Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 152 OF 2012

The Executive Engineer,
Works Division VI, GTIDC,
Sarvan, Bicholim-Goa …… Appellant.

Versus.

1) Prasad alias Raghuvir Shivram Chanekar, major of age,

2) Ms. Sumita Arun Chanekar,
Major of age,

3) Ms. Vrunda Anil Chanekar,
Major of age,

4) Shri. Mangal M. Chanekar,
Major of age,

5) Ms. Hema Gajanan Mhapsekar,
Major of Age,

6) Ms. Manuja Vithal Tilve,
Major of Age,

7) Ms. Lalitabai Babani Chanekar,
Major of Age,

8) Shri. Laxman Narsinha Chanekar,
Major of Age, all residing at Bhailipeth,
Bicholim Goa …... Respondents.

Mr. V. Sardessai, Addl. Govt. Advocate *for the Appellant.*

Mr. P. Sawant, Advocate *for the Respondents.*

FIRST APPEAL NO. 21 OF 2013

1) Prasad alias Raghuvir Shivram
Chanekar,

2) Sumita Arun Chanekar,

3) Vrunda Anil Chanekar,

4) Mangal M. Mungi;

5) Ms. Hema Gajanan Mhapsekar,

6) Ms. Manuja Vithal Tilve,

7) Ms. Lalitabai Babani Chanekar,
All residents of Bhailipeth,
Bicholim, Goa. ….. Appellants.

Versus

(1) THE EXECUTIVE ENGINEER,
Works Division VI, GTIDC,
Sarvan, Bicholim, Goa.

(2) LAXMAN NARSINHA CHANEKAR,
Resident of Bhailipeth,
Bicholim, Goa. …... Respondents.

Mr. P. Sawant, Advocate *for the Appellants.*

Mr. V. Sardessai, Addl. Govt. Advocate *for the Respondent*

No.1.

CORAM : M. S. SONAK, J.

DATE : 4th February 2022

ORAL JUDGMENT: -

1. Heard Mr. V. Saressai, learned Additional Govt. Advocate for the State and Mr. P. Sawant for the claimants.

2. Both these Appeals, question the Judgment and Award dated 24/8/2011, made by the Reference Court in Land Acquisition Case No.25/2009.

3. The State, through the Executive Engineer, questions the impugned Award on the ground that no enhancement ought to have been awarded in this case and, in any case, there is no legal evidence on record to sustain the enhancement of compensation from ₹ 50/- to ₹ 207/- per sq. metre.

4. First Appeal No.21/2013 has been instituted by the Claimants whose land came to be acquired, urging that the enhancement to the extent of ₹ 500/- per sq. metre was due and the Reference Court has erred in awarding the enhancement only to the extent of ₹ 207/- per sq. metre.

5. Having regard to the aforesaid, it is only appropriate that both these Appeals are taken up for consideration and disposed of by a common Judgment and Order.

6. Mr. V. Sardessai learned Additional Govt. Advocate submits that the Reference Court erred in relying on the sale deed dated 5/4/2006, which was not at all a comparable sale instance. He submits that the sale deed is in respect of four distinct sub-divided plots, totally admeasuring 2887 sq. metres. He submits that the property, which is the subject matter of this sale deed, was located almost 1.5 kms. away from the acquired land and the learned Reference Court has clearly misread the evidence on record and observed that the sale deed lands were hardly 700 metres away from the acquired land. He submits that the acquired land was not at all a developed land and even the expert examined by the Claimants admitted that the same was in an orchard zone. He submitted that the acquired land had no building potential and, therefore, the Reference Court erred in relying on the sale deed dated 5/4/2006.

7. Mr. Sardessai further submitted that the Claimants had relied on the sale deed dated 24/10/2007 *i.e.* hardly a day before the issuance of Section 4 Notification dated 25/10/2007. He submits that the expert examined by the Claimants (AW.2) admitted at paragraph 11 of his Affidavit-in-Evidence that this sale deed plot was about 200 metres away from the acquired property, though, in his report, he had by mistake stated that this property was 2 kms. away from the acquired property. Mr. Sardessai pointed out that the rate reflected in this sale deed for a small developed plot admeasuring only 475 sq. metres, was ₹400/- per sq. metre. He, therefore, submitted that the enhancement granted by the learned Reference Court is not at all proper, but, rather the same is quite excessive and warrants interference. He submits that the Land Acquisition Officer had correctly determined the compensation at the rate of ₹ 50/- per sq. metre and the Reference Court erred in enhancing the compensation.

8. Mr. P. Sawant, learned Counsel for the Claimants counters the submissions made by Mr. Sardessai. He submits that even though the sale deeds may have been of developed plots, the same were comparable instances and could have been relied upon by making deductions to the maximum extent of 1/3rd, as was held by the Hon'ble Supreme Court in the Case of ***Maya Devi (Dead) through LRs and Ors. vs. State of Haryana***, reported in (2018) 2 SCC 474.

9. Mr. Sawant submits that the Reference Court was justified in relying on the sale deed dated 5/4/2006, but erred in making deductions not only to the extent of 40% towards development charges but a further deduction of ₹ 37/- was made without assigning any proper reason. He submits that once the deductions to the extent of 40% which was also excessive, were made, there was no question of making further deductions, simply because the acquired land was allegedly rocky terrain and away from the road. He submits that based on the sale deed dated 5/4/2006, the rate could come to ₹ 810/- per sq. metre in the year 2007. He submits that after making deductions to the extent of 1/3rd, the rate of ₹ 500/- claimed by the Claimants, ought to have been awarded by the Reference Court. He, therefore, submits that the State Appeal may be dismissed and the Claimants' Appeal be allowed and the rate determined at ₹ 500/- per sq. metre.

10. The rival contentions now fall for my determination.

11. In this case, the acquisition proceedings commenced with the issuance of the notification under Section 4 of the Land Acquisition Act, 1894 (said Act) on 25/10/2007. The acquisition is for construction of the Sanquelim Distributory of L.B.M.C. of the Tillari Irrigation Project in Bicholim and the Claimants' land admeasuring 4305 sq. metres, situated at Bordem, Bicholim, Goa came to be acquired.

12. The Land Acquisition Officer, by his Award dated 11/5/2009, determined the market rate at the rate of ₹ 50/- per sq. metre. The Reference Court, by the impugned Judgment and Award dated 24/8/2011, has now enhanced this rate to ₹ 207/- per sq. metre.

13. In this case, no evidence was led on behalf of the State/ Acquiring Authorities. The Claimants examined Prasad Chanekar as AW.1 and the expert witness S.A. Dhuri as AW.2.

14. AW.1 has produced sale deeds dated 10/10/2003, 24/10/2007, 5/4/2006, and 14/8/2006 that were admitted in evidence and marked as Exhibit 15 – 22, respectively. It is significant to note that there was no opposition to the production of these sale deeds or their marking in the course of the evidence. The valuation report produced by AW.1 was, however, marked 'X', subject to proof. AW.1, in his cross-examination, admitted that the first sale deed dated 10/10/2003 pertains to a fully developed residential area. AW.1 also admitted that the sale deed dated 5/4/2006 relates to a sub-divided plot, which was in turn subdivided into 48 plots. AW.1 also admitted that the sale deed dated 5/4/2006 comprises 5 plots. He, however, denied that there is no similarity between the acquired land and the sale instances. He asserted that in that year, there was a 15% rise in the land rates and, ultimately, claimed compensation of ₹ 500/- per sq. metre.

15. Shri S.A. Dhuri, Architect and Valuer, was examined as an expert (AW.2). AW.2, in his examination-in-chief, at paragraph 1, he has deposed to his credentials and the fact that he was registered as a Government Valuer in the year 1998. This aspect was not challenged in the cross-examination.

16. AW.2, in paragraph 6 of his affidavit-in-examination-in-chief, has deposed as follows :

> *"I say that the acquired land is situated within Bicholim Municipal Limit. I say that acquired land is 2.30 kilo met. away from bus stand. I say that the acquired land is 200 mts. from State Highway i.e. Bicholim Dodamarg road. I Say that Green Hill Bar and Restaurant is approximately 210 mts. from acquired land. I say that the houses are at distance of 300 mts. at from acquired land. I say that the housing plots are at distance of 250 to 300 mts. I say that the acquired land is within 2.30 kilo mts. from taxi stand, municipal market, police station, banks namely State Bank Of India, Bank Of India, Bicholim Urban Bank*

educational institutions namely Our Lady Of Grace High school, post office etc. I say that this property is well suited for resort and have building potential. I say that regular bus transport is also available."

17. Again, the aforesaid statements made on oath by AW.2 have not been challenged in the cross-examination. There is really no dispute about the location of the acquired property and the fact that it was situated within Bicholim Municipal limits. The evidence on record establishes that the State Highway was hardly 200 metres away and even the Bhicholim bus stand was about 2.30 kms. away. Similarly, amenities like taxi stand, municipal market, police station, banks, educational institution were also at a distance of about 2.30 kms. from the acquired land. Regular bus transport is also available from the acquired land to the Bicholim bus stand and other amenities at Bicholim. Most importantly, the acquired land is within the Bicholim Municipal limits.

18. Considering the aforesaid evidence, it is quite clear that the compensation of ₹ 50/- per sq. metre awarded by the Land Acquisition Officer was totally inadequate and did not represent the market value on the date of issuance of Section 4 notification on 25/10/2007. Therefore, the question which arises is the extent of enhancement that the Claimants are entitled to based on the evidence on record.

19. The Reference Court has relied on the Sale Deed dated 5/4/2006 and held that this sale instance should be the basis for working out the market value of the acquired land. This is clear from paragraph 19 of the impugned award.

20. However, Mr. Sardessai learned Addl. Govt. Advocate is quite right in pointing out that the Reference Court has treated the area of the sale deed plot as 2504 sq. metres, when the actual area works out to 2887 sq. metres. Further, he pointed out that by this sale deed, it is not as if a single plot admeasuring 2887 sq. metres was sold, but rather, this is a case where 4 plots bearing nos. 44, 46, 47, and 48 at Sudha Colony were sold for a total consideration of ₹ 21.28 lakhs. Mr. Sardessai also pointed out and quite correctly, that the learned Reference Court has held that this sale instance pertains to land barely 700 meters away from the acquired land. However, AW.2, the expert witness in paragraph 9 of his examination-in-chief has stated that this sale deed was about 1.5 kms. away from the acquired land. To that extent, it does appear that errors have crept into the reasoning reflected in paragraph 19 of the impugned award.

21. At the same time, Mr. Sawant, learned Counsel for the Claimants is also right in his contention that there is no basis whatsoever for determining the market rate of the acquired land only at ₹ 369/- per sq. metre in the year 2006, based on the sale instance of 5/4/2006. He submitted that since the sale instance was a year before the date of Section 4 notification, at least a 10% increase was due. This means that the rate of the sale deed plot in the year 2007 had to be taken at ₹ 810.70 per sq. metre. He submitted that in this case, taking cognizance of the circumstance that the sale deed plots were developed and the acquired land only had a building potential but was not actually developed, deductions could have been to the extent of $1/3^{rd}$ and not any further. Based on this, Mr. Sawant contended that the market rate had to be determined at ₹ 500/- per sq. metre.

22. Now that it is established that the sale deed plot (Exhibit -21) was almost 1.5 kms. away and further, the same pertained to 4 developed plots together admeasuring 2887 sq. metres. Therefore even if this sale instance is considered as a base, several deductions are naturally due.

23. Besides, in this case, the Claimants have themselves relied on the sale instance dated 24/10/2007, *i.e.* just a day before issuance of Section 4 notification. This sale instance relates to a plot that is hardly 200 metres away from the acquired land. Rate reflected in this sale deed in respect of a developed plot of land admeasuring only 475 sq. metres, is ₹ 400/- per sq. metres.

24. Having regard to the sale instances dated 5/4/2006 and 24/10/2007, according to me, the market rate, in this case, will have to be determined at ₹ 250/- per sq. metre. This is mainly because there is evidence that the acquired land was within the Bicholim Municipal limits and had the benefits of several amenities within about 2 to 2.5 kms. These amenities include but are not restricted to the Bicholim bus stand, taxi stand, municipal market, police station, bank, educational institution, church, post office, etc. There is evidence about bars and restaurants and residential houses within about 200 to 300 metres from the acquired property. All this calls for a suitable enhancement.

25. If the sale instances are considered as a base, then, deductions are necessary to be made from out of the rate reflected therein because, the sale instances pertain to developed plots; whereas the acquired land was an undeveloped plot. The deductions, in this case, can be between 50 to 60%. In so far as sale instance of 5/4/2006 is concerned, 10% increase has rightly been considered by the Reference Court. Even though this sale instance is in respect of a property of about 1.5 kms. away, it cannot be said that the same is non-comparable, particularly considering the assertions by AW.1 and AW.2 in their evidence and the absence of any serious cross-examination on this aspect.

26. Upon cumulative consideration of all these factors, according to me the market rate of the acquired land will have to be determined at ₹ 250/- per sq. metre.

27. As a result, First Appeal No.152/2012, instituted by the State, through its Executive Engineer, Works Division VI fails and is, hereby, dismissed. First Appeal No.21 of 2013, instituted by the Claimants is partly allowed and the market rate is now determined at ₹ 250/- per sq. metre in place of ₹ 207/- per sq. metre as determined by the Reference Court in the impugned Judgment and Award. The impugned Judgment and Award are, therefore, modified to the aforesaid extent. On the enhanced compensation, needless to add that the Claimants will be entitled to all statutory benefits and interest.

28. If the compensation amount has been deposited by the State in this matter, then, the Claimants will be entitled to withdraw the same and the Registry to facilitate such withdrawal. Mr. Sardessai states that in case no deposits have been made, then, the State, through the Executive Engineer, Works Division VI, GTIDC, will ensure that this amount is deposited within six weeks from today.

29. The State will have to deposit the amount in terms of the impugned award now modified by this Judgment and Order *i.e.* by taking the rate at the rate of ₹ 250/- per sq. metre. Once this amount is deposited, the Claimants are at liberty to withdraw the same.

30. Both the First Appeals are disposed of in the aforesaid terms.

M. S. SONAK, J.