

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.92 OF 2010

1. Deputy Collector & SDO,
Mormugao, Vasco-da-Gama, Goa.

2. The Assistant Director (Project),
Directorate of Sports & Youth
Affairs, Campal, Panaji-Goa.

.... Appellants

Versus

1. Mario Estevao Francisco,
Ciriaco Carvalho,

2. Mrs. Celina Escolastica
Quadros Viegas e Carvalho,
Both residing at
C/o. Allwyn Fernandes,
H.No.18, Bairro Falvaddo,
Velcao, P.O. Cansaulim,
Mormugao-Goa.

.... Respondents

Mr. Vishwadh Sardesai, Additional Government Advocate
Appellants.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. S. Karpe,
Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATED: 3rd February 2022

JUDGMENT :

1. Heard Mr. Vishwadh Sardessai, learned Additional Government Advocate for the appellants, and Mr. J.E. Coelho Pereira learned Senior Counsel along with Mr. S. Karpe, learned Counsel for the respondents.

2. This appeal is directed against the judgment and award dated 08.04.2009, made by Reference Court in Land Acquisition Case No.56 of 1997, enhancing the market rate determined by the Land Acquisition Officer at ₹4/- per square meter to ₹100/- per square meter.

3. By notification dated 06.05.1992, the claimants' property admeasuring 4,000 square meters bearing survey no.56/3 and 2200 square meters bearing survey no.54/3 was proposed to be acquired for the public purpose of development of a playground at Velsao Pale in Mormugao Taluka.

4. The Land Acquisition Officer, vide his award dated 05.04.1995, determined the market rate of the acquired land at ₹4/- per square meter. The Reference Court by the impugned judgment and award has enhanced this rate to ₹100/- per square meter. Hence, this appeal by the State.

5. Mr. Sardesai, the learned Additional Government Advocate submits that the Reference Court failed to notice that the acquired land was affected by the CRZ notification of 1991 and was in the no-development zone in terms of the said notification. He submits that the sale instances relied upon by the Reference Court were not at all comparable. He submits that the experts, who deposed in this matter, visited the acquired property several years after the acquisition and, therefore, no credence could have been given to their evidence. He relied on *Chimanlal Hargovinddas V/s. Special Land Acquisition Officer, Poona & Ors. - AIR 1988 SC 1652*, *Maya Devi (dead) through legal representative & Ors. V/s. State of Haryana & Anr. - (2018) 2 SCC 474*, *Dr. Caetano Jose Filomeno Jacinto de Loiola Pereira V/s. Deputy Collector & Anr. - 2004 SCC OnLine Bom 1321* and *Government of Goa, through Under Secretary (Revenue) Secretariat, Panaji V/s. Jagannath Vamon Khalap (since dec. Through LR's) - 1996 2 BCR 714*, in support of his contentions.

6. Mr. Pereira, learned Senior Counsel appearing for the claimants defended the impugned award based on the reasoning reflected therein. He pointed out that this Court in *Dr. Caetano* (supra) had held that the activities permissible in terms of the CRZ notification can as well be carried out in the no-

development zone, subject to approvals from the competent authorities. He pointed out that the acquired lands were in the settlement zone. He submits that in the adjoining properties beach resorts have already come up. He submits that the sale instances of 1989 and 1990 (Exhibits 80 and 81) were indeed comparable instances. He submits that the Reference Court has made disproportionate deductions and the compensation awarded is, in fact, less than the market value on the date of Section 4 notification. He, therefore, submits that this appeal may be dismissed.

7. The rival contentions now fall for my determination.

8. In this matter, the claimant deposed through his power of attorney Allwyn Fernandes (AW1) and also examined Mr. Vikas Dessai, Chartered Engineer and a registered Government Valuer (AW2). In addition, the claimant also examined Ernesto Moniz, a Civil Engineer and expert as AW5, and Mr. Benedict Saldanha, the beach resort owner from the neighboring property as AW6. No evidence was led on behalf of the State.

9. AW1 admitted that the acquired properties were coconut gardens, but stated that the acquired property was plain land connected by a Kacha road leading to Velsao church, which was

at a distance of about 600 to 700 metres from the acquired land. He also deposed that the acquired land is 600 to 700 metres from the Margao Vasco road and further that the acquired land is itself the settlement zone. AW1 also deposed that all facilities like electricity, etc. were available at the time of issuance of Section 4 notification. He also deposed that amenities like Cansaulim railway station, market, bank, schools, etc. are available at a distance of about 1.2 kilometers from the acquired land. He deposed that there is a small market at a distance of 700 metres from the acquired land and there were houses about 150 to 200 metres from the acquired land towards the East, North, and South. He then deposed that to the West of the acquired land is a seashore, which according to him is more than 500 metres away. He deposed that they are larger properties of which the acquired property is only a part that goes right up to the seashore.

10. He produced a Sale Deed dated 17.08.1992 in respect of a plot admeasuring about 290 square meters having a market rate of about ₹200 per square meter (Exhibit 15). He admitted that the Sale Deed plot was developed about 1 to 1.2 km away from the acquired plot. He also produced a Sale Deed dated 29.07.1992 in respect of a plot admeasuring 359 square metres about 1 to 1.2 km from the acquired land at the market rate of ₹200/- per square meter.

11. In the cross-examination, no serious dent was made in the deposition of AW1. A suggestion was put to AW1 that the acquired land is about 350 metres from the seashore, to which he replied that it would be about 400 metres away. He denied the suggestion that the acquired land was a low-lying land. He also denied the suggestion about any absence of kacha roads.

12. AW1 was re-examined and during such re-examination, he produced Sale Deeds dated 23.10.1989 and 15.02.1990 (Exhibits 80 and 81). He deposed that he was acquainted with properties which were subject matters of the Sale Deeds as he stays in the same locality. He deposed that the Sale Deed dated 23.10.1989 property was sold at the rate of ₹103/- per square meter and the Sale Deed dated 15.02.1990 property was sold at the rate of ₹125/- per square meter. He deposed that the properties are at a distance of 300 and 600 metres respectively from the acquired land. He deposed that the Sale Deed properties and the acquired properties are similar and have the same amenities.

13. In his cross-examination, he deposed that the Sale Deed properties are towards the Eastern side of the acquired land. He deposed that possibly in the year 2000 a house was constructed on the Sale Deed dated 23.10.1989 land. He deposed about the constructions in the neighboring property.

14. Mr. Vikas Desai (AW2), the Chartered Engineer and a registered Government Valuer deposed that the acquired lands are situated between 150 to 200 metres from the sea but that the acquired land was in the settlement zone and it was leveled land having some coconut trees in it. He stated that the construction of buildings was possible in the acquired land. He then deposed that the acquired land was at a distance of about 700 metres from the Velsao Church and 1.5 km from the Cansaulim railway station, market, bank, school and village panchayat office. He deposed that even Dabolim airport was only 8 kilometers away and there was sufficient transport and access to the acquired lands. He deposed that electricity and water supply were available to the acquired land even before the Section 4 notification was issued.

15. AW2 has deposed the market value of the acquired land as on the date of Section 4 notification would be ₹200/- per square meter and for this, he relied on the Sale Deed dated 29.07.1992 and 17.08.1992, both of which are post Section 4 notification Sale Deeds. According to him, since the Section 4 notification was issued on 06.05.1992 and the Sale Deeds were executed hardly 2 to 3 months thereafter, they cannot be regarded as totally irrelevant.

16. AW2 deposed that from the tourism point of view, the acquired land had more advantages than the Sale Deed plots because the beach was nearby and shack activities could have been carried out on the acquired land. He also deposed about a hotel and project under construction in the neighboring property.

17. Mr. Vinod Kumar, the Deputy Town Planner, was examined as AW3. He produced a letter dated 23.10.1998 by which permission was granted to Saldana Cove Resorts for construction of a beach resort in the property bearing survey no.54/3 (part), which is in the neighbourhood of the acquired property.

18. Mr. Ernesto Moniz was examined as AW5. He deposed to his expertise and credentials. He deposed about certain Sale Deed plots and how a resort called Saldana Cove Resort was approved in 1998 in the remaining part of the property under survey no.54/3 of Velsao village.

19. Reference Court has relied on the Sale Deeds at Exhibits 80 and 81, which are the Sale Deeds dated 23.10.1989 and 15.02.1990, which are admittedly pre-section 4 notification sale instances. There is evidence that the Sale Deed plots were comparable to the acquired land because even they were indicated

as garden lands. Reference Court by applying the principles in *Chimanlal* (supra) made deductions to the extent of almost 50% and arrived at a market rate of ₹100/- per square meter.

20. In my judgment, there is no serious error in the approach of the Reference Court or the evaluation of both oral as well as documentary evidence produced by the claimants. As noted earlier, no evidence was led on behalf of the State.

21. The deduction to the extent of 50% was made because at least some portions of the Sale Deed plots, though even 500 meters from the HTL were within the range of 200 to 500 meters. That is, they were beyond 200 meters. In contrast, the acquired properties are within 200 meters.

22. In *Dr. Caetano* (supra), this Court has held that certain activities in terms of the notification of 1991 are permitted even in a no-development zone. These involve agriculture, horticulture, gardens, pastures, parks, playfields, forestry and salt manufacture from seawater. Besides, shack activity is also permitted in such areas and the same is a source of considerable revenue to owners of beachfront properties. All these aspects are required to be considered for determining the market rate.

23. There is also evidence about how a beach resort was constructed in the neighboring property. However, the evidence bears out that the construction was in the area beyond 200 square meters though the area within 200 meters was used for providing certain amenities. The location of the acquired lands and their proximity to the various amenities is also of relevant consideration. On cumulative consideration of the evidence on record, I do not think that any case has been made out to interfere with the impugned judgment and award. The award has considered the evidence on record and applied the correct parameters as applicable in such matters.

24. In *Dr. Caetano* (supra) and *Jagannath Khalap* (supra), this Court has held that the evidence of an expert, who visited the site long after the date of Section 4 notification will not have much probative value. Here, in this case, though the experts have visited the acquired land after the issuance of Section 4 notification, they have deposed as to the location and the distance to the various amenities. The claimant, through his power of attorney, has also deposed to this aspect. The sale instances were more or less comparable and in any case, substantial deductions have been made. Appropriate deductions have also been made for the sale exemplar for a small plot as is provided in *Maya Devi* (supra).

25. Therefore, this appeal is required to be dismissed and is hereby dismissed. There shall be no order for costs.

M. S. SONAK, J.