

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 96/2012**

The Directorate of Sports
and Youth Affairs, Campal,
Panaji, Goa.

... Appellant.

Versus

Suraj T. Naik,
R/o H.No.1503/1(53),
Mangirish Colony, Madel Amani,
Tivim, Bardez, Goa.

... Respondent

Ms. Susan Linhares, Addl. Government Advocate for the
Appellant.

None for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 8th January, 2020.

Pronounced on: 10th January, 2020

JUDGMENT:

The acquiring department has challenged the judgment of the reference Court dated 17.04.2012 pursuant to which the learned District Court while deciding the reference under Section 18 of the Land Acquisition Act, 1894 ('Act' for short hereinafter) fixed the market value of the acquired land at ₹800/- per sq. mt. in respect of an area of 305 sq. mts. from the survey no.430/1-A4 situated at Thivim for the purpose of construction of an International Cricket Stadium at Thivim, Bardez, Goa. The Acquiring Department feeling aggrieved is in appeal before this Court who shall be referred to as the appellant and the respondent respectively for brevity's sake hereinafter.

2. The Government had acquired the land of the respondent bearing survey no.430/1-A4 of village Thivim in an area of 305 sq. mts. for the purpose of construction of an International Cricket Stadium and the Land Acquisition Officer had fixed the total compensation of ₹65,981/- working out to ₹220/-per sq. mt. The respondent had claimed the enhanced compensation at the rate of ₹3000/-per sq. mt. and the reference Court upon examining the respondent and considering the documents placed on record arrived at a finding that the market value of the acquired land was ₹800/- per sq. mt. primarily relying on a sale deed produced on

behalf of the respondent and another sale deed which however was not produced before the reference court. Be that as it may, the appellant challenged the award as being illegal, bad in law and passed without considering the evidence on record. The reference Court was in error to enhance the compensation in respect of the acquired land to ₹800/- per sq. mt. without considering the evidence produced by the appellant. The reference court erred in concluding that the acquired land was uncultivable land whereas the award passed by the Land Acquisition Officer clearly demonstrated that the land was cultivable. The learned reference court erred in not considering the sale deed produced by the appellant on grounds that they were illegal, unjustified and unsustainable in law. The reference court was in error to enhance the compensation from ₹150 per sq. mt. to ₹800/- per sq. mt. despite being aware of the fact that the nature of the acquired land was cultivable land as stated by the Land Acquisition Officer. The reference court was in error on such and similar grounds and therefore it was a fit case to interfere with the judgment and award and to allow the appeal filed by the appellant.

3. Heard Ms. Suzan Linhares, learned Addl. Government Advocate on behalf of the appellant who reiterated that the appellant's case that the acquired land was for the purpose of construction of an International Cricket Stadium at Thivim in

which the acquisition was sometime on 21.04.2006. The Land Acquisition Officer had awarded the compensation at the rate of ₹216/- per sq. mt. while the reference Court enhanced the compensation to ₹800/- per sq. mt. without any basis. The reference Court relied on the sale instance dated 18.09.2000 in respect of a land admeasuring 3931 sq. mts. to fix the market value of the acquired land. She adverted to the evidence of the respondent and submitted that having relied on a sale instance of 2010, necessary deductions ought to have been made by the learned reference Court. Quite on the contrary it had placed reliance on another sale instance which was not produced on record in which the rate of land per sq. mt. sold was at ₹900/- per sq. mt. and considered it as the basis for computing the compensation. In her submission the compensation which could be enhanced was to the extent of ₹250/- per sq. mt. considering the other acquired land and not any more. Therefore, it was a fit case to grant the appeal and reduce the compensation fixed by the Land Acquisition Officer appropriately.

4. None appeared on behalf of the respondent despite due opportunity time and again and therefore, the appeal was taken up for disposal accordingly on hearing the learned Counsel for the appellant. It would be apt to refer to the evidence on record nonetheless to decide whether the learned reference court was in error to award the compensation at the

rate at which it did and whether any interference was called for with the judgment under consideration.

5. In that context, the respondent had examined himself reiterating his case on oath that he was the owner of the plot of land bearing survey no. 130/1 A-4 of village Thivim in an area of 305 sq. mts. having purchased it from one Madhukar Gawas also by sale deed dated 18.09.2000/-. The plot had been purchased by him for the construction of his residential house and he was never interested in selling the same to any one on that count. Many persons had approached him to sell the plot for ₹1000/-to ₹2000 per sq.mt. during the period from 2000 to 2006 but he was not interested in selling his plot as he had plans to build his residential house. He next stated that the said plot was acquired by the Government for the stated purpose and when he claimed the compensation of ₹3000/- per sq. mt. Moreover, he had been forced to purchase another plot of land for the construction of a residential house on the other side of the acquired land in the year 2006 and in which he had constructed his house.

6. The respondent had further stated on oath that the acquired plot was a barren land and no cultivation was going on in the said plot at any point of time and which was fit only for the construction purpose and noted by the Land Acquisition Officer. It had building potential and easily

accessible to the basic facilities like water, electricity and telephone. There were residential houses in the vicinity of the acquired land and plots were being sold in the neighbourhood at the rate of ₹1000/-to ₹1,500/- per sq. mt. at the time of the acquisition in the year 2006. Ms. Linhares, learned Addl. Government Advocate pointed out to his statement during the cross examination wherein he had admitted having purchased the plot in the year 2000 for a sum of ₹61,000/- but not carried out any construction since he had not obtained NOC for the same. The plot which he had purchased in the year 2006 close to the acquired plot and about 1 km. away was purchased by him at ₹900/-per sq. mt. but however no sale deed was produced on record to substantiate his claim.

7. Materially he had admitted that the property of one Gaude was acquired in the course of these proceedings and close to that of one Advocate N.S. Parab and Durgadas Parab. He however fairly conceded that he did not know if the compensation awarded to them was at the rate of ₹350/-per sq. mt. At the same time, he admitted that he was aware that they had filed appeals before the High Court but was not aware of the outcome of the said appeals. In other words, there was no material produced by him on record as rightly submitted by Ms. Linhares to substantiate that the plot was purchased by him at the rate of ₹900/-per sq. mt. nor was any sale deed produced on record to that effect. This is beside

the fact that he had not brought any comparison between the acquired land and this sale land in 2006 as to entitle him to the enhanced rate of ₹800/- per sq. mt. as awarded by the learned reference Court.

8. Although the respondents claimed that he was not aware of the outcome of the appeals filed by the other persons whose appeals were at large before this Court, Ms.Linhares had produced the judgments in the said appeal before this Court filed by Durgadas Parab and Chandrakant Parab and which reflects that the learned Single Judge of this Court by its judgment dated 16.02.2007 was pleased to set aside the compensation awarded by the learned reference Court and remand the file to the reference court for a decision afresh after giving ample opportunity to the respondents i.e. the appellant herein to adduce evidence. What was the position of the matter on remand was not placed on record either by the appellant nor by the respondent who had totally failed to participate in these proceedings.

9. Be that as it may, the only basis which would remain at large for computing the compensation in favour of the respondent would be the sale instance of 2000 relied upon by him pursuant to which he had purchased the plot in September, 2000. Besides, as rightly submitted by Ms. Suzan Linhares, there was no basis for the learned reference court to

take into account the sale instance of 2006 pursuant to which the respondent had purportedly purchased another plot, a kilometre away for construction of his residential house and built a house thereon. The reference court could not have relied upon the bare statement of the respondent and that too to haphazardly fix the market rate of the acquired land at ₹800/-per sq. mt.

10. In the circumstances therefore, the appeal is allowed and the impugned judgment and award fixing the market rate of the acquired land at ₹800/- per sq. mt. by the learned reference Court is quashed and set aside.

11. The appeal stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

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