Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 48 OF 2014

1. Shri. Richard Fernandes, (Since deceased represented by his legal heirs)

la. Mrs. Dolly Fernandes,
w/o late Mr. Richard Fernandes,
aged 50 years, housewife.

1b. Mr. Gilley Fernandes,
S/o late Mr. Richard Fernandes,
aged 28 years, service and

lc. Miss. Lovely Fernandes,
d/o late Mr. Richard Fernandes,
aged 26 years, service, all residents of 15/20A, Azgar Manzil, 2nd Floor, Chandanwaddi, Mumbai - 2. represented herein through their attorney holder C/o. Shri. Jeronimo Fernandes, P.O. Velim Carai, Salcete, Goa

..... Appellants.

Versus.

1. Deputy Collector and S.D.O., and Land Acquisition Officer, Quepem. 2.

2. The Director of (IPSEM) ONGC,
C/o. 84-C-Laymate Davorlin,
P.O. Navelim, Salcete, Goa. …. Respondents.

Ms. Kimberley Gracias, holding for Mr. Anthony D'Souza, Advocate *for the Appellants.*

Ms. Sulekha Kamat, Addl. Govt. Advocate *for Respondent No.1.*

Mr. M.B. D'Costa, Senior Advocate with Mr. John Lobo & Ms. K. Betquecar, Advocates *for Respondent No.2.*

CORAM : M. S. SONAK, J.

Reserved on : 11th February 2022
Pronounced on : 15th February 2022

JUDGMENT: -

1. Heard Ms. Kimberley Gracias, holding for Mr. Anthony D'Souza, Advocate for the Appellants, Ms. Sulekha Kamat, learned Addl. Govt. Advocate for Respondent No.1 and Mr. M.B. D'Costa, learned Senior Advocate, who appears along with Mr. John Lobo for Respondent No.2.

2. This appeal is directed against the Judgment and Award dated 21/11/2013, made by the Reference Court in Land Acquisition Case No.67/2002, dismissing the Appellants' reference seeking enhancement of compensation under Section 18 of the Land Acquisition Act, 1894 (said Act).

3. By a notification dated 25/6/1990, issued under Section 4 of the said Act, the Respondents acquired land in Village Betul-Quitol, Quepem Taluka for setting up an Institute of Safety and Environment Management for Petroleum Industries of India. The acquired lands include property admeasuring 42,850 sq. metres surveyed under No.76/1 and the property admeasuring 825 sq. metres surveyed under No.76/2 of Quitol belonging to the Appellants.

4. By Award dated 17/6/1992, the Land Acquisition Officer awarded compensation at the rate of ₹ 5/- per sq. metre for the paddy field portion of the acquired property and ₹6/- per sq. metre for the balance portion.

5. The Appellants sought a reference, claiming compensation at the rate of ₹100/- per sq. metre. The Appellants also claimed additional compensation in respect of the trees in the acquired property. The Reference Court, by Judgment and Award dated 23/11/2006, dismissed the reference. This Award was challenged by the Appellants by instituting First Appeal No.102/2007. Vide Judgment and Order dated 26/6/2012, this Court quashed the Award dated 23/11/2006 and remanded the matter to the Reference Court with a direction to decide the reference afresh after hearing the parties and in the light of the observations made in the Judgment and Order dated 26/6/2012. In particular, this Court required the Reference Court to take into consideration the Judgment and Order of the Division Bench dated 22/6/2010 in First Appeal No.175/2004, which pertained to the property acquired under the same notification, but bearing survey No. 74/1, admeasuring 92,000 sq. metres.

6. This Court, in its Judgment and Order dated 26/6/2012, disposing of First Appeal No.102/2007, instituted by the present Appellants noted that the Award dated 23/11/2006 had ignored the award in Land Acquisition Case No.159/1996 on the ground that an appeal against the same was pending before the Division Bench of this Court i.e. First Appeal No.175/2004. This Court then noted that First Appeal No.175/2004 had since been disposed of by the Division Bench vide its Judgment and Order dated 22/6/2010, therefore, at least *prima facie*, the Award in Land Acquisition Case No.159/1996, as modified by the Division Bench of this Court in its Judgment and Order dated 22/6/2010 in First Appeal No.175/2004, was required to be taken into account. At the same time, this Court also accepted the contention of Mr. M.B. D'Costa, learned Senior Advocate appearing for Respondent No.2 (acquiring body) that there was no evidence about comparability and, therefore, this Court's Judgment and Order dated 22/6/2010 in First Appeal No.175/2004 cannot be blindly adopted for determination of the compensation. This Court, therefore, felt that an additional opportunity can be granted to the parties to lead evidence on the issue of comparability.

7. Based upon the aforesaid, this Court, by its Judgment and Order dated 26/6/2012, disposed of First Appeal No.102/2007 by observing thus:

> *"6. On perusal of the records, Shri Anthony Da Silva is justified to contend that the judgment passed in Land Acquisition Case No.159/1996 was discarded by the Reference Court on the ground that the award passed therein was the subject matter of the appeal preferred before this Court. Taking note of the fact that First Appeal No.175/2004 has been disposed of by the Division Bench of this Court by judgment dated 22/06/2010, the said ground on which the award was discarded does not survive. Subject to establishing the comparability it cannot be disputed that the judgment of the Division Bench can form the basis for arriving at the compensation for the land acquired in the present case.*
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> *7. Shri M.B. Da Costa, the learned Senior Counsel is justified to contend that there is no finding about the comparability by the Reference Court. The Division Bench of this Court in the judgment dated 29/10/2010 in First Appeal No.325/2007 when the same judgment was sought to be relied upon has held at para 12 thus:*

> *12. The learned Senior Counsel Mr. M. B. da Costa does not dispute that the price fixed by this Court in First Appeal No. 175/2004 can form the basis for determining the market value of the land acquired subject to deductions on account of dissimilarities. Considering the contentions of the learned Senior Counsel appearing for the respondent No. 2 that there are dissimilarities which are strongly disputed by learned Counsel Mr. A. F. Diniz appearing for the appellants, we find that in the interest of justice, the respondent No. 2 should be given an opportunity to lead evidence to substantiate their contention about the said aspect as to whether both lands are comparable and/or to what extent they are dissimilar or not before the Reference Court. The Reference Court will have to decide the reference afresh after considering the evidence adduced on the same aspect by the respondent No. 2. Needless to say that the appellants are also entitled to adduce evidence in rebuttal. The point for determination is answered accordingly.*

8. Considering the said judgment of the Division Bench, I find it appropriate in the interest of justice and in the facts and circumstances of the case, that the Reference Court be directed to decide the reference afresh after hearing the parties in accordance with law. No doubt the appellants would be entitled to produce the said judgment passed by the Division Bench or any other instance which they wish to rely upon and adduce further evidence to establish the comparability with the land acquired. The respondents would *no doubt be entitled to lead rebuttal evidence if any. As such, the point for determination is answered accordingly.*

9. In view of the above, I pass the following order;

ORDER

(i) The impugned judgment dated 23/11/2006 passed by the Reference Court is quashed and set aside.

(ii) Land Acquisition Case No.67/2002 is restored to the file of the Reference Court.

(iii) The Reference Court is directed to decide the reference afresh after hearing the parties in the light of the observations made herein above, in accordance with law.

(iv) The appeal stands disposed of accordingly.

(v) The parties are directed to appear before the Reference Court on 1/08/2012 at 10.00 a.m"

8. Upon remand, the parties lead additional evidence in terms of the liberty granted by this Court. The Reference Court, however, by the impugned Judgment and Award has once again rejected the reference, maintaining the rate of ₹5/- and ₹ 6/- per sq. metre, as awarded by the Land Acquisition Officer. Hence, this appeal.

9. Ms. Gracias, learned Counsel for the Appellants submitted that before this Court the learned Senior Advocate appearing for Respondent No.2, had conceded that the Judgment and Order dated 22/6/2010 in First Appeal No.175/2004 could be regarded as the basis for determination of compensation, provided there was evidence about comparability. She submitted that the evidence was led on the aspect of comparability and, therefore, even the present Appellants should have been awarded compensation at the rate of at least ₹40/- per sq. metre.

10. Ms. Gracias, without prejudice to the aforesaid, submitted that there were some positive factors attaching the acquired land as compared to the lands which formed the subject matter of the Judgment and Order dated 22/6/2010 in First Appeal No.175/2004, and therefore, additional compensation was payable. In any case, she submitted that the Reference Court was not justified in rejecting the reference in its entirety on the second occasion, as well.

11. Ms. Gracias submits that the evidence led by the Appellants, particularly after remand has not been looked into, much less appreciated by the Reference Court, and, therefore, the impugned Judgment and Award warrants interference.

12. Mr. M.B.D'Costa, learned Senior Advocate appearing for Respondent No.2 submits that even after liberty was granted to the Appellants to lead fresh evidence, no proper evidence on the aspect of comparability was brought on record by the Appellants. He pointed out that there were two plots between the acquired land bearing Survey No.76/1 and 76/2 and the property bearing Survey No.74/1, which was the subject matter of First Appeal No.175/2004. He submitted that even the location of the property bearing Survey No.74/1 was much better and this property had much greater advantages as compared to the acquired land. He submitted that in the absence of any cogent evidence about the comparability, the Reference Court was justified in rejecting the reference.

13. Ms. Sulekha Kamat, Addl. Govt. Advocate appearing for Respondent No.1 adopts the submissions of Mr. D'Costa, learned Advocate appearing on behalf of Respondent No.2.

14. The rival contentions now fall for my determination.

15. As noted earlier, the position that the Judgment and Order of the Division Bench of this Court dated 22/6/2010 in First Appeal No.175/2004, could be taken as the basis for determination of the compensation in respect of the acquired land, was accepted. This was, no doubt, subject to the Appellants placing on the record proper evidence about the comparability of the property bearing Survey No.74/1 that was the subject matter of First Appeal No.175/2004 and the acquired land. The matter was remanded to the Reference Court precisely to allow both the parties to lead evidence on the aspect of comparability and, thereafter, directions were issued for disposal of the reference, afresh.

16. Jeronimo Fernandes (AW.1) filed his affidavit-in-evidence initially on 21/2/2004 (before remand) and was cross-examined. After remand, AW.1 filed an additional affidavit-in-evidence on 6/11/2012 and was again cross-examined.

17. AW.1 relied on the sale deed dated 24/8/1984 concerning the property under Survey No.65/2 of Quitol Village, which was sold at the rate of ₹45/- per sq. metre. He deposed that this sale deed plot was located at a distance of 300 metres from the acquired land. AW.1 also deposed that the property surveyed under No.74 of Betul, Quitol, was also acquired for the same purpose and under the same notification. He deposed that by Award dated 17/3/2003 in Land Acquisition Case No.159/1996, the Reference Court had determined the compensation at the rate of ₹60/- per sq. metre in First Appeal No.175/2004. AW.1 then deposed that in First Appeal No.175/2004, this amount was reduced to ₹40/- per sq. metre.

18. AW.1 deposed that the nature of the property surveyed under No.74 and the acquired land, is very similar and both the properties are having the same topographical status. He deposed that the sale instance dated 24/8/1984 was considered by both, the Reference Court and this Court in Land Acquisition Case No. 159/1996 and First Appeal No.175/2004, to arrive at the market rate of ₹40/- per sq. metre. He submitted that both these lands are similar to the acquired lands and have good potentialities and are developed lands.

19. AW.1 deposed that the acquired land is a plateau with a flat surface and better potentiality for development as compared to the property under Survey No.74. He also deposed that the church of Betul is at a distance of about 500 metres from the acquired land. The acquired land is accessible by a road and is serviced by electricity. School, bank, post office are at a distance of about 1.5 to 2 kms. from the acquired land. The grocery store is at a distance of about 300 metres from the acquired land and the fish market is at a distance of about 500 metres from the acquired land. He deposed that public transportation is available from the acquired land and development for tourism purposes was very much feasible at the acquired land.

20. AW.1 was cross-examined in the context of his later affidavit dated 6/11/2012. In the cross-examination, except for a suggestion that the acquired land is inferior to the land surveyed under No.74, no dent as such has been made to the evidence regards comparability. The authority of attorney was questioned, but the matter was not seriously pursued. A suggestion was put that the acquired land is different from the property surveyed under No.74. Some questions were posed on boundaries. However, upon evaluation, no serious dent has been made to the evidence regards comparability produced by AW.1.

21. Ernesto Moniz, an expert was examined as AW.2 in this matter. Upon remand, he too filed his affidavit-in-evidence on 17/6/2013. Again, he also deposed to the comparability between the acquired land and the property surveyed under No.74. In examination-in-chief, he stated that he was engaged as an expert and has prepared the valuation report in respect of the property surveyed under No.74, which forms the subject matter of First Appeal No.175/2004. In the cross-examination, he reiterated this position and then deposed that at the time of preparing his report in respect of the property surveyed under No.74, he took into consideration the status of the surrounding lands, which includes the acquired property surveyed under Nos.76/1 and 76/2. Though he admitted that he visited the property surveyed under Nos.76/1 and 76/2 after the acquisition for preparation of his report in the present case, he submitted that he had visited the site even earlier for preparing the report in respect of the property surveyed under No.74.

22. On the evaluation of the evidence of the expert AW.2, again there is evidence on the aspect of comparability and no serious dent has been made on this aspect.

23. D.V.V. Prasad (DW.1), Deputy Manager (HR) deposed on behalf of the Respondent No.2 i.e. Institute of Safety and Environment Management (ONGC). In his chief, he simply stated that the market rate determined by the Land Acquisition Officer is reasonable and was arrived at by following the proper procedure. In his cross-examination, he admitted that even he saw the acquired area only in the year 2011. He admitted that the acquired land is a plateau, with rocky land, suitable for construction. He admitted that the land under survey Nos.76/1 and 2 and the land under Survey No.74 is a hard rocky area.

24. DW.1 deposed that between the acquired land (Survey No.76/1 and 76/2) and the property surveyed under No.74, there are two properties surveyed under No. 75 and 73. He admitted that both these properties were surveyed under Nos. 73 and 75, and are touching survey No.76/1 on one side and survey No. 76/2 on the other side. Thereafter, he simply claimed that he did not know whether the amenities deposed to by AW.1 were within the distance stated by AW.1 because, he claimed to have been posted only in the year 2011 and before 2011, he had no opportunity to see or visit the acquired area.

25. Now, upon evaluation of the evidence, the Reference Court was not at all justified in holding that there was no evidence about the comparability of the acquired land and the property surveyed under No.74, which was the subject matter of First Appeal No.175/2004. There was ample evidence on the issue of comparability, particularly if the evidence of AW.1 and AW.2 after remand, was to be looked into and properly evaluated.

26. True, as contended by Mr. D’Costa, the evidence of DW.1 bears out that between the acquired property bearing Survey Nos.76/1 and 76/2 and the property bearing Survey No.74, there were two other properties bearing Survey Nos. 75 and 73. But, this factor does not render the properties with which we are concerned, incomparable. There is direct evidence that the two properties were comparable. Even, DW.1 admitted that the acquired property is a plateau and rocky land, suitable for construction. DW.1 specifically admitted that the area covered by the property surveyed under Nos. 76/1, 76/2, and 74 is a hard rocky area. Therefore, merely because there are two properties in between, that by itself, does not, in any manner, diminish the value of the properties surveyed under Nos.76/1 and 76/2, or render such properties incomparable to the property surveyed under No.74.

27. There is also no evidence that the acquired property was slightly low-lying and had certain disadvantages as compared to the property surveyed under No.74. The property surveyed under No.74/1 admeasured 92,000 sq. metres and the property surveyed under No.76/1 admeasures 42,850 sq. metres and the property surveyed under No.76/2 admeasures 825 sq. metres. The Reference Court also erred in holding that the property surveyed under No.76/2, admeasuring only 825 sq. metres, is not comparable to the property surveyed under No.76/1 admeasuring 42,850 sq. metres, or the property bearing Survey No.74/1 admeasuring 92,000 sq. metres. The Reference Court failed to appreciate that the acquired properties bearing Survey No.76/1 and 76/2 are contiguous and together constitute a single property, admeasuring 49,675 sq. metres. Now, this acquired property admeasuring 49675 sq. metres was certainly comparable with the property bearing Survey No.74 admeasuring 92,000 sq. metres.

28. Further to a certain extent, the acquired property was better suited for development, because, its entire area was about 50,000 sq. metres as compared to the property surveyed under No.74/1, which was admeasuring 92,000 sq. metres. The Division Bench of this Court, in its Judgment and Order dated 22/6/2010, disposing of First Appeal No.175/2004, had observed that considering the large area of 92,000 sq.

metres, cost of development cannot be taken as a minimum and, therefore, a deduction to the extent of 50% was warranted. In the case of property almost half in size, the development cost would have been much lesser. Be that as it may, suffice to hold that there was evidence about the comparability and the Reference Court failed to look into the same or, in any case, properly evaluate the same.

29. Therefore, the Appellant in the present case, was entitled to the benefit of the rate determined by this Court in its Judgment and Order dated 22/6/2010 in First Appeal No.175/2004.

30. As a result, this Appeal is allowed and the market rate is now determined at ₹40/- per sq. metre, instead of ₹ 5/- and ₹6/- per sq. metre, determined by the Land Acquisition Officer. This will have to be paid to the Appellants by taking the market rate at ₹40/- per sq. metre in respect of the acquired land. Needless to add that the Appellants will be entitled to all statutory benefits, including interest, based on this rate and this quantum of compensation.

31. The Respondents, including in particular Respondent No. 2 will now have to deposit the compensation amount together with all statutory benefits after adjusting the payment already made, if any, within two months from today in this Court. Thereafter the Appellants will be entitled to withdraw the same. The Registry to make a direct deposit in the Bank account/s to be indicated by the Appellants.

32. The Appeal is allowed in the aforesaid terms. There shall be no order for costs.

M.S. SONAK, J.