acquisition. It is a matter of record that by virtue of a notification dated 23.07.2012 under Section 48 of the Act, the Government had decided to withdraw from the acquisition.

9. Feeling aggrieved, the respondent no. 6 filed Writ Petition No. 92/2011, before this Court, claiming that the acquisition proceedings were complete and sought a direction for payment of compensation, as determined by the LAO, to be paid to the respondent nos. 1 to 6, as agreed amongst them. This Court by a judgment and order dated 24.03.2011, dismissed the petition leaving the rival contentions in respect of the title open to be adjudicated in appropriate proceedings.

10. The LAO in pursuance of the withdrawal of the acquisition took up the matter for determination of compensation under Section 48 of the Act and by an award dated 27.12.2012, determined the compensation payable by the petitioner herein at Rs.1,59,500/-.

11. The petitioner feeling aggrieved, challenged the same before this Court, in Writ Petition No. 80/2013, mainly on the ground that the petitioner was not heard before passing of

the said award. This Court allowed the said petition on 05.03.2014, remanding the matter back to the LAO for deciding it afresh, after hearing all the interested parties, including the petitioner.

12. The LAO after the remand has passed an award dated 08.07.2014 awarding compensation as aforesaid, which is subject matter of challenge in this petition.

13. I have heard the learned Counsel for the parties. Perused record.

14. Mr. Desai, the learned Counsel for the petitioner has submitted that as per the development plan, the said land is an open space/abandoned quarry and the possession of the land was voluntarily handed over by the respondent no. 7 to the petitioner, dehors the land acquisition proceedings. It is pointed out that the Division Bench of this Court, in Writ Petition No. 92/2011, has held that the possession was voluntarily handed over by the respondent no. 7 to the petitioner. It is thus submitted that no compensation could be determined under Section 48 of the Act. It is submitted that the LAO after having rejected the various claims, as made by

the respondent no. 6, has then, on his own accord granted compensation on the basis of a potential annual lease rent, which was not permissible. It is submitted that the land being an open space/abandoned quarry, could not have fetched any lease rent and as such, the order granting compensation is patently illegal. The learned Counsel has taken me through the award which also allows benefits, such as solatium, interest, which were not admissible, particularly, when the Government had withdrawn from the acquisition. It is submitted that the compensation on account of solatium and component interest would be admissible only when the land is acquired and not otherwise. It is contended that Chapter III of the Act, cannot apply to the award passed under Section 48 of the Act, which is clear from the phraseology used in the said section. It is submitted that the respondent nos. 3 to 5 and 6 have not taken recourse to any remedy before the competent Court for declaration of the title and ownership of the said land and thus, they are not entitled to any compensation.

15. Ms. Fernandes, the learned Counsel for the respondent no. 7 has supported the petitioner. It is submitted that it was the voluntary act of the respondent no. 7 in deciding to hand over the possession of the said land to the petitioner for

being used as a landfill site on the condition that the same will be returned after beautification. It is submitted that the possession having been handed over, dehors the provisions of the Act, no compensation under Section 48 of the Act could be determined.

16. Mr. Rao, the learned Counsel for the respondent nos. 3 to 5 and Mr. Vaze, the learned Counsel for the respondent no. 6, has supported the impugned order. It is submitted that the claim, to the extent it is rejected, also ought to have been granted by the LAO. Mr. Vaze, the learned Counsel for the respondent no. 6 has submitted that the award under Section 11 of the Act having been passed, the land acquisition proceedings were practically concluded and as such, the proceedings ought to have been taken to their logical conclusion. It is submitted that the respondent nos. 3 to 5 and 6 had decided for the apportionment of the compensation in the proportion of 40:60 and in view of the fact that these respondents were shown as interested parties, the Government could not have withdrawn from the acquisition and in any event, these respondents are entitled to appropriate compensation in terms of Section 48 of the Act on account of withdrawal from the acquisition.

17. Mr. Vaze, the learned Counsel for the respondent no. 6 has submitted that the respondent no. 6 has sought a reference of the matter under Section 18 of the Act to the District Court, where the issue of quantum as well as entitlement of the compensation can be gone into. The learned Counsel has placed reliance on the decision of this Court in the case of **Ramaji Baliramji Sawarkar Vs. Special Land Acquisition Officer & Others, AIR 1974 BOMBAY 249**, in order to submit that in a reference under Section 18 of the Act, arising out of an award under Section 48 of the Act, the issue of apportionment of the compensation, can also be gone into. He also submitted that the respondent no. 1 can be directed to make a reference under Section 18 of the Act to the competent Civil Court. It is submitted that the said land is held by the respondent no. 6 under a development agreement. The learned Counsel has pointed out a copy of a sanctioned plan in order to submit that the said land comprises part of the sanctioned plot nos. E-1 and E-2 and a swimming pool and it is not an open land/abandoned quarry, as claimed by the petitioner and the respondent no. 7.

18. I have carefully considered the circumstances and the submissions made.

19. Section 48 of the Act, which is relevant for the purpose reads thus:

*“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed-
(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.*

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

It can thus be seen that as per Section 48 of the Act, completion of the acquisition is not compulsory. However, compensation is required to be awarded when the Government

decides to withdraw from the acquisition. Under Section 48 of the Act, the Government is at liberty to withdraw from the acquisition of any land, prior to taking of possession. In the present case, the possession was not taken under Section 16 of the Act in pursuance of the award under Section 11 of the Act. The Division Bench in Writ Petition No. 92/2011 has also held that the possession of the land was obtained by the petitioner, dehors the land acquisition proceedings.

20. In the present case, there is a dispute as to the title/possession of the land. The respondent nos. 3 to 5, who are claiming to be the owners and the respondent no. 6, which is claiming right on the basis of a development agreement have agreed for apportionment of the compensation in the ratio of 40:60. Insofar as respondent no. 7 is concerned, it has not claimed any compensation as according to the respondent no. 7, the land was voluntarily handed over to the petitioner for the purpose of landfill site and the same has been restored after beautification on 27.06.2014. None of the parties have approached the Civil Court for deciding their rival claims as to the ownership/title to the said land.

21. Be that as it may, presently, we are concerned only with the award granting compensation under Section 48 of the Act. The LAO has also determined the compensation dehors the issue of possession/ownership and the consequential entitlement. In this case, apart from the dispute as to ownership, there is also a dispute as to the nature of the land. According to the respondent no. 7, it is an open space/abandoned quarry. The respondent no. 6 claims that it comprises of a sanctioned plot no. E-1 and part of plot no. E-2 and the proposed swimming pool. Obviously, such a disputed question of fact cannot be gone into in this petition. The present petition is entertained only on account of the fact that the acquiring body has no remedy under the Act to challenge the award under Section 48 of the said Act. Even in the reference under Section 18 of the Act made, at the instance of the interested parties, the Reference Court cannot grant compensation, which is lower than what is granted by the LAO. In other words, in a reference under Section 18 of the Act, the Reference Court, cannot reduce the compensation granted by the LAO. Thus, the petitioner also could not be relegated to contest the reference under Section 18 of the Act, made at the instance of the respondent no. 6. In that view of the matter, the limited question, which can be examined in this petition is as to

whether, the LAO could have granted the compensation on the basis of a potential base rent, particularly, when the LAO had refused to grant compensation under any of the heads as claimed by respondent nos. 3 to 6, thereafter leaving the parties to contest their rival claims in a reference under Section 18 of the Act.

22. Respondent No. 6 claimed compensation of Rs.2,05,51,518/- under the following heads:

- | | |
|--|------------------|
| (i) As market value of the said property. | Rs.55,51,518/- |
| (ii) As expenses to restore the said property to its original condition. | Rs.25,00,000/- |
| (iii) As cost of litigation. | Rs.25,00,000/- |
| (iv) As punitive and compensatory damages for acts and omissions. | Rs.1,00,00,000/- |

23. The respondent nos. 3 to 5 made a total claim of Rs.1,50,000/- as under:

- | | |
|--|-------------|
| (i) Legal expenses incurred in prosecuting Writ Petition No. 92/2011 before this Court. | Rs.15,000/- |
| (ii) Legal expenses incurred in prosecuting land acquisition proceedings before the LAO. | Rs.10,000/- |
| (iii) Fees paid to the land Surveyor, Mr. Prazeres A. Gonsalves for survey work. | Rs.5,000/- |
| (iv) Conveyance expenses incurred to attend Court cases and visits to Advocate's office. | Rs.10,000/- |

- (v) Towards typing, photocopy charges, telephone calls and other incidental charges in prosecuting the cases. Rs.10,000/-
- (vi) For removal of the garbage and for restoration of the property to status quo ante. Rs.1,00,000/-

24. A perusal of the impugned award shows that the LAO has refused to accept the claim under any of the heads as aforesaid. The LAO has found that the damages suffered by the owner obviously cannot be equated with the compensation awarded under Section 11 of the Act. However, in the opinion of the LAO, the damages payable under Section 48 of the Act, “would have a direct relation to the actual value of the said land”. In the opinion of the LAO, a specific formula needs to be adopted and followed for the purpose of determining the amount of compensation due for the damage suffered by the owner in terms of Section 48 of the Act. A perusal of para 27 onwards of the award shows that the LAO had decided to grant the compensation on the basis of the annual lease rent. Holding so, the LAO has observed thus in para 27 of the impugned award.

“27. A standard practice is followed for calculating annual lease rent for land. Annual lease rent is fixed by multiplying the market value of the land with the area of the land. Thereafter

the amount arrived by following the said formula is divided by twenty. In the present case, if the said formula is adopted, the result would be that the Collector would get a figure which theoretically and legally would be the fair annual lease rent for the said land. In the present case, there is a plot of land admeasuring 3000 sq. mtrs. which has been used by the Corporation who is not the owner of the said land. Therefore, the owner of the land will be entitled to receive payment of a certain amount as compensation for the period that the said land is occupied by the Corporation. Whether the owner wants to receive the said amount or not, is another issue.

One interesting point that has to be kept in mind in the present case is that since acquisition of the said land has not been completed by the Collector by taking possession under section 16 of the said Act, the next stage of de-notifying the acquisition process by invoking Section 48(1) of the said Act was started by publication of the required Notification.

The second interesting point is that the said Association who is claiming exclusive rights over the said land as owner of the same, actually handed over the said land to the Corporation at whose behest the acquisition proceedings had been originally initiated and at whose demand section 48(1) of the said Act was also notified by

the Government. The said handing over of the said land by the said Association to the Corporation was de hors the acquisition process.

However, the third interesting point is that since the Corporation requested for denotifying the acquisition and because the Government conceded to the said request and issued section 48(1) of the said Act, the Collector is under obligation to declare the Award under section 48(2) read with section 48(3) of the said Act.

In the circumstances, since the handing over of the said land was done by the Association to the Corporation de hors the acquisition, although compensation determined in the Award under section 11(1) of the said Act will not be payable, the Collector will be legally bound to determine the compensation under section 48(2) read with section 48(3), since section 48(1) of the said Act has been invoked by the Corporation in the present case.”

25. Thereafter, in para 29, the LAO has determined the compensation as under:

“29. Therefore, from the position discussed above, and in view of the peculiar facts and circumstances, specially the fact that the said land is zoned under R-Zone(Recreational/Open space), it is felt that under section 48(2) of the said Act,

the amount payable as one years annual lease rent in respect of the said land would be fair and appropriate as payment to the owner as damages in the present case.

The total market value of the entire land in terms of the award declared under section 11(1) of the said Act was Rs.35,22,169/- (Rupees thirty five lakhs twenty two thousand one hundred and sixty nine only). Therefore, using the formula referred to above for calculating annual lease rent, the yearly lease rent for the said land would amount to Rs.1,76,108/- (Rupees one lakh seventy six thousand one hundred and eight only). The said amount would therefore be the entitlement as damages for the owner of the said land, whoever the said owner may be.

This Authority shall however refrain from awarding costs to anyone in view of the facts and circumstances of the case, but in view of section 48(3) of the said Act, the owner will be entitled to the benefits prescribed under part III of the said Act as applicable.

Therefore, I award 12% p.a. on Rs.1,76,108/- (Rupees one lakh seventy six thousand one hundred and eight only) as additional compensation for the period commencing on and from the date of the publication of the Notification under section 4(1) of the said Act i.e. 05/03/2008 to till date in terms of section 23(1-A) of the said Act. Besides this, I

also award 30% on Rs.1,76,108/- (Rupees one lakh seventy six thousand one hundred and eight only) in terms of section 23(2) of the said Act.

This Authority will further refer this matter to the Hon'ble District Court with the request to decide the dispute since the Collector is not having any jurisdiction to decide any dispute as regards apportionment of compensation or as to the persons to whom the compensation is payable in terms of section 30 and 31 of the said Act. Therefore, the said issue will be decided by the Hon'ble District Court and thereafter, in terms of the said decision, the rightful owner holding title over the said land can decide whether to collect the determined compensation or leave the same for crediting it back to the Corporation."

26. On a careful consideration of the rival circumstances and the submissions made, I do not find that the reasoning articulated by the LAO and the amount of compensation arrived at, can be accepted. There is a serious dispute as to the nature of the land, whether, it is a part of the sanctioned layout, comprising of plot no. E-1 and part of plot no. E-2 with a proposed swimming pool or whether, it is an open space/abandoned quarry. The determination of the compensation on the basis of the annual lease rent for the land, cannot be accepted, in the facts and circumstances of the

present case, unless the potential of the land for being leased out and the potential lease rent has clearly come on record.

27. A perusal of Section 48(2) of the Act shows that the determination of the compensation under the said Section is under two heads, namely, (i) the damage suffered by the owner in consequence of the notice or any proceedings thereunder and (ii) the costs “reasonably incurred”, by him in the prosecution of the proceedings under the Act, relating to the said land.

28. At this stage, it is not shown that the respondent nos. 3 to 6 have suffered damage in consequence of notice or any proceedings under the Act. In a given case, the damage under this head can be on account of the inability of the owner to enter into sale transaction of the land, which is subject matter of notification under Section 4 of the Act. No such claim is either made or established at this stage. The second head, comprises of costs “reasonably incurred” by the owner in prosecuting the “proceedings under the Act”.

29. The land acquisition proceedings gave rise to three petitions are filed before this Court and one review petition,

which cannot be strictly said as the proceedings under the Act. However, even assuming for a moment that they are so, one of the three petitions was filed by the respondent no. 6 and the review petition was also filed by the respondent no. 6 and the other two petitions were filed one each by the petitioner and the respondent no. 7. In my considered view, only some notional compensation can be awarded in the present case on account of the costs “reasonably incurred” in prosecution of the proceedings relating to the said land. In as much as respondent no. 6 has already sought for reference under Section 18 of the Act, such determination of notional damages shall be subject to the outcome of the reference under Section 18 of the Act. In my considered view, the compensation of Rs.15,000/- can be awarded, each to the respondent nos. 3 to 5 together and the respondent no. 6.

30. I have also considered as to whether, the solatium or the component interest can be granted on the compensation determined under Section 48 of the Act. Section 48(3) of the Act provides that the provisions of Part III of the Act shall apply, “so far as may be”, to the determination of the compensation payable under the said Section. Section 23 of the Act which undoubtedly falls in Chapter III of the Act reads thus:

"23. Matters to be considered in determining compensation - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration -

- firstly, the market-value of the land at the date of the publication of the [notification under Section 4, sub-section (1)]*
- secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;*
- thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;*
- fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*
- fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and*
- sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.*

[(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Explanation. - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition."

(Emphasis supplied)

It can thus clearly be seen that Section 23 of the Act would apply only for determination of the amount of compensation to be awarded for the "land acquired" and not otherwise. Quite to the contrary, Section 48 of the Act pertains to the determination of compensation for the land, which is not acquired on account of withdrawal from the acquisition. Thus,

the solatium under Section 23(2) and the component interest under Section 23(1) of the Act would not be admissible on the compensation awarded under Section 48 of the Act.

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

O R D E R

- (i) The petition is partly allowed.
- (ii) The impugned award is hereby modified, granting compensation of Rs.15,000/- payable to the respondent nos. 3 to 5 together and Rs.15,000/- to the respondent no. 6.
- (iii) This shall be subject to the outcome of the reference under Section 18 of the Act.
- (iv) The respondent no. 6 shall deposit the amount withdrawn by him after deducting Rs.15,000/-, before the Reference Court, within six weeks from today.
- (v) The respondent no. 1 is directed to make reference of the dispute to the competent Civil Court, within six weeks from today.
- (vi) Liberty to the respondent nos.3 to 5 to file reference under Section 18, if so advised, subject to the limitation as may be applicable.
- (vii) Needless to mention that the Reference Court shall decide the matter on its own merits and in accordance with law.
- (viii) Rival contentions of the parties in the reference are kept open.
- (ix) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.