

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 104 OF 2006

1. Shri Shaikh Adam Khan
(deceased)
 - a. Smt. Sakina Bi
Widow of late Shaikh Adam Khan
 - b. Sri Haroon Khan
son of late Shaikh Adam Khan
33 years, married and his wife
 - c. Smt. Nissar Bi
Wife of Haroon Khan
 - d. Sri Asim Khan,
30 years Bachelor
All resident of H.No. 04,
Muslim Wada, Sanguem, Goa.
 - e. Smt. Shahina Bi,
D/o Late Shaikh Adam Khan
Major in age and her husband
 - f. Shri Munaf Mulla,
Major in age
Both residebnt of Nagamajhid
Ponda, Goa.
 - g. Smt. Shafina Bi
D/o. Late Shaikh Adam Khan
Major in age and her husband
 - h. Shri Shaikh Husman
Major in Age
Both resident of H. No. 155
Auepem Alto, Pandva Copel
Margao Goa.
 - i. Smt. Shamina Bi

D/o Late Shaikh Adam Khan
Major in age and her husband

j. Shri Shaikh Haroon
Major in age,
Both resident of H.No.122A
Opposite to Daewoo Showroom
Davorlim, Margao, Goa.

2. Shri Mohamad Azim Khan

3. Shri Abdul Khan Arun
All major in age and residents
of Muslimwada, Sanguem, Goa.

..... Appellants

V e r s u s

1. Special Land Acquisition
Officer, GOA – IDC,
Midas Touch Building,
2nd Flr., Opposite El Dorado
Plaza, Panaji-Goa.

2. The Goa, Daman & Diu
Industrial Development
Corporation having its office
at Patto Plaza, Panaji, Goa.

..... Respondents

Shri V. A Lawande and Mr P. Redkar, Advocates for the Petitioners.
Shri H. D. Naik, Advocate for the Respondents.

**Coram:- DAMA SESHADRI NAIDU &
M. S. JAWALKAR, JJ.**

Date: 5th February 2021

ORAL JUDGMENT *(Per Dama Seshadri Naidu, J)*

In an acquisition initiated in 1998, the Award was passed in August
2001. For the appellants land, Rs. 7/- per square metre was fixed as the

compensation, the area being 1,57,200 square metres. Claiming the compensation to be inadequate, the appellants had the Award referred under Section 18 of the Land Acquisition Act. Then, the Reference Court, through its judgment, dated 24th June 2005, rejected the reference. It was on the premise that the appellants could not place any material on record to establish that the acquired land deserved more compensation. Further aggrieved, the appellants have filed this First Appeal.

2. Heard Shri V. A. Lawande, the learned counsel for the appellants, and Shri H. D. Naik, the learned counsel appearing for the respondents.

3. As seen from the record, soon after they had filed the First Appeal, the appellants filed Miscellaneous Application No.253 of 2006 under Order XLI Rule 27 of the Civil Procedure Code, for production of additional evidence. That additional evidence comprises three Sale Deeds and two Awards.

4. Shri Lawande submits that those three Sale Deeds relate to a part of the land that had been acquired; even the Awards arise out of the same acquisition. To elaborate, he has submitted that the Land Acquisition Officer, uniformly awarded Rs.7/- per square metre to all the landowners in the acquisition. Most of them had the matter referred to the Reference Court. Then, based on these Sale Deeds, the Reference Court enhanced the compensation to Rs.28/- per square metre. Of the two

awards the appellants want to place on record as additional evidence, one Award belongs to the same notification, as enhanced by the reference court. The other belongs to some other acquisition, but the land is from the same locality.

5. As to the further developments, Shri Lawande has submitted that this Court confirmed the Reference Court's enhanced Award at Rs.28/- per square metre when other landowners approached. According to him, the same reasoning applies to this First Appeal because the acquisition was under the common Notification, and the lands are the same. He has pointed out that these three Sale Deeds formed the basis for the valuation report considered by the Reference Court while it enhanced the compensation.

6. In the appellants' case, the Reference Court rejected the valuation report only on the premise that they could not produce these sale deeds. Now, according to Shri Lawande, that defect stands cured. So, he urges us to allow this appeal.

7. In response, Shri Naik, the learned counsel for the respondents, has submitted that a mere placing of documents on record does not prove their veracity. It is essential for the appellants, according to him, to lead cogent evidence regarding them, and that is possible only before the Reference Court.

8. In reply, Shri Lawande has drawn our attention to para 6 of the Miscellaneous Application under Order XLI Rule 27. That paragraph reads thus:

“6. The Applicants state that the above documents at (a) to (d) were mentioned and referred to in the valuation report which was produced by the Applicant before the Hon'ble Reference Court. The same was neither disputed nor rebutted by the Respondents. However, the Ld. Trial Court has rejected the reference of the Applicants on the ground that the said documents were not produced by the Expert before the reference court and has therefore not considered the valuation report.”

9. True, the respondents may not have contested the correctness of the valuation report, but that does not, ipso facto, results in its acceptance or the resultant enhancement. It is for the Reference Court to be satisfied on that count. It has, for valid reasons, rejected that report in the absence of supporting documents. We also accept that this Court in other appeals confirmed the acquired land's value, as enhanced by the Reference Court, to be Rs.28/- per square metre. But what remains to be seen is whether the appellants' land is similar to the lands to which the enhanced compensation was awarded.

10. To establish that factum, now the appellants want this Court to consider certain Sale Deeds which are said to have formed the foundation for this valuation report. As rightly contended by the respondents' counsel, it is a matter of evidence. As the matter pertains to 2006, there

has already been a considerable delay; yet it is the Reference Court that may allow the parties to lead evidence on this question and appreciate it.

11. Under these circumstances, we set aside the impugned judgment and remand the matter to the Reference Court. On remand, the Reference Court will consider whether the documents now the appellants want to place on record relate to the issue on hand. If the appellants file another application under Order XLI Rule 27, CPC before the Reference Court, it will consider that application and decide the issue of enhancement, keeping in view all the other awards under the same notification. We trust the Reference Court will consider the matter expeditiously and dispose of the remanded reference in six months from the date the judgment is placed before it.

With the above observations and directions, we dispose of the First Appeal.

M. S. JAWALKAR, J.
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DAMA SESHADRI NAIDU, J.