

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL No. 76 OF 2016

Land Acquisition Officer,
PWD Cell,
Altinho, Panaji, Goa

.... Appellant

Versus

1 Mohandas Pandharinath,
Kamat Dhakankar & Another,
H. No.1010, Ballwada,
Cundaim Industrial Estate,
Post Office Ponda Goa.

2 Damodar Pandharinath,
Kamat Dhakankar r/o H. No.5124,
Satyawati Building,
Behind Roque Electricals,
Murida, Fatorda, Salcete, Goa.

.... Respondents.

Ms. Ankita Kamat, Additional Government Advocate for the Appellant.

Mr. J. J. Mulgaonkar, Advocate for the Respondents.

Coram:- M. S. SONAK, J

Reserved on :- 13th July, 2020

Pronounced on : 16th July, 2020

JUDGMENT

Heard Ms. Ankita Kamat, learned Additional Government

Advocate for the Appellant and Mr. J. J. Mulgaonkar, learned counsel for the Respondents.

2. This appeal is directed against the judgment and award dated 29th October, 2015 made by the District Judge-2, Panaji (Reference Court) in Land Acquisition Case No.32/2013, by which the Reference Court enhanced compensation amount from Rs.20/- per square metre to Rs.160/- per square metre in respect of Respondents' acquired land at Marcaim Goa.

3. The State Government published notice under Section 4(1) of the Land Acquisition Act, 1894 (the said Act) on 28th November, 2006 declaring its intention to acquire *inter alia* 3392 square metres of land bearing survey No.332/1 of Marcaim Village, Ponda Taluka for public purpose of construction of bypass road from Kundaim Industrial Estate to Marcaim Industrial Estate via Tapobhumi and Kundaim. This land is hereinafter referred to as “*acquired land*” since, the same was ultimately acquired by the State Government vide Land Officer (LAO) Award dated 2nd February, 2010.

4. The LAO determined the compensation in respect of the acquired land at Rs.20/- per square metre. The Respondents, dissatisfied with the award sought for a reference under Section 18 of the said Act, which was registered as Land Acquisition Case No.32/2013 before the

Reference Court. The Reference Court vide impugned judgment and award, has enhanced the compensation from Rs.20/- per square metre to Rs.160/- per square metre. Hence, this appeal by the Land Acquisition Officer, representing the State of Goa.

5. Ms. Ankita Kamat, learned Additional Government Advocate has firstly urged that the entire burden of establishing the precise market rate is upon the Respondents-Claimants, which burden, the claimants have failed to discharge in the present case. Without prejudice, she submits that two sale deeds upon which the Reference Court has placed reliance are not at all comparable instances. She submits that merely because the lands which are the subject matter of the two sale deeds were located in Marcaim village, where the acquired land is also located, the same is no ground to hold the sale instances as comparable instances. She submits that in the absence of any evidence on the aspect of comparability the Reference Court was not at all justified in placing any reliance upon two sale instances.

6. Ms. Kamat without further prejudice to the aforesaid submits that even if it is assumed that the two sale instances could have been taken into consideration by the Reference Court, the Reference Court, erred in making deductions to the extent of hardly 5% or even lesser, when in fact on the basis of the material on record, the deductions should have been to the extent of 67%. She submits that

there is evidence that the sale deeds were in respect of small and developed plots of land whereas the acquired land was large and undeveloped. She submits that there is evidence that the acquired land was in fact landlocked. On the basis of all these, the deductions ought to have been to the extent of 67% and the Reference Court in failing to make such deductions, has clearly erred.

7. Ms. Kamat also pointed out that there is some evidence to indicate that the two plots which are the subject matter of the sale deeds already had houses therein. She also pointed out that the valuation report produced by and on behalf of the claimants ought not to have been looked into as admittedly the valuer had visited the acquired land long after the acquisition proceedings were complete and further there is absolutely no evidence on record to suggest that the valuer had actually visited the two sale deeds plots at any time.

8. For all these reasons, Ms. Kamat submits that there is absolutely no evidence on record to sustain any enhancement or in any case, even if the two sale deeds are to be considered as comparable instances, the deductions ought to be to the extent of 67% in the facts and circumstances of the present case.

9. In support of the aforesaid contentions, Ms. Kamat has relied upon the following decisions :-

(i) Chimanlal Hargovinddas v/s. Special Land Acquisition Officer, Poona and Ors. MANU/SC/0071/1988;

(ii) Ramanlal Deochand Shah v/s. The State of Maharashtra and Ors. MANU/SC/0672/2013;

(iii) Ranvir Singh and Ors. V/s. Union of India (UOI) MANU/SC/0554/2005;

(iv) Shaji Kuriakose and Ors. V/s. Indian Oil Corpn. Ltd. and Ors. MANU/SC/0465/2001;

(v) Basant Kumar and Ors. V/s. Union of India (UOI) and Ors. MANU /SC/1761/1996;

(vi) Chandrashekar (D) by L.Rs. and Ors. V/s. Land Acquisition Officer and Ors. MANU/SC/1379/2011;

(vii) Dr. Caetano Jose Filomeno Jacinto de Loiola Pereira v/s. Deputy Collector, South, Sub-Division and Ors. MANU/MH/1301/2004;

(viii) Shri Sadguru R. Kolmule v/s. Dy. Collector of North Goa Division, Panaji-Goa. First Civil Appeal No.17/1988 dated.16.01.1996 (High Court of Judicature At Bombay, Panaji Bench, Goa);

(ix) Subh Ram and Ors. V/s. Haryana State and Ors. MANU/SC/1790/2009.

10. Mr. Mulgaonkar, learned counsel for the Respondents defends the impugned award on the basis of the reasonings reflected therein. He points out that there is absolutely nothing unreasonable or excessive about the compensation awarded particularly since the same is backed by evidence on record. He points out that the burden was duly

discharged by the claimants and there was hardly any cross examination on behalf of the Appellant. He submits that appropriate deductions have been made by the Reference Court and there is no ground to warrant interference.

11. Mr. Mulgaonkar points out that necessary evidence was led on the issue of comparability which evidence has in fact gone unchallenged. He points out that the acquired land already had access by a road and further, several amenities were available to the acquired land. He points out that the two industrial estates at Kundaim and Marcaim were at a distance of hardly one to two kilometers from the acquired land.

12. Mr. Mulgaonkar relies on the following decisions in support of his submissions.

i) General Manager, Oil And Natural Gas Corporation Limited v/s. Rameshbhai Jivanbhai Patel and Another. (2008) 14 SCC 745;

ii) Nelson Fernandes And Others v/s. Special Land Acquisition Officer, South Goa And Others. (2007) 9 SCC 447.

13. For all the above reasons, he submits that this appeal is liable to be dismissed.

14. The rival contentions now fall for my determination.

15. In so far as Ms. Kamat's first contention is concerned, it will have to be accepted that the burden was upon the Respondents-Claimants to establish that the rate determined by the LAO was inadequate and therefore, enhancement was indeed warranted. In *Chimanlal* (supra) the Hon'ble Supreme Court has made it clear that the claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

16. To the same effect are the observations of the Hon'ble Supreme Court in the case of *Ramanlal Shah* (supra), in which, it is held that it is trite that in a reference under Section 18 of the Land Acquisition Act, on the question of adequacy of compensation determined by the collector, the burden to prove that the collector's award does not correctly determine the amount of compensation payable to the landowner is upon the owner concerned. It is for the claimant to prove that the amount awarded by the Collector needs enhancement, and if so, to what extent. The claimant can do so by adducing evidence, whether oral or documentary which the Reference Court would evaluate having regard to the provisions of Sections 23 and 24 of the Land Acquisition Act while determining the compensation payable to the owners. To that extent the claimant is in the position of a plaintiff before the Court. In the absence of any evidence to prove that

the amount of award by the Collector does not represent the true market value of the property as on the date of the preliminary notification, the Reference Court will be helpless and will not be justified in granting any enhancement. The Court cannot go by surmises and conjectures while answering the reference nor can it assume the role of an Appellate Court and enhance the amount awarded by reappraising the material that was collected and considered by the Collector. What is important to remember is that a reference to a Civil Court is not in the nature of an appeal from one forum to the other where the appellate forum takes a view based on the evidence before the forum below.

17. The issue which arises for determination therefore is whether the Respondents-Claimants in the present case have succeeded in discharging the burden so placed upon them. The Respondents-Claimants examined one of themselves i.e. Damodar Das Dhakankar (AW1) and a valuer namely Neelesh Laad (AW2) in a bid to discharge such burden.

18. Upon perusal of the depositions of AW1 and AW2, including *inter alia* the documentary evidence produced by them in the form of sale deeds dated 19th April, 1995 (Exhibit 12) and 16th April, 2004 (Exhibit 13), it is not possible to accept Ms. Kamat's contention that the Respondents-Claimants have failed to discharge the burden to

prove that the LAO's award does not correctly determine the amount of compensation or that the Respondents-Claimants are entitled to enhancement over the rate determined by the LAO.

19. The cross examination of both the witnesses by and on behalf of the Appellant is extremely sketchy and makes no serious dent, at least as regards the factual aspects which emanates from the depositions and the documents produced on record by and on behalf of the Respondents-Claimants. There may be something to be said on the aspect of appreciation of such oral or documentary evidence on record. There may be also something which is required to be said about the opinion expressed by the valuer. However, this is not a case where it can be said that the Respondents-Claimants have failed to lead any evidence at all or failed to make out any case warranting enhancement.

20. The next issue to be determined is whether the two sale instances relied upon by the Respondents-Claimants can be regarded as comparable sale instances. True, as contended by Ms. Kamat it was possible for the Respondents-Claimants to have produced better evidence on record on this aspect. However, it is not possible to accept that there is no evidence whatsoever on the aspect of comparability to be found on record.

21. At the outset, there is no dispute whatsoever that the

acquired land is located in the village of Marcaim and plots which are subject matter of the two sale deeds are also located in the village Marcaim. The acquired land bears survey No.332/1. The plot which is the subject matter of the sale deed at Exhibit 12 bears survey No.307/3 and the plot which is the subject matter of sale deed at Exhibit 13 bears survey No.317/1. Incidentally, one of the Respondents-Claimants was the vendor in respect of sale deed at Exhibit 12 which is dated 19th April, 1995, executed almost 11 years prior to the acquisition in question. AW1 has deposed on the aspect of comparability and no serious dent has been made to this deposition in the course of the cross examination. No questions were posed to the valuer on the aspect of comparability and in any case, nothing is elucidated in the course of the cross examination of AW2, on the aspect of comparability.

22. In *Rameshbhai Patel* (supra) the Hon'ble Apex Court has held that where no evidence of earlier sale was available in the village of Ijapura (where the acquisition had taken place) the evidence in respect of lands in two neighbouring villages could as well be considered. In the present case, the Respondents-Claimants have produced evidence of sale instances in the same village. For all these reasons, it is not possible to accept Ms. Kamat's contention that the two sale deeds in question do not offer any comparable instances.

23. Ms. Kamat, is however, on a stronger wicket in so far as her

third contention relating to the appropriate deductions is concerned. The Reference Court does not appear to be resorted to appropriate deductions, after coming to the conclusion that the sale instances are comparable. The Reference Court, has concluded that as on the relevant date the market rate in terms of the sale instances would come to Rs.165/- per square metre. However, the Reference Court has deducted only an amount of Rs.5/- per square metre and thereafter determined the compensation at the rate of Rs.160/- per square metre.

24. The perusal of the impugned judgment and award indicates that the Reference Court has failed to notice that the sale instances were in respect of smaller plots of land out of which, one of the plots was possibly a developed plot. The Reference Court has also not given sufficient credence fact that the acquired land though bound by a katcha road, was, to some extent, landlocked. The percentage of deductions therefore, ought to have been much greater than what the Reference Court has adopted in the present matter.

25. Exhibit 12 is the sale deed dated 19th April, 2015, in terms of which a plot of land admeasuring 1150 square metres bearing survey No.307/3 was sold, in fact by one of the Respondents-Claimants for total consideration of Rs.60,000/-. This means that the rate per square metre comes to approximately Rs.52.17. Applying the principle in *Nelson Fernandes* (supra) if the escalation at the rate of 10% per

annum is to be allowed on this rate, then, in the year 2006 (as on the date of Section 4 Notification), the rate, would come to approximately Rs.150/- per square metre.

26. Exhibit 13 is a sale deed dated 16th April, 2004 by which a plot of land admeasuring 510 square metres was sold for an amount of Rs.65,625/-, which corresponds to per square metre at the rate of Rs.128.67. By taking into consideration the 10% escalation per annum, the rate comes to Rs.154.88, as in the year 2006.

27. Upon appreciation of evidence, particularly Exhibits 12 and 13, it is safe to hold that the rate as reflected by the two sale deeds comes to Rs.155/- per square metre in the year 2006. In order to arrive at this rate, it is really not necessary to go to the evidence of the valuer (AW2). Consequently, it is also not necessary to consider the impact of the decisions in *Dr. Caetano Pereira* (supra) and *Sadguru Kolmule* (supra), which take the view that the valuer's report, may not have great evidentiary value, where the valuer has not visited the site of the acquired land at or around the time of issuance of Section 4 Notification. Though, the rate on the basis of the two sale deeds, can be taken as Rs.155/- per square metre, the deductions are warranted because though the sale instances can be regarded as comparable instances, there are certain negative factors attached to the acquired land, which warrant deductions, when compared to the sale deed plots.

28. Firstly, it is necessary to note that the two sale deeds plots relate to areas of 1150 and 510 square metres when admittedly, the area of the acquired land is 3392 square metres. Exhibit 13 plot was a developed plot surrounded by other developed plots. There is no evidence that Exhibit 12 plot which admeasures 1150 square metres was a fairly developed plot. However, even this plot, had access by a proper road. The acquired land appears to have access by a katcha road and except for this katcha road, the acquired land may be regarded, to some extent, as landlocked. Taking into consideration all these aspects, the deductions will have to be in the range of about 30% to 40% from the rate of Rs.155/- per square metre as determined above.

29. However, it is necessary to note that there are some positive factors which attach to the acquired land as well. There is evidence that the Kumdaim and Marcaim industrial estates are within the radius of 3 Kms from the acquired land. There is evidence that the acquired land has access to piped water supply of the Public Works Department, Government of Goa. There is evidence that the electricity and telephone lines pass from the close vicinity of the acquired land. There is evidence that the acquired land is mostly flat and only partly steep. There is evidence that the public utility such as Primary Health Centre, Panchayat house, Bank of Maharashtra, Government Primary School, Government Secondary School, Playground, Temples and local market are also situated within a radius of 3 Kms from the acquired land. The

claimants deposition in this regard has virtually gone unchallenged.

30. Therefore, upon consideration of positive and negative factors as aforesaid and also upon applying the principles laid down by the Hon'ble Supreme Court in the case of *Chimanlal* (supra) and *Chandrashekar* (supra), the deductions at the rate of 35% from out of the rate of Rs.155/- per square metre will be appropriate in the facts and circumstances of the present case.

31. Ms. Kamat's contention that the deductions should be 67% deserve no acceptance in the facts and circumstances of the present case. If such contention was to be accepted then the rate would have to be determined at Rs.54/- per square metre in the year 2006. As noted earlier, Exhibit 12 is a sale deed of the year 1995 in respect of an undeveloped plot admeasuring 1150 square metres. The rate reflected by this sale deed comes to Rs.52/- per square metre. The acceptance of Ms. Kamat's contention would imply that the rate of undeveloped plot has appreciated by only Rs.2/- over the period of eleven years. The acceptance of this contention would also amount to ignoring various positive factors which attach to the acquired land. Therefore, upon consideration of the evidence on record in its entirety and by applying the principles laid down by various decisions referred to by Ms. Kamat herself, the deduction to the extent of 35% would be appropriate in the facts and circumstances of the present case. This means that an amount

of Rs.54.25 will have to be deducted from the rate of Rs.155/- as determined earlier. The market rate of the acquired land on the date of Section 4 Notification will therefore be Rs.100.75 which can be safely rounded to Rs.101/- per square metre.

32. The appeal is therefore liable to be partly allowed and the compensation amount of Rs.160/- per square metre as determined by the Reference Court is liable to be modified and scaled down to Rs.101/- per square metre. No contentions were raised on the aspect of statutory benefits which have been awarded by the Reference Court. Accordingly, there is no reason to interfere with the award of such statutory benefits made by the Reference Court.

33. The appeal is therefore partly allowed. The compensation is now determined at the rate of Rs.101/- per square metre. The impugned award is modified to that extent accordingly. There shall be no order as to costs.

34. The learned counsel for the parties submit that the entire awarded compensation was deposited by the Appellant in this Court and out of the same, some amount of compensation has already been withdrawn by the Respondents-Claimants. If that is so, the registry to work out the entitlement in terms of the present judgment and award and if any amounts have to be returned by the Respondents-Claimants,

they shall do so within a period of eight weeks from today alongwith interest at the rate of 9% per annum from the date of withdrawal till the date of return in the registry, which, shall in any case be not beyond the period of eight weeks from today. Registry shall permit the Appellant proportionate withdrawal as expeditiously as possible and in any case within a period of eight weeks from today. The parties to file formal praecipe before the registry indicating the calculations in terms of the present judgment and award.

M. S. SONAK, J.

35. At this stage, the learned counsel for the parties submit that they are not sure whether the awarded amount has indeed been deposited in the registry. Mr. Mulgaonkar, learned counsel for the Respondents categorically states that at least from the High Court, the Respondents have not withdrawn any amount. The registry to verify the position. If, the awarded amount has indeed been deposited by the Appellant, then, the registry to permit the withdrawal to both the parties consistent with the present judgment and award. However, if any amount is deposited then, the parties may have to resort to the remedy of the execution.

M. S. SONAK, J.

at*