

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 119 OF 2016**

1. The Executive Engineer,
Works Division – VII (NH)
Public Works Department,
Patto, Panaji, Goa.

2. The Land Acquisition Office,
P.W.D., (Cell), Altinho, Panaji, Goa. Appellants.

Versus.

1. Ms. Gita R.P. Navelkar, daughter of
late Ramchandra S.P. Navelkar, aged 58
years, Spinster,

2. Ms. Vanita R.P. Navelkar,
widow of Pradip R.P. Navelkar, aged 43
years,

3. Ms. Sidhi R.P. Navelkar,
daughter of Vanita S.P. Navelkar,
aged 12 years,

4. Mr. Dilip R.P. Navelkar,
son of late Ramchandra
S.P. Navelkar, aged 54 years,
All above are Indian nationals and
residents of house no. 81, near Police
station, Ribandar, Tiswadi, Goa, 403006.

5. Mrs. Nutan D.P. Navelkar,

wife of Dilip R.P. Navelcar,
aged 53 years, Indian national,
resident of 6, Matruchaya building,
Dhobi Aali, Thane (West), Maharashtra. -

6. Mr. Dilip P. Dalvi, son of Prabhakar
Dalvi, aged 53 years, married,

7. Mrs. Smitha D. Dalvi, wife of Dilip
Dalvi, aged 50 years
Both Indian Nationals and residents of
Chaitanya Co-op. Housing Society,
Building No.14A, Navelcar Estate,
Bainguinim, Old Goa-403402

.... Respondents.

Ms. Sulekha Kamat, Additional Govt. Advocate *for the
Appellants-State.*

Mr. V.R. Tamba, with Mr. P. Swant, Advocates *for the
Respondents-Claimants.*

**WITH
CROSS OBJECTIONS NO.4/2019
IN
FIRST APPEAL NO. 119 OF 2016**

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Works Division – VII (NH)
Public Works Department,
Patto, Panaji, Goa.

2. The Land Acquisition Office,
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..... Appellants.

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Both Indian Nationals and residents of Chaitanya Co-op. Housing Society, Building No.14A, Navelcar Estate,

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.... Respondents/
Cross Objectors.

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Appellants-State.

Mr. V.R. Tamba, with Mr. P. Swant, Advocates *for the*
Respondents-Cross objectors

CORAM : M. S. SONAK, J.

DATY : 28th April 2022.

ORAL JUDGMENT:-

1. Heard Ms. Sulekha Kamat for the Appellants-State and Mr. V.R. Tamba for the Respondents-Cross Objectors.
2. This Appeal and the cross-objections are directed against the Judgment and Award dated 30/4//2016 made by the Reference Court in Land Acquisition Case No.4/2014.
3. By the impugned Judgment and Award, Reference Court has enhanced the compensation for the acquired land from ₹ 150/- per sq. meter to ₹ 2,000/- per sq. meter. First Appeal No.119/2016 is instituted by the State, questioning the enhancement. The Claimants have instituted Cross Objections, urging that the rate should have been determined at ₹3,800/- per sq. meter or at least ₹ 2,660/- per sq. meter.

4. By a notification under Section 4 of the Land Acquisition Act, 1894 (said Act) dated 31/7/2006, the Claimants' land measuring 2270 sq. meters of survey No.23/1 of Village Baiguinim, Tiswadi Taluka was proposed to be acquired for Ribandar Bye-pass. The Land Acquisition Officer, by his Award, determined the rate of ₹150/- per sq. meter. However, by the impugned Award, the Reference Court has enhanced this rate to ₹ 2,000/- per sq. meter.

5. Ms. Kamat learned Addl. Government Advocate submits that the sale instance at Exhibit C-17, relied upon by the Claimants, was not comparable. She points out that this sale instance was in respect of a small developed plot, admeasuring 336 sq. meters and, further, points out that the acquired land was quite large in comparison, *i.e.*, 2270 sq. meters and further, the acquired land was not developed. Accordingly, she submits that the sale instance should not have been taken into account.

6. Ms. Kamat pointed out that in First Appeal No.14/2011 (State of Goa vs. Miss Gita R.P. Navelkar (deceased) and ors.) decided by this Court on 22/4/2022, for an area of 9700 sq. meters surveyed under No.23/1 of Baiguinim Village itself, this Court had determined the rate at ₹ 660/- per sq. meter. She

submits that there is no evidence about the escalation of rates in the area and, therefore, the Reference Court erred in awarding an enhancement of ₹ 2,000/- per sq. meter. She submits, without prejudice, that even if escalation at 10 % were to be considered, the rate would be in the range of ₹1,100/- to ₹1,200/- per sq. meter but maintains that this was not a case where any enhancement should have been granted to the Claimants.

7. On the other hand, Mr. Tamba, learned Counsel for the Claimants, defends the impugned Award and the reasoning reflected therein. He points out that the sale instance was from the same village and the sale deed plot was hardly 300 meters away from the acquired property. He points out the voluminous evidence on record supporting the building potential and escalation. He submits that the deductions to the extent of 50% have been made from the sale instance when deductions should generally be in the range of 25% to 30%. Based on all this, Mr. Tamba submits that the cross-objections should be allowed and the rate enhanced to ₹ 2,660/- per sq. meter.

8. I have considered the rival contentions and also perused the evidence on record.

9. In the Judgment and Order of this Court dated 22/4/2022, the rate in respect of a portion of the very same survey No.23/1 in Baiguinim Village, was determined at ₹ 660/- per sq. meter as of 7/11/2002. The present acquisition notification was issued almost five years later, *i.e.*, on 31/7/2006. There is evidence about overall development after the Ribandar Bye-pass was constructed vide acquisition under notification dated 7/11/2002. The present acquisition is for the widening of the Bye-pass.

10. From the evidence on record, including, in particular, the evidence of the expert/valuer and the Claimants, a case is made out about the escalation in the area is more than usual of 10% per annum. The evidence on record would justify the escalation of up to 20% per annum.

11. There is evidence of several infrastructural facilities that benefit the acquired land. There is evidence of residential and commercial developments within a radius of hardly 1 to 2 km. from the acquired land. There is evidence of banks, temples, housing complexes, etc., within this radius. There is evidence of how this land is suitable for development purposes. There is evidence that this land is close to both Old Goa and Panaji. There

is evidence about how this land is located on a plateau and how this is a positive feature in determining the building or developmental potential. Considering all this, a case is made for assessing the escalation of up to 20% per annum, which will take the rate to around ₹ 1,520/- per sq. meter.

12. The sale instance was, no doubt, in respect of a small plot of 336 sq. meters. There is evidence that this small plot was developed and was a part of the layout. But, this sale instance was hardly 300 meters away from the acquired land. Therefore, the sale instance was required to be considered, no doubt, after making suitable deductions. The Reference Court has made deductions to the extent of approximately 50%. However, considering that the sale instance was in respect of a very small plot compared to the acquired land, and it was in respect of a fully developed layout, the deductions could go to 70%. Even then, the rate would be ₹ 1,520/- per sq. meter.

13. Thus, by applying both the methods, the rate would come to ₹ 1,520/- per sq. meter. To that extent, the Appeal instituted by the State will have to be partly allowed, and the cross objection will have to be dismissed.

14. For the above reasons, First Appeal No.119/2016, instituted by the State, is partly allowed, and the rate is modified from ₹2,000/- per sq. meter to ₹1,520/- per sq. meter. Cross objections are, however, dismissed. Except for this modification, other directions in the impugned Award are not interfered with and maintained.

15. The State has deposited the awarded amount in this Court. The Claimants will now be entitled to withdraw from the deposited amount the compensation at the determined rate, together with proportionate interest. The State will be entitled to withdraw the balance amount and proportionate interest. Registry to facilitate the withdrawals. The Claimants will have to furnish identification and bank details so that the Registry can transmit their shares to their respective bank accounts.

16. Misc. applications, if any pending, will not survive and are disposed of.

17. There shall be no order for costs.

M. S. SONAK, J.