

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL APPLICATION (REVIEW) NO. 6 OF 2016****IN****FIRST APPEAL NO. 131 OF 2002**

Dy. Collector & SDO, Ponda

Sub Division & Anr.

... Applicants

Versus

Malini Vinayak Nevrekar & 2 Ors.

... Respondents

Mr. Sagar Dhargalkar, Additional Government Advocate for the Applicants.

Mr. R.G. Ramani, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.**Reserved on : 16th April, 2019****Pronounced on : 18th April, 2019****ORDER:**

By this application, the applicants are seeking review of judgment and order dated 04.07.2014, passed by this Court (U.V. Bakre, J.) in First Appeal No. 131/2002 with Cross Objection (STA) No. 1548/2003. By the said judgment, this Court has partly allowed the appeal filed by the applicants and the compensation for the acquired land has been reduced to Rs.106/- per square metre from Rs.121/- per square metre as granted by the Reference Court. Consequently, the cross objection filed by the respondents/claimants is rejected.

2. The brief facts are that by a notification under Section 4(1) of the Land Acquisition Act, 1984 (Act, for short) dated 25.01.1991, several lands were acquired from village Usgaon and from adjoining villages for widening of national highway no. 4-A. This included an area of 415 square metres from survey no. 263/1 and an area of 2,367 square metres from survey no. 259/2 of village Usgaon belonging to the respondents.

By an award dated 15.02.1994, the Land Acquisition Officer (LAO) awarded compensation at the rate of Rs.20/- per square metre. Feeling aggrieved, the respondents filed a reference under Section 18 of the Act being Land Acquisition Case No. 19/1999. The Reference Court, by a judgment and award dated 28.11.2001, enhanced the compensation to Rs.121/- per square metre, which has been reduced to Rs.106/- per square metre by the judgment under review.

3. I have heard Mr. Dhargalkar, the learned Additional Government Advocate for the applicants and Mr. Ramani, the learned Counsel for the respondents.

4. Mr. Dhargalkar, the learned Additional Government Advocate for the applicants has raised two contentions. It is

submitted that uniform rates are not fixed for the neighbouring lands, acquired by the same notification, which according to the learned Additional Government Advocate, is an error apparent on the face of the record. It is submitted that in First Appeal Nos. 155/2006, 157/2006 and 107/2009, the compensation was uniformly fixed by this Court at the rate of Rs.31.50 per square metre. It is pointed out that the lands, which were subject matter of acquisition in these appeals were pertaining to the same notification dated 25.01.1991.

Secondly, it is contended that in First Appeal No. 93/2007 (Dy. Collector & SDO, Ponda Sub Division & Another Vs. Bhaskar Vithal Sinai Wagale), the subject land was at 121/750 kilometres falling in village Curti, which is at a distance of 3.25 kilometres from Ponda city, whereas in the instant case, the said land falls within village Usgaon from 116/800 to 117/050 kilometres and the same is at a distance of 8 kilometres from Ponda city. The contention in short, is that Ponda city being a Taluka place in the vicinity, the distance from the said city assumes significance. In other words, the contention is that the compensation towards the land, which is nearer to Ponda city is at a lower rate, whereas the lands which are furtherer to Ponda city, the compensation granted is at a higher rate. Except this, there are no other contentions raised.

5. Mr. Ramani, the learned Counsel for the respondents has supported the impugned judgment. The learned Counsel for the respondents has placed reliance on the decision of the Supreme Court in the case of (i) Haridas Das Vs. Usha Rani Banik & Others (2006) 4 SCC 78 (ii) State of Goa & Another Vs. Gopal Baburao Gaudo & Others (2009) 10 SCC 686 and (iii) Haryana State Industrial Development Corporation Ltd. Vs. Mawasi & Others (2012) 7 SCC 200.

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

7. This Court in para 12 of the judgment under review has noticed that the acquired land was a levelled land, situated along the national highway no. 4-A and there were residential houses situated across the road, at the time of acquisition and the land had the availability of facilities like electricity, tap water, telephone etc. The closest bus stop was at a distance of 4 to 5 metres. There was a primary school, a cottage hospital, petrol pump, higher secondary school, market, cinema hall etc., which were all within an easily reachable range. The MRF factory was adjacent to survey no. 259/2. This Court also considered two sale instances namely, dated 10.01.1991

(Exhibit AW-1/A) and 14.06.1991 (Exhibit AW-1/B), which were proximate to the date of notification under Section 4 of the Act and after considering the location of the lands, which were subject matter of these sale deeds and thus, considering the proximity, both in time as well as location, has relied upon the said sale instances. This Court, however, took note of the fact that the plots, which were subject matter of the said sale deeds were developed plots. The Reference Court had made deduction of 30%, while fixing the price of the undeveloped land. Thus, noticing that the deduction of 30% cannot be on the higher side and further noticing that the learned Reference Court instead of deducting 30% from the price of Rs.151/- per square metre has deducted Rs.30/- per square metre from the said price and has arrived at Rs.121/- per square metre, which in fact should be Rs.106/- per square metre, reduced the compensation to Rs.106/- per square metre. Thus, a perusal of the judgment does not show any error apparent on the face of the record.

8. First Appeal Nos. 155/06 and 157/2006 were decided before the Lok Adalat, where the claimants had agreed for the rate of Rs.31.50 per square metre. First Appeal No. 107/2009 is decided by this Court on 08.10.2009, based on the

compensation granted by the Lok Adalat in First Appeal No. 155/2006. It can thus be seen that there was no adjudication as such, in any of these appeals and if, some of the claimants had agreed for a particular rate before the Lok Adalat, it cannot bind the other owners, whose lands are subject matter of acquisition. In a given case, the claimant can agree for a particular compensation, depending upon the area of the land and several other factors. In any event, reliance placed on the decision in First Appeal Nos. 155/2006, 157/2006 and 107/2009, which essentially turned on the compensation granted before the Lok Adalat on concession, is misplaced.

9. Coming to First Appeal No. 93/2007 (Dy. Collector & SDO, Ponda Sub Division & Another Vs. Bhaskar Vithal Sinai Wagale), a perusal of the judgment dated 08.01.2007, passed by the Reference Court shows that land admeasuring 133 square metres from survey no. 42/8 of village Curti was subject matter of the said appeal. In that case, the claimant, Bhaskar Wagale had claimed an enhancement to the extent of Rs.120/- per square metre. The Reference Court partly allowed the reference and enhanced the compensation to Rs.30/- per square metre. The claimant appears to be satisfied with the said enhancement and did not carry the matter any further. The

State came in appeal in First Appeal No. 93/2007, challenging the enhancement to the extent of Rs.30/-. This Court, dismissed the appeal on 02.08.2007, which was carried to the Supreme Court, at the instance of the State in Special Leave to Appeal No. 1609/2008, which was dismissed on 15.02.2008. It is difficult to see as to how the said judgment can come to the aid of the applicants in seeking review of the judgment in the present case. Perhaps, looking to the area of the land acquired was only 133 square metres and to the best of his knowledge, the claimant was satisfied with the enhancement to the extent of Rs.30/- per square metre and that again, cannot bind the other owners, whose land is acquired. That apart, a bare perusal of judgment dated 08.01.2007 in Land Acquisition Case No. 62/2005 and order dated 02.08.2007 of this Court in First Appeal No. 93/2007, show that the case clearly turned on its own facts. Thus, both the grounds, which are urged in support of the prayer for review, to my mind, cannot be accepted. The civil review application is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

EV