

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.43/2013

THE ACQUIRING DEPARTMENT

(Bharat Sanchar Nigam Ltd.)

Plot No.3, EDC Patto Panaji-Goa.

...APPELLANT

Versus

1. COMUNIDADE OF CHICALIM,
St. Francis Xavier Church Bldg.,
Chicalim.

2. Dy. Collector/S.D.O.
Mormugao, Vasco-da-Gama.

...RESPONDENTS

**Ms. Sapna Mordekar, Additional Government Advocate for
Respondent No.2.**

CORAM: M. S. SONAK, J.

DATED: 4th February 2022

P.C.:

1. Mr. Terence Vaz holding for Mr. Joseph Vaz states that they no longer appear on behalf of the appellant in this matter. Mr. Raviraj Chodankar learned Standing Counsel for the Central Government states that he has no instructions to appear on behalf of the appellant. Ms. Sapna Mordekar learned

Additional Government Advocate appears on behalf of Respondent No.2.

2. This is an appeal of the year 2013 and therefore, it will not be appropriate to adjourn this matter any further.

3. In this appeal, the appellant (Acquiring Department) questions the Judgment and Award dated 29.10.2012 made by the Reference Court in Land Acquisition Case No.79/2003 enhancing the market rate from ₹54/- per sq. mtr. to ₹360/- per sq.mtr. as against the claim of the claimant of ₹1500/- per sq.mtr.

4. In this case, the claimant's land admeasuring 1700 sq.mtrs. situated at Bogmalo, Goa was acquired for setting up of a telephone exchange. The Section 4 notification in this regard was issued on 04.04.2001. The Land Acquisition Officer (LAO) determined the market rate at ₹54/- per sq.mtr. and by the impugned Judgment and Award the Reference Court has enhanced this to ₹360/- per sq.mtr.

5. In the memo of appeal, the appellant alleges that the impugned award is not in accord with the directions given in Judgment and Order dated 29.11.2011 in First Appeal

No.273/2006 and Cross-Objections No.5/2007 by which the matter was remanded to the Reference Court for reconsideration.

6. This Court, vide its Judgment and Order dated 29.11.2011 had quashed the earlier award made by the Reference Court determining the market rate at ₹200/- per sq.mtr. because this Court found that the Reference Court had not given any reasons as to why the sale instances relied upon by the claimants were not comparable with the acquired land or otherwise take into account the rate reflected in these sale transactions for determining the market rate of the acquired land.

7. From the perusal of the impugned award, this time, the lacuna which was pointed out by this Court in its Judgment and Order dated 29.11.2011 appears to have been remedied. This time, the Reference Court has taken into consideration some of the sale instances and has rejected others. However, what is important is reasons are available on record for this exercise. Therefore, there is no merit in the ground raised about the non-compliance with the directions issued in the Judgment and Order dated 29.11.2011.

8. In the appeal memo, thereafter general grounds have been raised as to how the determination by the Reference Court is

erroneous. However, the main ground appears to be that the sale transactions relied upon by the claimants were not in respect of comparable instances, and in any case, property deductions have not been made and therefore, the impugned award is vitiated. This is clear from grounds VII, VIII, IX, X, and XII.

9. There is another ground (Ground No. XVI) that speaks about the error in awarding solatium and interest. The provisions of the Land Acquisition Act provide for the award of solatium and interest at the prescribed rates. The Reference Court by referring to these statutory provisions has awarded the claimants these statutory benefits. There is no error and consequently, there is no merit in Ground No.XVI.

10. As noted earlier the main ground is about the comparability of the sale instances and making of appropriate deductions.

11. There is evidence in this case (AW1) that the acquired land is located on a plateau that commands a spectacular view of the Arabian Sea on account of which the acquired land can be said to be located in an area that is much in demand for residential as well as commercial purposes. There is evidence that the acquired land was quite flat and no additional or at least

significantly additional expenditure was necessary for development and construction. There is evidence that the acquired land was accessible along its entire northern side by a public road and is close to the four-lane National Highway 17-A. AW1 has in fact deposed that the acquired land is a part of a larger area which is an exclusive area that includes residential colonies of the Goa Shipyard officers, Naval officers, Adarsh Nagar, Salgaocar Medical Research Centre, Oberoi Beach Resort, Police Station, etc. No serious dent has been made to this evidence and these factors are certainly not irrelevant factors when it comes to the determination of market value.

12. In the present case, the Reference Court has relied upon the Sale Deed dated 14.01.2000 in respect of a developed plot admeasuring 501.60 sq.mtrs. The sale deed plot belonged to private parties and in contrast, the acquired property belongs to a Comunidade. It is obvious therefore that the rate of ₹975/- per sq.mtr. that is reflected in the said Sale Deed dated 14.01.2000 cannot be taken to be the market value for the acquired land. The Sale Deed dated 14.01.2000 was executed about 16 months before the notification dated 04.04.2001 under Section 4 of the Land Acquisition Act was issued. Therefore, as on the date of the notification, the Sale Deed plot can be said to bear the rate of ₹1072/- per sq.mtr. by giving a 10% enhancement.

13. In the case of *Comunidade of Sancoale v/s. Government of Goa in First Appeal No.158/2004 decided on 08.08.2008* this Court, has referred to handicaps for the Comunidade in selling or leasing its property and on such basis concluded that some deductions will have to be made when the issue of determination of the market rate of the property belonging to the Comunidade is involved. Besides, in this case, the sale deed plot was a developed plot and the acquired plot was an undeveloped plot. The sale deed plot admeasures 501.60 sq.mtrs. while the acquired land admeasures 1700 sq.mtrs. Some deduction is due on this count as well.

14. Upon cumulative consideration of all the aforesaid handicaps, the Reference Court has determined the market rate at ₹360/- per sq.mtr. This amounts to a deduction of almost 65% to 70%. Normally, the deductions have to range between 20% to 70%.

15. At least towards development costs, not many deductions were due because there is evidence that the acquired plot was plain land having building potential. There was evidence about the location of the acquired land and the demand for acquired land on account of the spectacular view of the Arabian Sea which it commanded. There was development

almost all around the acquired plot. Besides, 1700 sq.mtrs. is not a very large area and therefore, the plot of 501.60 sq.mtrs. is not incomparable though some deduction is due on this count. The bulk of the deductions is because the acquired land is Comunidade property. Taking into account all these circumstances a deduction to the extent of 65% to 70% made by the Reference Court appears to be reasonable. There is accordingly no case made out to interfere with the impugned award.

16. For all the aforesaid reasons this appeal is hereby dismissed. There shall be no order for costs.

17. In case any amounts have been deposited by the appellant in this Court then, the claimant will be entitled to withdraw the said amounts along with the interest that may have accrued thereon. The Registry to facilitate such withdrawal by making direct deposits in the bank account of the claimant.

M. S. SONAK, J.