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IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.103 OF 2010

1. State of Goa
Through Chief Secretary
Secretariat Panaji-Goa.

2. Deputy Collector & S.D.O.
Ponda, Sub-Division
Ponda - Goa.

3. Executive Engineer,
Work Division XV (NH)
P.W.D. Ponda – Goa.

... Appellants.

Versus

M/s. Nestle India Limited,
Through Shri M.K.S. Saraon,
ADMN & Accounts Manager,
Usgao Ponda-Goa.

... Respondents.

Mr. Pravin Faldessai, Additional Government Advocate for the Appellants.

Mr. A. Sardesai, Advocate for the Respondents.

WITH
CROSS OBJECTIONS NO.8 OF 2010
IN
FIRST APPEAL NO.103 OF 2010

NESTLE INDIA LIMITED,
THROUGH P.O.A
SANJAY S. BHANDARI

... Cross Objectors.

Versus

STATE OF GOA, THROUGH
CHIEF SECRETARY

... Respondents.

Mr. Anirudh Sardesai, Advocate for the Cross Objectioners.

Mr. Pravin Faldessai, Additional Government Advocate for the Respondents.

Coram: M.S. SONAK, J.

Date: 1st October 2021.

ORAL JUDGMENT :

1. Heard Mr. Pravin Faldessai, Additional Government Advocate for the Appellants-State, and Mr. Anirudh Sardesai, Advocate for the Respondents.

2. This appeal is directed against the Judgment and Award dated 08.12.2009 made by the Reference Court enhancing the compensation from ₹20/- per square meter to ₹96/- per square meter. The Respondents have filed cross-objections complaining about the failure to award compensation in respect of the damages incurred towards the relocation of electronic weighbridge, security office, and concrete gutters.

3. Mr. Faldessai, the learned Additional Government Advocate, submits that the Respondents purchased a large property of which the acquired portion is only a part, vide registered sale deed executed on 28.12.1993. He points out that such purchase was admittedly, post the issuance of Section 4 notification which is dated 08.01.1991. He, therefore, submits that this deed could never have been considered as the basis for determining the compensation. He further submits that the Reference Court has applied incorrect principles to grant an almost five-

fold enhancement over what was granted by the Land Acquisition Officer. He submits that the evidence on record has not been appreciated in its proper perspective, and therefore, the impugned award warrants interference.

4. Mr. Sardesai defends the impugned award based on the reasoning reflected therein but points out that additional compensation of ₹15,75,000/- should have been granted to the Respondents for the damages incurred by them for relocation of the electronic weighbridge, security office, and reconstruction of concrete gutters. He submits that the evidence of AW1, and more particularly, the evidence of the expert – AW2 has not been considered by the Reference Court on this aspect, and therefore, the impugned award warrants interference. Mr. Sardesai has relied on *State of Goa and Another vs. Gopal Baburao Gaudo and others*,¹ and *Mehta Ravindrarai Ajitrai (Deceased) Through His Legal Heirs and Lrs and Others vs. State of Gujarat*², in support of his submissions.

5. The rival contentions now fall for my determination.

6. In this case, there is no dispute that the Section 4 notification was issued on 08.01.1991. Therefore, in terms of Section 23 (1), the market value of the land has to be assessed at the date of publication of the Section 4 notification i.e. 08.01.1991. In this case, the extent of the acquired land is 2310 square meters and the purpose of the acquisition is

1 (2009) 10 SCC 686

2 (1989) 4 SCC 250

the widening of the highway NH-4 which borders the property of almost 1,78,000 square meters purchased by the Respondents on 28.12.1993.

7. One of the most significant features of the present matter is that the Respondents, in this case, purchased, no doubt, a large property admeasuring 1,78,000 square meters, but which included the acquired portion of 2310 square meters surveyed under No.294 of Usgao village, only on 28.12.1993 i.e. almost three years after the publication of Section 4 notification of the Land Acquisition Act i.e. on 08.01.1991. The compensation, therefore, has to be determined by keeping this significant consideration in focus.

8. The Land Acquisition Officer, in this case, has awarded ₹20/- per square meter. The burden was on the Respondents to establish that the compensation awarded was not commensurate to the market value. The Respondents had to adduce proper evidence to justify the enhancement.

9. In this case, the Respondents have examined Mr. Sanjay Bhandari, the power of attorney holder of the Respondents' as AW1 and Mr. Nilesh Dessai as AW2. Nilesh Dessai-AW2 was examined only because the survey report held by him was admitted in evidence, subject to proof. AW2 has admitted that he was a Civil Engineer, but not a registered valuer.

10. AW1, in his evidence, has admitted that an attempt was made to find out the deeds in the locality around the year 1991, that is the date of

Section 4 notification, but no deeds were found in the immediate vicinity. In his affidavit in evidence, he has stated that the acquired land is connected to the State Highway, has water and electricity lines passing along the road, and enjoys several benefits and infrastructural facilities. He has admitted that the acquired land is a small strip of land as compared to the total area of 1,78,000 square meters purchased by the Respondents and on this basis, he has stated that the Respondents are entitled to compensation of ₹300/- per square meter. AW1 has also deposed that on account of the acquisition, the Respondents had to relocate the electronic weighbridge, security office and reconstruct the concrete gutters, thereby incurring an expenditure of ₹15,75,000/-.

11. AW2, as noted above, has only produced the survey report. In his evidence, he has admitted that he visited the property only in the year 2001 i.e. almost ten years after the issuance of Section 4 notification. Still, he has purported to value the cost of construction material, electronic weighbridge, security office, concrete gutter, and even exposed laterite stone masonry wall at ₹17,04,778/-. He has stated the estimate of shifting/reconstruction of these structures at ₹15,75,000/-.

12. According to me, the evidence of AW1 and AW2 is of no assistance to sustain the enhancement of compensation from ₹20/- to ₹96/- as awarded by the Reference Court in this matter. Similarly, the evidence of AW2 inspires no confidence and could not have been relied upon, because, AW2 admits that he visited the site only in the year 2001 i.e.

almost ten years after the publication of the Section 4 notification. AW2 has visited the site almost seven years after the property was purchased by the Respondents. Therefore, it is difficult to conceive how this engineer, who has admitted that he is not a registered valuer, prepared his survey report to determine the cost of structures as they were obtained in the year 1994-95.

13. Besides, in this case, as noted earlier, all these structures, if at all were put up by the Respondents, were put up after the publication of the Section 4 notification. This means that such structures were put up with the full knowledge that the property is going to be acquired. In respect of such structures, therefore, there was no question of the Respondents claiming any compensation. Such compensation was rightly denied by the Reference Court and the cross-objections filed in this appeal cannot be allowed. None of the decisions relied upon by Mr. Sardesai have even remotely assisted the case of the Respondents.

14. Now, coming to the issue of enhancement of compensation from ₹20/- per square meter to ₹96/- per square meter, the Reference Court has taken the Respondents' sale deed dated 28.12.1993, as the basis. The Reference Court has reasoned that there is no prohibition to look into the post-notification sales and has reduced the rate by 10% in respect of each year, since the purchase. Thereafter, the Reference Court has reasoned that the sale deed was in respect of a large area of 1,78,000 square meters,

but the acquired portion was a small plot admeasuring 2310 square meters, and on such basis, granted some enhancement.

15. With great respect, I am unable to subscribe to this reasoning. In the first place, the acquisition was not of a small plot of 2310 square meters, but, rather, the acquisition was in respect of a strip of land acquired for road widening which may have totally admeasured 2310 square meters. In fact, AW1 admitted this position and it was never the case even of the Respondents that the acquisition was in respect of a small plot of 2310 square meters. Therefore, there was no basis for any enhancement. Secondly, though, in the facts of the present case, the post-notification sale deed could have been taken into consideration, the decrease, in this case, had to be substantial. This is because the sale deed was almost 3 years post the publication of Section 4 notification. The rate reflected in the sale deed was ₹73/- per square meter. Therefore, even going by the reasoning of the Reference Court about a reduction of 10% per annum, a reduction of 30% would bring the rate to ₹48.67 or thereabouts. Besides, as noted earlier, this is not a case of some plot of 2310 square meters which would have a ready buyer or could be used for some industrial or residential purposes, but rather, this is a case of acquisition of a large strip of land along the highway for the purpose of widening of the highway. No doubt, such a strip of land cannot be regarded as valueless, having regard to the law laid down by the Hon'ble Supreme Court in *Gopal Bahurao Gaudo* (supra), but, certainly, there was no warrant for enhancing the compensation from ₹20/- per square

meter to ₹96/- per square meter. According to me, the compensation in this case, as on the date of publication of the notification, could have, at the highest, been fixed at around ₹45/- per square meter.

16. Accordingly, the first appeal is partly allowed and the compensation amount of ₹96/- per square meter is reduced to ₹45/- per square meter. The cross-objections are, however, dismissed.

17. The Appellant has deposited the awarded amount in this Court. The Appellants and the Respondents are now permitted to make proportionate withdrawals in terms of the impugned award as modified by this judgment and order. Both the parties will be entitled to withdraw the proportionate interest that may have accrued on the deposited amount.

18. The appeal and the cross-objections are disposed of in the aforesaid terms. There shall, however, be no order as to costs.

M.S. SONAK, J.