

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 77 & 78 OF 2015

FIRST APPEAL NO. 77 OF 2015

The Managing Director,
Goa State Infrastructure Development
Corporation Limited, EDC House, 7th
Floor, Panaji, Goa. Appellant.

Versus.

Shrikant P. Shirodkar,
Indian National, Major of age,
r/o. Ella, Old Goa, Tiswadi, Goa. Respondent.

FIRST APPEAL NO. 78 OF 2015

The Managing Director,
Goa State Infrastructure Development
Corporation Limited, EDC House,
7th Floor, Panaji, Goa. Appellants.

Versus

Satish P. Shirodkar,
Indian National, Major of age,
r/o. Ella, Old Goa, Tiswadi, Goa. Respondents.

**Mr. Pranav Vaze, holding for Mr. Nikhil Vaze, Advocate
for the Appellant.**

Mr. Vibhav Amonkar, Advocate for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 4th February 2022

ORAL JUDGMENT: -

1. Heard Mr. Pranav Vaze, holding for Mr. Nikhil Vaze for the Appellant and Mr. Vibhav Amonkar for the Respondents in both these Appeals.
2. The learned Counsel for the parties state that both these Appeals can be taken up together and disposed of by a common judgment and order since, the issues of fact and law that arise in both these matters, are substantially similar.
3. The land, which is a subject matter of First Appeal No.77/2015, admeasures 424 sq. metres and the land, which is the subject matter of First Appeal No. 78/2015 admeasures 22 sq. metres and is surveyed under No.11/1 of Village Ela, Old Goa.
4. In both the appeals, the challenge is to the separate Judgments and Awards dated 25/9/2013 by which the Reference Court has enhanced the compensation from ₹125/- to ₹1252/- per sq. metre.

5. Mr. Pranav Vaze, learned Counsel for the Appellant submits that in this case, the Reference Court has almost exclusively relied on the sale deed dated 8/5/2008 (Exhibit-19) in respect of the land which was not comparable to the acquired lands. He points out that in the first instance, the sale deed dated 8/5/2008 was executed almost 18 months after the issuance of Section 4 Notification on 4/11/2006. He submits that though there is no general rule that in all cases post-Section 4 notification sale instances must be excluded from consideration, the Reference Court has not at all considered the impact of the acquisition on the enhancement of the property rates in the area and has mechanically made a deduction to the extent of only 20%. He submits that this is contrary to the law laid down by the Hon'ble Supreme Court in *Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and anr.*¹, as also the very decisions relied upon by the Reference Court.

6. Mr. Vaze submitted that the sale instance dated 8/5/2008 is not a genuine transaction and is, in all probabilities, a gotten-up transaction only to secure enhancement of the compensation. He, therefore, submits that this sale transaction could never have been relied upon.

1. (1988) 3 SCC 751

7. Mr. Vaze submitted that in any case, there is clear evidence that the property involved in the sale transaction at Exhibit-19, was a converted and developed property for which permission for the construction of a compound wall to enclose the same, was already obtained. He submitted that a perusal of this sale instance would show that the sale was effected for the construction of villas or otherwise, developing the property in question. He submitted that in contrast, the acquired properties are neither developed nor converted. He submitted that the sale instance properties were, therefore not at all comparable and, therefore, the Reference Court ought not to have relied upon the same.

8. Mr. Vaze submitted that in this case, only the Claimants examined themselves and neither was any expert witness nor were the vendors or the vendees of the sale deed in question, examined. He submitted that only an expert could have deposed to the similarity of the acquired and the sale instance lands. He submitted that this is a case where there is no evidence to justify any enhancement.

9. For all the aforesaid reasons, Mr. Vaze submits that the impugned Awards may be set aside and the determination made by the Land Acquisition Officer may be restored.

10. Mr. Vibhav Amonkar, learned Counsel for the Claimants in both these Appeals, defends the impugned Awards based on the reasoning reflected therein. He submitted that there is no rule that post-Section 4 notification sale instances have to be necessarily excluded from consideration. He relies on *Chindha Vithal Sonawane, vs. Special Land Acquisition Officer*², *Special Land Acquisition Officer (N) & anr. vs. Ramesh Mahadev Sinai Mulgaonkar (Dr.)*³ and *Land Acquisition Officer, P.W.D. Cell, Altinho, Panaji-Goa and anr. vs. Kalidas Atmaram Savaikar*⁴, in support of this proposition.

11. Mr. Amonkar submits that the Reference Court, in this case, was alive to the position that it was urged to rely upon the post-Section 4 notification sale instance and, therefore, has made deductions to the extent of 20% by relying on *Ramesh Mahadev Sinai Mulgaonkar* (supra) and *Kalidas Atmaram Savaikar* (supra).

2. 1975 Mh.L.J. 469

3. 2005 (4) Bom. C.R. 234

4. 2018 (3) Mh.L.J. 769

12. Mr. Amonkar submits that the Reference Court has also taken into account the circumstances that the sale instance related to a developed property and, thereafter, made the deductions to the extent of 40%. He submitted that in this case, the deduction extends to 60% and the same is within the range prescribed by the Hon'ble Supreme Court in *Basavva (Smt.) and ors. vs. Special Land Acquisition Officer and ors.*⁵.

13. Mr. Amonkar also referred to the evidence of the Claimants, where they have deposed to the various amenities available near the acquired lands, like schools, shops, banks, pharmacies, restaurants, etc. He pointed out that such amenities are available within a radius of 1 to 2 km. from the acquired lands and the police station at a distance of 500 metres from the acquired lands. He pointed out that infrastructural facilities like water supply, electricity, telecommunication, and motorable access are available to the acquired lands. He pointed out that the acquired property falls within a settlement zone and partly in the orchard zone, as deposed to by the Claimants.

14. For all the aforesaid reasons, Mr. Amonkar submitted that both these Appeals may be dismissed and the impugned Awards may be upheld.

5. (1996) 9 SCC 640

15. Rival contentions now fall for my determination.
16. In this case, Section 4 notification was issued on 31/10/2006, proposing to acquire lands for the construction of approaches to Gaundalim-Kumbharjua Bridges, across river Mandovi.
17. The Land Acquisition Officer, by his Award dated 2/8/2010, determined the market rate at ₹125/- per sq. metre. The Reference Court has enhanced this rate to ₹ 1252/- per sq. metre.
18. The Reference Court has, almost entirely, relied upon the sale instance dated 8/5/2008 (Exhibit-19) in respect of an area of 4475 sq. metres from Survey No.14/2 of Village Ela, which was sold for ₹1.40 crores. This means that the sale instance property was sold for the rate of ₹3128.50 per sq. metre, which the Reference Court has rounded off to ₹ 3129/- per sq. metre.
19. The Claimants have examined themselves in both these Appeals. However, no expert was examined in support of their claim about the market rate being ₹1500/- per sq. metre on the date of Section 4 notification. Similarly, neither the vendors nor the vendees to the sale instance dated 8/5/2008 were examined.

Such non-examination of the vendors or the vendees does not render inadmissible the sale instance of 8/5/2008.

20. The Claimant Shrikant Shirodkar, who examined himself, admitted in cross-examination that the sale instance property was developed, adjoining the road and having a conversion sanad. He admitted that the acquired property did not have any such conversion sanad. He, however, deposed that the sale instance property is about 150 to 200 metres from the acquired properties. He also admitted that the sale instance property is a fully developed plot, in which there exists constructed structures.

21. Shrikant Shirodkar, in his Chief, had indeed set out in the affidavit, that the acquired property is suitable for building construction, as it falls partly in the settlement zone and partly orchard zone in the Regional Plan, 2021. But, in his cross-examination, he admitted that he has not produced any document to indicate the zone of the acquired property. He, however, denied his land being a garden land. He also admitted that the sale instance relied upon by him is an instance entered into almost 2 years after the date of acquisition. However, Mr. Amonkar has pointed out that Section 4 notification, in this case,

was dated 30/10/2006 and the sale instance is dated 8/5/2008. This means that there is a gap of 18 months and not 2 years. This is correct.

22. Now, the law is not that post-Section 4 notification sale instances are to be excluded from consideration in all cases for determining the market rate on the date of Section 4 notification. In *Chimanlal Hargovinddas* (supra), relied upon by Mr. Vaze, the Hon'ble Supreme Court, has held that even the post-section instances can be taken into consideration again if they are very proximate, genuine and the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

23. Mr. Vaze tried to contend that the sale instance was not a genuine sale instance. This contention deserves no acceptance. The sale instance is between the persons/entities with whom the claimants have no nexus whatsoever. Besides, it does appear to be far-fetched to think that some sale transaction involving the sale of 4475 sq. metres of land and involving an amount of ₹1.40 crores will be executed simply to enable the Claimants to claim higher compensation in respect of the acquisition of their properties admeasuring 424 sq. metres and 22 sq. metres,

respectively. No suggestions were put in cross-examination on this aspect, Therefore, the contention about the sale instance dated 8/5/2008, not being genuine is, hereby, rejected. However, Mr. Vaze's contention about the sale instance not being very proximate, or the acquisition itself motivating the purchaser to pay a higher price on account of the resultant improvement in development prospects, will have to be considered.

24. In *Chindha Sonawane* (supra), relied upon by the Reference Court in the impugned Awards, the Division Bench of this Court has approved the view expressed in *Assistant Development Officer, Trombay v. Tayaballi* – (1933) 35 Bom. L.R. 763. The legal position, as it appears in the head-note of *Tayaballi* (supra), has been quoted by the Division Bench in paragraph 10, which reads as follows :

“In estimating the market value of property compulsorily acquired under the provisions of the Land Acquisition Act, 1894, it cannot be laid down as a general rule that post-notification transactions should necessarily be ignored altogether. All transactions are relevant which can fairly be said to afford a fair criterion of the value of the property as at the date of the notification. If any considerable interval has elapsed the Court will naturally attach little or no value to subsequent sales, just as transactions long prior to the notification will usually be discarded; but

transactions only a month or two after the notification may sometimes perhaps have some value as evidence. It must largely depend on the purpose of the acquisition. If, for instance, lands have been acquired for the development of a locality and the improvement of its communications and amenities, it is a reasonable inference that the value of the property will increase, and the Court must consider that factor, even though it is not directly proved that the transactions in question have been affected by the notification. Direct proof would hardly ever be available"

25. Based on the aforesaid, the Division Bench has held that there is no general rule that post-notification transactions are to be ignored altogether. On the other hand, all transactions would be necessary to be relevant which could afford fair criteria for the value of the property as at the date of the notification under Section 4. The distance of time by which a particular transaction is divorced from the date of relevant notification will have a bearing on the probative value and impact of that transaction while determining the fair market value of the property acquired. As has been stated in the aforesaid head-note, it must generally depend upon the purpose of acquisition and the question of whether any particular transaction, even if it be a post-notification transaction, is relevant and can afford a guide for determining the fair market value of the property acquired as at

the date of the Notification will depend upon the facts and circumstances of each case. Just as transactions long before the notification may be of no value, similarly the transactions long after the notification would be of no value.

26. In paragraph 12, the Division Bench has specifically approved the law laid down in *Tayaballi* (supra). This means that the post-Section 4 notification sale instances cannot be outrightly rejected though the weight to be attached to those transactions might vary according to the facts and circumstances of each case.

27. In *Ramesh Mahadev Sinai Mulgaonkar* (supra), Section 4 notification was published on 13/10/1995 and the sale instance sought to be relied upon, was dated 5/12/1995. But the same was possibly a few days after the date of Section 4 notification. In these peculiar circumstances, this Court held that a deduction of 20% from the consideration mentioned in the sale deed would be appropriate since the possibility of the people in the locality coming to know in advance about the proposed acquisition, cannot be ruled out. This means that even though the gap between Section 4 notification and the sale instance was of hardly a few days, still the deduction to the extent of 20% was ordered.

28. In *Kalidas Atmaram Savaikar* (supra), the gap between Section 4 notification and the sale deed relied upon, was of about 2 years, but even there the deduction to the extent of only 20% was ordered by reference to *Ramesh Mahadev Sinai Mulgaonkar* (supra). Besides, the facts in *Kalidas Atmaram Savaikar* (supra) were considerably different and it is based on several other circumstances after making an overall deduction of 70%, the market rate was determined. In paragraph 15 in *Kalidas Atmaram Savaikar* (supra), it is clear that 20% was deducted offset the post-Section 4 notification sale instance; 40% was deducted towards the development and 10% because the acquired land was in the orchard zone. Thus, the deductions in *Kalidas Atmaram Savaikar* (supra), were to the extent of 70%.

29. Now, in this case, as noted earlier, the acquisition was for the construction of approaches to the Gaundalim-Kumbharjua Bridge across river Mandovi, linking two places. To the query from the Court, Mr. Amonkar submitted that the actual construction of the bridge was sometime in 2016 or thereabouts. However, once the notification to provide for approach roads to the proposed bridge was published on 31/10/2006, it is quite obvious that this very declaration would have an impact on the property prices in the area. This is precisely what was pointed out

in *Tayaballi* (supra) when it was stated that the transactions only a month or two after the notification may sometimes perhaps have some value as evidence and that it must largely depend on the purpose of the acquisition. If, for instance, lands have been acquired for the development of a locality and the improvement of its communications and amenities, it is a reasonable inference that the value of the property will increase and the Court must consider that factor, even though it is not directly proved that the transactions in question have been affected by the notification. The Court held that direct proof would hardly ever be available.

30. *Tayaballi* (supra) was fully approved by the Division Bench of this Court in ***Chindha Vithal Sonawane*** (supra). The Reference Court, in this case, has no doubt, quoted from ***Chindha Vithal Sonawane*** (supra), but it appears that, has missed the crucial observations by which the Division Bench approved specifically the law laid down in *Tayaballi* (supra). The Reference Court did not even bother to advert to the crucial observations in *Tayaballi* (supra), which were quoted by the Division Bench in ***Chindha Vithal Sonawane*** (supra) and specifically approved.

31. In *Ramesh Mahadev Sinai Mulgaonkar* (supra), since the time gap between the sale instance and the Section 4 notification was of a few days, or perhaps there was no gap at all, and yet this Court made a deduction to the extent of 20%, by observing about the possibility of the people in the locality coming to know about the purpose of acquisition. Once the people in the locality get the knowledge of acquisition in advance, the inference that such knowledge will impact the property prices was drawn in *Tayaballi* (supra) and was approved in *Chindha Vithal Sonawane* (supra).

32. In this case, we are concerned with the declaration that a bridge was to come up over the river Mandovi, linking Gaundalim to Kumbharjua. The acquisition was for the approach road to the said bridge. The Claimants have themselves deposed that the sale instance land was hardly 150 to 200 metres from the acquired land. Therefore, it is reasonable to infer that the rate referred to in the sale instance dated 8/5/2008, almost 18 months after the Section 4 notification was issued, was impacted by the notification and the purpose of acquisition.

33. Therefore, in the above circumstances, the Reference Court was not justified in simply making a deduction to the

extent of 20% by relying on *Ramesh Mahadev Sinai Mulgaonkar* (supra) and *Kalidas Atmaram Savaikar* (supra). In this case, the deductions should have been at least to the extent of 50% and the rate under the sale instance could have been taken at ₹1565/- in the year 2008.

34. Now, admittedly, the sale instance property was a developed and converted plot, that could be immediately used for construction purposes. There is some evidence that there were constructions in the sale instance plot. There is evidence that there was permission to construct a compound wall to enclose the sale instance property. In contrast, the acquired property was undeveloped and unconverted, possibly garden land. For all these reasons, the deductions to the extent of a minimum of 40% were due. This means that the rate would come to ₹940/- per sq, metre.

35. Even, if the decision in *Kalidas Atmaram Savaikar* (supra) is to be accepted in its entirety, there the deductions were to the extent of 70%. This means that from out of the rate of ₹3129/-, as reflected in the sale instance, deductions to the extent of 70% will have to be made, which gives the rate of ₹939/- per sq. metre. This rate can be rounded off to ₹940/- per sq. metre.

Thus by adopting both the criterion, the market rate on the date of Section 4 notification can be determined at Rs.940/- per sq. metre.

36. For all the aforesaid reasons, these Appeals are partly allowed and the market rate is now determined at ₹940/- per sq. metre in place of ₹1252/- per sq. metre. The statutory benefits awarded by the Reference Court are maintained, but the same will now have to be calculated on the market rate of ₹940/- per sq. metre and not ₹1252/- per sq. metre.

37. Mr. Amonkar points out that the Appellant has deposited the compensation amounts in this Court. Accordingly, both, the Appellant as well as the Respondents, will now be entitled to withdraw the proportionate amounts in terms of the impugned Award, which is now modified by this judgment and order. The learned Counsel for the parties to submit and exchange their calculation sheets and the Registrar (Judicial) of this Court to permit withdrawal after verification of the same. The amounts will have to be deposited in the bank accounts of the Appellant and the Respondents, in terms of the details to be provided by the learned Counsel for the parties.

38. Both the appeals are partly allowed in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J.