

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.6 OF 2015**

Cuncolim Municipal Council,
A Municipal Council established and
incorporated under the Goa
Municipalities Act, 1968,
Cuncolim, Salcete Goa,
through its Chief Officer. Appellant

Versus

1. Shri Wilson Fernandes alias
Wilson A. Columbano Dos
Doris Fernandes,
major of age,
H. No.12,
Nagavaddo, Betalbatim,
Salcete Goa.
2. Special Land Acquisition Officer,
S.I.P. Gogal, Margao – Goa (W.R.D.). Respondents

Mr. Sandesh Padiyar with Mr. S. Bhangui, Advocates for the Appellant.

Mr. C. A. Coutinho with Mr. I. Santimano, Advocates for Respondent No.1.

**Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.**

**Reserved on : 11th March, 2020
Pronounced on: 16th March, 2020**

JUDGMENT (Per M. S. Sonak, J)

Heard Mr. S. D. Padiyar, learned counsel for the Appellant

and Mr. C. A. Coutinho, learned counsel for Respondent No.1.

2. This appeal is directed against the judgment and award dated 3rd April, 2014 made by the Reference Court in Land Acquisition Case No.27/2011 enhancing the compensation in respect of the Respondent's acquired property from Rs.102/- per square metre to Rs.1000/- per square metre.

3. This appeal has been instituted by the Cuncolim Municipal Council which is the authority for whose benefit the Respondent's property came to be acquired.

4. Notification under Section 4 of the Land Acquisition Act, 1894 (the said Act) was issued by the appropriate Government for acquisition of Respondent's property surveyed under No.340/1 (part) admeasuring 17435 square metres at Cuncolim, Salcete Goa for public purpose of Sewerage Waste Water Treatment Plant. The Land Acquisition Officer made award on 25th May, 2011 and determined rate of compensation at Rs.102/- per square metre by observing that the acquired property is an untenanted bharad land.

5. The Respondent, dissatisfied with the determination, applied for a reference and the Reference Court, by its impugned judgment and award dated 3rd April, 2014 has enhanced the

compensation from Rs.102/- per square metre to Rs.1000/- per square metre. Hence, the present appeal.

6. The record indicates that the Reference Court in its impugned judgment and award has basically taken into consideration the following :-

- (a) Award dated 26th March, 2013 in Land Acquisition Case No.36/2011 (Exhibit C-41);
- (b) The sale deed dated 22nd October, 2010 at Exhibit 17;
- (c) Evidence of AW1 – Claimant/Respondent herein;
- (d) Valuation report by Mahendra Kakule (AW3), who was examined as expert valuer by the Respondent.

7. According to us, the most relevant evidence in this matter would have been the award dated 26th March, 2013 in Land Acquisition Case No.36/2011 at Exhibit C-41. However, Mr. Padiyar, learned counsel for the Appellant submitted that this award was not really a comparable instance. He submitted that in any case, this award, was recalled by the Reference Court after it was discovered that out of total area of 3275 square metres of the acquired land, almost an area of 2700 square metres was found to be tenanted land and only an area of 575 square metres was found to be untenanted land.

8. Mr. Padiyar, however pointed out that after recall of award

dated 26th March, 2013 (Exhibit C-41), the Reference Court, once again vide judgment and award dated 4th August, 2018 disposed of the Land Acquisition Case No.36/2011. This time the Reference Court held that the portion of the acquired property which was untenanted land admeasuring 575 square metres was liable to be paid compensation at the rate of Rs.1200/- per square metre and the tenanted portion admeasuring 2700 square metres was not liable to be paid any enhanced compensation at all.

9. Mr. Padiyar, learned counsel for the Appellant and Mr. C. A. Coutinho, learned counsel for the Respondent submitted that this subsequent development be taken into consideration for the purposes of disposal of this appeal. They in fact submitted that the judgment and award dated 4th August, 2018 be read in evidence in this appeal by resorting to provisions in Order 41 Rule 27 of the Civil Procedure Code. In view of the joint request, we see no difficulty in taking the cognizance of the judgment and award dated 4th August, 2018 in Land Acquisition Case No.36/2011, rather, then remand the matter to the Reference Court for fresh adjudication consequent upon recall of Exhibit C-41, which would as was rightly submitted by the learned counsel for the parties, entail only further delay in the matter.

10. The judgment and award dated 4th August, 2018 suggests that the market value of untenanted land which was subject matter of

the said award was Rs.1200/- per square metre in respect of the acquisition which commenced with the issuance of Section 4 Notification dated 11th February, 2009. In so far as the present appeal is concerned, Section 4 Notification was issued on 31st December, 2010. By providing for 10% appreciation per annum, the market rate for the property surveyed under No.666/5 admeasuring 575 square metres forming subject matter of the judgment and award dated 4th August, 2018 can safely be regarded as approximately Rs.1400/- per square metre as on 31st December, 2010, which is the date of Section 4 Notification in the present matter.

11. The evidence on record establishes that the property bearing survey No.666/5, in respect of which compensation of Rs.1200/- per square metre was awarded, admeasures only 575 square metres. Besides, this property was zoned as commercial and was located right behind the community hall in the Cuncolim market. This property abuts national highway and all these factors contributed to the Reference Court determining its market rate at Rs.1200/- per square metre as on 11th February, 2009.

12. In contrast, the acquired property which is the subject matter of the present appeal admeasures 17435 square metres. There is controversy as to whether this acquired property is in settlement zone or in part settlement zone or part garbage management zone. The

impugned judgment and award records categorical finding that the acquired property is located partly in the settlement zone and partly in garbage management zone. This finding has not been challenged by the Respondent by filing any cross objections. Apart from the statement of Mahendra Kakule in the course of the deposition there is no other documentary evidence produced on record by the Respondent to substantiate that the entire acquired property fell within the settlement zone or that no part of the acquired property fell even in the garbage management zone. Incidentally, the evidence on record establishes that adjacent to the acquired property is the property on which garbage management plant has already been set up by the Appellant Council.

13. Besides, the evidence on record establishes that the acquired property is almost 600 metres away from nearest Quepem road. AW1 i.e. Respondent has admitted in his deposition that amenities are quite away from the acquired property. There is also evidence on record that the acquired property is at a distance of 1.5 km away from the property bearing survey No.666/5 admeasuring 575 square metres which is the subject matter of the judgment and award dated 4th August, 2018. This negative factor will have to be taken into consideration if, the judgment and award dated 4th August, 2018 is to be regarded as a comparable instance. The deductions are therefore required to be made from out of the rate determined in judgment and award dated 4th August, 2018, in order to arrive at proper market rate in respect of the acquired property.

14. Mr. Padiyar has relied upon ***Chandrashekar (Dead) by LRs and others Vs Land Acquisition Officer and Another¹, P. Ram Reddy and others Vs Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and others², Subh Ram and others Vs State of Haryana and Another³***.

15. Mr. Coutinho, learned counsel for the Respondent has pointed out that the Land Acquisition Officer has himself regarded as the property surveyed under No.666/5 as comparable instance and he therefore pointed out that the Reference Court was quite justified in treating this Exhibit C-41 as a comparable instance. He relies on ***Mohinder Singh and others Vs State of Haryana⁴*** to point out that where the acquired land is within the development municipal limits, the deductions of 40% towards the development cost as determined by the High Court was unjustified and deduction of 1/4th of market value made by the Reference Court was appropriate and liable to be restored.

16. As noted earlier, as on the date of Section 4 Notification in the present matter, the market rate of plot surveyed under No.666/5 can be safely regarded as Rs.1400/- per square metre by making allowance for annual appreciation. However, from this rate further allowance has to be made on account of the circumstance that the plot bearing survey No.666/5 admeasuring only 575 square metres and the acquired

1 (2012) 1 SCC 390

2 (1995) 2 SCC 305

3 (2010) 1 SCC 444

4 (2014) 8 SCC 897

property admeasuring 17435 square metres. According to us, the deduction of at least 25% is due on account of this factor alone.

17. Besides, the plot bearing survey No.666/5 admeasuring 575 square metres was virtually in Cuncolim market abutting national highway. This plot was in the commercial zone. In contrast, the acquired property is at a distance of almost 1.5 km away from this plot. The acquired property is almost 600 metres away from the nearest Quepem road. Even the amenities are away from the acquired property. The acquired property, even if it is assumed to be entirely in settlement zone is touching Cuncolim garbage treatment plant. For all these negative factors, a further deduction of at least 25% is clearly warranted in the facts and circumstances of this case.

18. The aforesaid means that the deduction of at least 50% is warranted, if, the judgment and award dated 4th August, 2018 is to be regarded as comparable instance.

19. The Respondent had also relied upon a sale deed dated 22nd October, 2010. However, this sale deed was in respect of developed plot admeasuring 300 square metres situated almost 2 kms away from the acquired plot. There is evidence on record that this developed plot had several amenities. Accordingly, we do not think that this plot could be said to be a comparable instance.

20. We have also considered the evidence of AW1 and AW3 in this matter. AW1 – Claimant has himself admitted that the acquired land is at a distance of 1.5 km from the plot bearing survey No.666/5. He has also admitted that the acquired property does not touch Quepem road but at a distance of 600 metres away from the same. AW1 also admitted that the plot bearing survey No.666/5 is in the heart of Cuncolim market and abuts national highway. AW3 expert, has relied upon the sale deed dated 22nd October, 2010, which has noted earlier was in respect of small plot of 300 square metres which was fully developed and had benefits of several amenities.

21. The decision in *Mohinder Singh* (supra) turns on its peculiar facts. In that case, the Hon'ble Apex Court found that the acquired land adjoins the abadi of the township of Shahabad and was in its municipal limits. There was also evidence that around this land there exist DAV College, Girls High School, cinema hall, cold storage, rice mills, grain market and private nursing homes and all the establishments have sprung up before the acquisition and the acquired land had great potential value for development of residential, commercial and industrial units. It is in these circumstances, the Hon'ble Apex Court felt that the deduction to the extent of 25% was sufficient and there was no case for making deduction up to 40%.

22. In *Chandrashekar* (supra) the Hon'ble Apex Court has

considered several of its earlier decisions on the aspect of appropriate deductions towards the development cost etc. The discussion and analysis is to be found at paragraph 18. Finally, the Hon'ble Apex Court has concluded that the deduction can range between 20 to 75% when there is occasion to compare a developed plot with an undeveloped plot. The aspects like area, location, potentiality play a significant role in effective comparison and evaluation.

23. In *P. Ram Reddy* (supra) the Hon'ble Apex Court has explained the factors to be considered when a small plot of land is to be treated as sale instance in respect of acquired property which is of large extent.

24. In *Subh Ram* (supra) the Hon'ble Apex Court has held that the purpose of acquisition or future use can have no role in determining the percentage towards development cost nor can the purpose of acquisition be used to increase the compensation awardable with reference to the expected profits from the future user. In fact, the Hon'ble Apex Court pointed out that Section 24 of the said Act prohibits the Court from taking into consideration any increase in the value of the land acquired, likely to accrue from the use to which it will be put when acquired.

25. In *Subh Ram* (supra) the Hon'ble Apex Court has

observed that if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads etc.) plus one-third (for expenditure of development), in all two-thirds (or 67%), as '*development cost*' from the value of small plot. The percentage of deduction may however vary between 20% to 75% depending on several circumstances.

26. Applying the aforesaid principles to the facts of the present case, we are satisfied that the deduction to the extent of 50% is warranted if, plot bearing survey No.666/5 is to be treated as comparable instance. The compensation, will accordingly have to be determined at the rate of Rs.700/- per square metre in respect of the acquired property.

27. For all the aforesaid reasons, we determine the market rate in this case at Rs.700/- per square metre and to that extent we interfere with the impugned judgment and award which has determined the market rate at Rs.1000/- per square metre.

28. In so far as all other benefits and entitlements are concerned, there is absolutely no reason to interfere with the impugned judgment and award.

29. The compensation will now have to be reworked on the basis of the market rate of Rs.700/- per square metre instead of Rs.1000/- per square metre. The statutory benefits will also have to be reworked on the basis of market rate which we have now determined in this appeal. The Appellant to file a statement before the Registrar (Judicial) within four weeks from today after service of copy of the same upon the learned counsel appearing for the Respondents. The Respondents are granted two weeks time to furnish say upon such statement.

30. The record indicates that some amount was deposited by the Appellant and withdrawn by the Respondents. If, as a result of calculation made, the Appellant is required to deposit any additional amount, the Appellant to do so within a period of eight weeks from the determination of correct calculation by the Registrar (Judicial). Else, this amount will carry interest as prescribed under the Land Acquisition Act, 1894. However, if the Respondents are required to bring back the amount withdrawn by them, then, they shall do so within a period of eight weeks from the determination by the Registrar (Judicial). Else, the amount shall carry interest at the rate of 10% per annum.

31. The appeal is partly allowed in the aforesaid terms. There shall be no order as to costs.

SMT. M. S. JAWALKAR, J
at*

M. S. SONAK, J