

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.20 OF 2016

1. The Executive Engineer,
Work Division VI(R-S),
PWD, Fatorda,
Margao Goa.
2. Dy. Collector/SDO, Mormugao,
Vasco-da-Gama, Goa. ... Appellants

Versus

1. Shri Louis Proto Barbosa,
R/o Cansaulim, Goa.
(Since deceased)
represented through legal heirs:
 - a) Smt. Alice Vas E Barbosa, (deceased)
widow of the Respondent;
 - b) Dr. Noel Proto Barbosa,
son and his wife;
 - c) Smt. Mamta Borkar,
daughter in law;
 - d) Smt. Nanette Barbosa
E Pereira Carvalho,
daughter;
 - e) Shri Oswald Pereira Carvalho,
Son in law;
 - f) Smt. Nalini Barbosa E Pinto Rodrigues,
daughter;
 - g) Shri Carlos Pinto Rodrigues,
son in law. ...Respondents

Correction carried
out as per order
dated 11.03.2022
passed in MCA
No.59 of 2022.

Mr. Manish Salkar, Government Advocate for the appellants.
Mr. Sudesh Usgaonkar and Ms. R. Pereira, Advocates for respondent
Nos. 1(a) to 1(g).

CORAM: M. S. SONAK, J

DATE : 18th February 2022

ORAL JUDGMENT

1. Heard Mr. Salkar, learned Government Advocate for the appellants-State, and Mr. Sudesh Usgaonkar learned counsel for the respondent Nos. 1(a) to 1(g)-claimants.

2. This appeal is directed against the judgment and award dated 20.07.2006 made by the reference Court in Land Acquisition Case No.74/2003 enhancing to a certain extent the compensation awarded for the acquired lands comprising lands surveyed under No.59/2 and 59/3 admeasuring 862 sq. mtrs. and surveyed under No.70/0 and 71/0 admeasuring 1275 sq. mtrs and 58(Part) admeasuring 925 sq. mtrs.

3. The acquisition as aforesaid was proposed vide notification under Section 4 of the Land Acquisition Act, 1894 (the said Act) dated 28.03.1995. The acquisition was for the construction of a road in Cuelim, Cansaulim Goa.

4. The Land Acquisition Officer (LAO) by his award dated 20.07.1999 awarded compensation at a uniform rate approximately at the rate of ₹21/- per sq. mtrs. The reference Court initially vide its judgment and award dated 20.07.2006 dismissed the reference. However, in First Appeal No.28 of 2007, this Court vide judgment

and order dated 11.10.2013 set aside the award dated 20.07.2006 and remanded the matter to the Reference Court to decide the reference afresh. Upon remand, the reference Court vide impugned judgment and award dated 16.08.2014 has partly allowed the reference in the following terms:-

“(i) Survey No.59/2 at the rate of ₹62/- per sq. mtrs.
(ii) Survey Nos. 70/0 & 71/0 at the rate of ₹52/- per sq. mtrs.
(iii) Survey No.59/3 at the rate of ₹16/- per sq. mtrs.
Also allowed amount of ₹37012/- towards the acquisition of a portion of Survey No.58(Part) of village Cuelim.”

5. Aggrieved by the aforesaid, the appellants-State has instituted this appeal.

6. Mr. Salkar learned Government Advocate submits that the enhancement is based on no legal evidence. He submitted that the sale deed dated 21.05.1996 at Exhibit 17 relied upon by the reference Court was post Section 4 notification sale deed. He pointed out that the portion of the vendor's property had also been acquired under the same notification and therefore, the possibility of escalation of price cannot be ruled out. He submitted that even otherwise the sale deed at Exhibit 17 was not a comparable instance and in any case, there is no legal evidence about comparability. He submitted that the reference Court has not correctly interpreted the judgments referred to in the impugned award. Even the discrepancies in the testimony of the witnesses have not been appropriately evaluated. He submits that

deductions are too low and the reference Court in the state of evidence produced ought to have dismissed the reference once again.

7. Mr. Usgaonkar learned counsel for the respondent Nos. 1(a) to 1(g)-claimants defends the impugned award based on the reasoning reflected therein. He pointed out that in this case the original claimant who has since expired was examined as AW1 and an expert was examined as AW2. He submitted that the expert, as against the respondents' claim about the market rate being ₹150/- per sq. mtrs scientifically assessed the material before him and determined the rate at ₹84/- per sq. mtrs. He submits that the reference Court has made further deductions that were not quite justified. He, therefore, submits that no interference is warranted with the impugned award and the determination made therein.

8. The rival contentions now fall for determination.

9. The reference Court, in this case, has relied on the sale instance at Exhibit 17 that is no doubt a post Section 4 notification sale instance. However, it must be noted that while notification under Section 4 was issued on 28.03.1995, this sale instance is dated 21.05.1996. There is no issue raised about the genuineness of this transaction.

10. In *Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona*¹, the Hon'ble Supreme Court has held that as long as there is no legal evidence about the sale instance being rigged up either in anticipation of a sale or in anticipation of some higher compensation after issuance of Section 4 notification even post notification instances can be taken into account 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. Here again, the Court has to assess the proximity from time angle and proximity from situation angle. Thereafter, the Court is required to draw out a balance sheet of plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

11. In this case, the State did not lead any evidence. From the cross-examination of AW1 and AW2, including more particularly AW2, it is seen that no dent has been made to the evidence of the claimants. In particular, there is nothing on record to doubt the genuineness of the sale transaction reflected in Exhibit 17. Subject to other factors, therefore, Exhibit 17 could have been taken into consideration by the reference Court for determining the market rate even though, this sale instance was a post Section 4 notification instance. As noted earlier, this sale instance was hardly a year from the date of issuance of Section 4 notification.

¹ 1988 (3) SCC 751

12. There is evidence on record that the sale instance of the property is at a distance of hardly 2.5 kilometres from the acquired land. The amenities and facilities that either affect or benefit the acquired lands are somewhat similar when it comes to the sale instance property. Therefore, the reference Court cannot be faulted for relying upon this sale instance. The reference Court in this case has made substantial deductions from out of the rate that is reflected in the sale instance by evaluating plus and minus factors.

13. AW2 in this case has prepared and produced on record his valuation report at Exhibit 21. In this report, AW2 has quite correctly adverted to plus and minus factors in concluding that the market rate of the acquired lands can be approximately in the range of ₹84/- per sq. mtrs though not uniformly. Suffice to note that the rate determined by AW2 is much less than the rate claimed by the respondents-claimants in their claim statement or their application seeking reference.

14. The reference Court, in this case, has evaluated the evidence on record including, in particular, the evidence of AW2 as reflected in his valuation report at Exhibit 21. The reference Court has considered the other evidence on record and also addressed the contentions raised on behalf of the State Government about the existence of a stone quarry near the acquired lands or the evidence in the context of access to and access over the acquired property. The reference Court has made further deductions over and above those proposed by AW2 and finally

determined the compensation at the rate of ₹62/- per sq. mtrs in respect of portion surveyed under No.59/2, ₹52/- per sq. mtrs in respect of portion surveyed under Nos.70/0 and 71/0 and ₹16/- per sq. mtrs in respect of surveyed under No.59/3. According to me, the reference Court has correctly marshaled and evaluated the evidence on record and further applied correct principles as are applicable in such matters.

15. The reference Court has also awarded compensation in respect of the acquired portion under Survey No.58(Part) because it was noticed that no compensation was awarded in the LAO's award even though there was evidence about this portion being acquired.

16. This is not a case of no evidence but rather this is a case where the reference Court has correctly evaluated the evidence on record. Even the deductions made are quite appropriate and there are serious discrepancies in the evidence as alleged. The proper deductions have been made regards various aspects styled as minus factors in Exhibit 21. Over and above these deductions, the reference Court for valid and germane reasons has made further deductions. The acquired property for which no compensation was awarded has also been compensated by the reference Court.

17. For all the aforesaid reasons, I hold that there is no case made out to interfere with the impugned award. This appeal is liable to be dismissed and is hereby dismissed.

18. The appellants have deposited the awarded amount in this Court and now this appeal is dismissed, the respondents will be entitled to withdraw the same together with interest, if any, that may have accrued on this amount. The learned counsel for the respondents to furnish bank details so that the registry can directly transfer this amount into the bank accounts, no doubt, after verifying details.

19. This appeal is disposed of in the aforesaid terms without making any orders for costs.

M. S. SONAK, J

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