

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 95 OF 2014
WITH
CROSS OBJECTIONS NO. 3 OF 2014

1. The Deputy Collector (LA), MPT
Headland Sada, Goa – 403 804

2. The Executive Engineer,
Works Division VI, P.W.D.
Fatorda, Margao, Salcete, Goa,
Gogal, Margao, Goa.

..... Appellants.

Versus.

1. Fregrenado Alex Nunes
Major in age, in service, married,
and his wife,

2. Mrs. Maria Hilda Nunes, major
in age, Housewife
Both residing at H.No.307/1,
Next to Sea Scan Academy,
Airport Road, Chicalim,
Vasco, Goa – 403 711.

.... Respondents.

Mr. Deep Shirodkar, Additional Govt. Advocate *for the*
Appellants.

Mr. A.F. Diniz, Senior Advocate with Mr. Ryan Menezes, Mr.
Nigel Fernandes and Ms. Gina Almeida, Advocate *for the*
Respondents-Cross Objectors.

CORAM : M. S. SONAK, J.

Reserved on : 18th February 2022.

Pronounced on : 22nd February 2022.

JUDGMENT: -

1. Heard Mr. Deep Shirodkar, learned Additional Govt. Advocate for the Appellants and Mr. A.F. Diniz, Senior Advocate who appears along with Mr. Ryan Menezes for the Respondents-Cross Objectors.

2. This Appeal and the Cross Objections are directed against the Judgment and Award dated 12/2/2013 made by the Reference Court in Land Acquisition Case No.8/2012, enhancing the compensation by determining the market rate at ₹1000/- per sq. metre, in place of ₹30/- per sq. metre, determined by the Land Acquisition Officer in his Award dated 11/12/2002.

3. By notification under Section 4 of the Land Acquisition Act, 1894 (said Act) dated 20/8/1999, the State proposed to acquire the Respondents' plot of land admeasuring 391 sq. metres surveyed under No.178/1 (part) of village Sancoale (acquired

plot) for a four-lane road from Verna National Highway junction to Mormugao Harbour.

4. Mr. Shirodkar learned Additional Government submitted that in this case, the Respondents suppressed and withheld the best evidence *i.e.* the sale deed by which the Respondents purchased the suit acquired plot. He submits that an adverse inference had to be drawn against the Respondents and the reference dismissed. He relies on ***Avelino Rodrigues and anr. Vs. Executive Engineer*** – First Appeal No.57 of 2014 decided by this Court on 10/2/2022.

5. Mr. Shirodkar, without prejudice, submits that the sale instance dated 20/7/1995, relied upon by the Reference Court, was not comparable, and based on the same, there was no case made out for enhancement. Without further prejudice, he submitted that the Reference Court has misconstrued the sale instance as applicable to the property admeasuring 3984.35 sq. metres when, in fact, the sale instance relates to the property admeasuring 25,608 sq. metres. He submitted that based on the correct construction of the sale instance, the rate reflected therein comes to ₹295/- per sq. metre and not ₹1600/- per sq. metre.

6. Based on the aforesaid two contentions, Mr. Shirodkar submitted that the enhancement of the market rate from ₹30/- to ₹1600/- per sq. metre, was wholly unjustified and the impugned award warrants interference.

7. Mr. A.F. Diniz learned Senior Advocate for the Respondents-Cross Objectors submits that the sale instance relied upon by the Reference Court concerns an area of 3984.35 sq. metres only and consequently reflects the rate of ₹1600/- per sq. metre. He submitted that if this was the rate in the year 1995, the Reference Court had to make additions towards 10 to 12% escalation each year and then determine the correct market rate of ₹3000/- per sq. metre as of the date of Section 4 notification.

8. Mr. Diniz submits that the sale deed by which the Respondents purchased the acquired plot was not produced because the same was made almost 6 years before the date of issuance of Section 4 notification. He relied on ***Ram Avtar etc. Vs. The State of Haryana & ors.*** – Civil Appeal Nos. 586-591 of 2017 decided by the Hon'ble Supreme Court on 20/9/2017 for the proposition that sale instances only up to 4-5 years can be taken into consideration for determining the market rate.

9. Mr. Diniz acknowledged that Respondent No.1 restricted the claim to the rate of ₹1600/- per sq. metre. However, he submitted that the Court has to award just and fair compensation and, therefore, is not powerless to grant compensation exceeding the amount claimed by the landowners. He relied on *Vidarbha Irrigation Development Corporation vs. Shri Laxman Seetaram Neulkar & anr.* – 2020 (6) All M.R. 221.

10. Based on the aforesaid, Mr. Diniz submitted that First Appeal No.95/2014 is required to be dismissed and the Cross Objections are liable to be allowed by enhancing the market rate from ₹1000/- per sq. metre to ₹3000 per sq. metre.

11. Mr. Shirodkar, in response to the Cross Objections, pointed out that not only the Respondents had restricted the claim to ₹1600/- per sq. metre, but the expert (AW.2) examined by the claimants, also deposed that the market value would not exceed ₹1600/- per sq. metre because the prices in the vicinity had risen only marginally in the ensuing 5 years from the date of registration of the sale deed dated 20/7/1995. Mr. Shirodkar maintained that there was no case made out even for enhancement of the rate up to ₹1000/- per sq. metre. He,

therefore, urged that First Appeal No.95/2014 be allowed and the Cross Objections No.3/2014, be dismissed.

12. The rival contentions now fall for my determination.

13. There is some merit in the contention of Mr. Shirodkar that the Respondents were not justified in withholding the deed of sale by which they purchased the acquired plot of 391 sq. metres. In the absence of production of the best possible evidence, the Reference Court should have drawn the adverse inference against the Respondents, in this matter.

14. In *Avelino Rodrigues* (supra) there are observations that the best possible evidence in such matters, is the sale deed by which the landowner purchased the acquired property, particularly when the same is within some reasonable period before the date of issuance of Section 4 notification. No doubt, thereafter the parties can always lead evidence to demonstrate the trend of escalation or de-escalation, as the case may be. But the non-production of such vital evidence may invite an adverse inference in such matters.

15. Before drawing such inference, the Respondents were allowed to produce the sale deed and the matter was adjourned

for the said purpose. On the adjourned date, Mr. Diniz produced the sale deed dated 8/2/1993 by which the Respondents purchased the plot admeasuring 391 sq. metres at the rate of ₹ 295/- per sq. metre. Having regard to the powers vested in this Court in terms of Order 41, Rule 27 of the C.P.C., or at least by applying the principle analogous thereto, it was agreed that the sale deed dated 8/2/1993 could be looked into as evidence for determining the market value. No doubt, Mr. Diniz did contend that this sale deed of 8/2/1993 was not relevant because this sale deed was executed almost 6 years before the issuance of Section 4 notification. According to him, the Hon'ble Supreme Court has held that sale instances beyond 4-5 years are not relevant for the determination of the market price.

16. In ***Ram Avtar*** (supra), the Hon'ble Supreme Court has referred to its earlier decision in *The General Manager, Oil and Natural Gas Corpn. Ltd. vs. Rameshbhai Jivanbhai Patel & Anr.* – (2008) 14 SCC 745 and observed as follows :

“This Court in The General Manager, Oil and Natural Gas Corpn. Ltd. V. Rameshbhai Jivanbhai Patel & Anr. (2008) 14 SCC 745 has observed that mode of determining the market value by providing appropriate escalation over the market value is permissible when there is no evidence of any contemporaneous sale

transaction or acquisition of comparable lands in the neighbourhood. The sale transaction/acquisition precedes by only a few years that is up to 4 or 5 years. Bond that it may be unsafe to act upon it and it is unsafe and unreliable standard where the gap is larger”.

17. The aforesaid observations were made in the context of an attempt to determine the market value in the year 1992 based on the transactions of 1970 or 1980. In such a situation, the Hon’ble Supreme Court noted that over the course of years, the rate of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

18. Even in the case of ***Ram Avtar*** (supra), the question was whether sale instances of 1983 could be taken into account for determining the market rate in the year 2002. Applying the aforesaid principles, the Hon’ble Supreme Court held that such sale instances would not afford a proper base for determining the market rate.

19. However, neither does *Oil and Natural Gas Corpn. Ltd. (supra)* nor *Ram Avtar* (supra) lay down an absolute proposition that sale instances that precede Section 4 notification

by more than 5 years can never be looked into for determining the appropriate market rate. All that these decisions state is that the Courts must be conscious of the various pitfalls that may arise between the date of execution of the sale deed and the issuance of the Section 4 notification. Pitfalls or the intervening factors must also be taken into account for determining whether such previous sale instances can be taken as a safeguard for determining the market value as of the date of Section 4 notification and thereafter mechanically allowing annual escalations at the rate of 10-12 percent.

20. In the present case, we are concerned not with any sale instance, but with the sale instance by which the landowners themselves purchased the plot which has now been acquired by the Government. The sale instance precedes the date of Section 4 notification by about 6 years. The expert (AW.2) examined by the Respondents has deposed that the prices in the vicinity of the acquired land have arisen only marginally in the ensuing 5 years from the date of registration of the sale deed dated 1/8/1995. Even the Respondent (AW.1), in his deposition, deposed that though the market rate was claimed to be ₹1800/- per sq. metre, the claim was now restricted to ₹1600/- per sq. metre, based on the sale deed dated 1/8/1995 in respect of the land admeasuring

3984.35 sq. metres, situated at a distance of less than 1 km. from the acquired plot.

21. Having regard to such evidence led by the Respondent and their expert and the most important circumstance that the sale deed dated 8/2/1993 pertains to the very plot that has now been acquired, I think that the sale deed dated 8/2/1993 and the rate of ₹295/- per sq. metre reflected therein is a very relevant piece of evidence in this matter. There was no justification for its non-production.

22. The Sale Deed dated 8/2/1993, contains a recital that reads as follows:

“AND WHEREAS the Vendors, have offered the said plot no.22, admeasuring 391 sq. metres, (hereinafter, referred to as said part of the said property) for sale at the rate of Rs.295/- per sq. mt which is the fair and actual market price.”

23. The Respondents were not at all justified in withholding this relevant piece of evidence from the Reference Court. After producing this evidence, the Respondents could have urged that the same should not be the basis for determining the market rate as of the date of Section 4 notification and even led evidence why

this should not be so. The Respondents could have always produced evidence about the sudden spurt in the prices between 8/2/1993 (sale instance) and 20/8/1999 (Section 4 notification) if any or about the extent of development in the vicinity during this interregnum. However, the evidence of the Respondents, including that of their expert AW.2, suggests that the prices in the vicinity of the acquired plot have only risen marginally in the ensuing 5 years from the date of registration of the sale deed.

24. Since the best possible evidence is the sale deed dated 8/2/1993 concerning the acquired plot itself, there is no good reason to go to the sale deed dated 1/8/1995, which pertains to a property almost 1 km. away that was purchased for commercial purposes by a big hotel group to construct and operate a flight kitchen to cater to the passengers at the Dabolim Airport at a distance of about 9 to 10 km. from the said property. In any case, the sale deed dated 1/8/1995 could not have formed the basis or rather, the sole basis for determination of the market rate as of the date of Section 4 notification when the best possible evidence in the form of the sale deed dated 8/2/1993 was available with the Respondents, but not produced by them before the Reference Court. The sale deed dated 1/8/1995 could however be considered for evaluating the extent of development in the

vicinity and the resultant escalation in market prices to some extent.

25. Mr. Shirodkar was justified in relying on *Shakuntalabai (Smt.) and others Vs. State of Maharashtra* – (1996) 2 SCC 152 in which it is held that if there is evidence or admission on behalf of the claimants as to the market value commanded by the acquired land itself, the need to travel beyond the boundary of the acquired land is obviated. When the owner himself has purchased the land under acquisition, the consideration mentioned in the sale deed would form the basis to determine the market value. The need to take into consideration the value of the lands adjacent to the acquired land or near about the area which possessed the same potentiality to work out the prices fetched therein for determination of the market value of the acquired land would arise only when there is no evidence of the value of the acquired land. In a case where evidence of the value of the acquired land itself is available on record, it is unnecessary to travel beyond that evidence and consider the market value prevailing in the adjacent lands.

26. Mr. Shirodkar also relied on *Gangadhar s/o. Devidas Mane and anr. Vs. The State of Maharashtra and ors.* First

Appeal No.256 of 2011 and other connected matters decided on 7/1/2019 to submit that valuation report or the evidence of valuer who visited the acquired land several years after the acquisition, should generally not be taken into consideration. In this case, there is evidence about AW.2 visiting the land along with his father at or about the time of Section 4 notification. Be that as it may, now most of the evidence of AW.2 is rendered irrelevant on account of the sale deed dated 8/2/1993 by which the Respondents purchased the acquired plot at the rate of ₹295/- per sq. metre. Mr. Shirodkar, himself, without prejudice to his other contentions, relied on the evidence of this expert that there was no significant rise in property rates after 1995 in the vicinity of the acquired plot.

27. Mr. Shirodkar also referred to the Judgment and Order dated 21/6/2010, in *M/s. Zuari Industries Ltd. vs. Dy. Collector (LA)/MPT, Headland Sada, vs. Executive Engineer, Works Division VI*, (First Appeal No.158 of 2006). He urged that this Judgment concerns the acquisition of land under Section 4 notification under which the Respondent's plot was acquired. There is no clarity on this aspect because the notification in the said judgment was dated 2/9/1999. However, even if it is held so, the Judgment and Order merely remanded the matter to the

Reference Court for determination of the compensation in respect of an area of 1,66,000 sq. metres. Despite opportunities, Mr. Shirodkar was unable to say anything about the further progress after remand or the rate determined post remand. Besides, in the said case, the Court was concerned with an area of 1,66,000 sq. metres and not a developed plot of 391 sq. metres.

28. Mr. Diniz relied on *Vidarbha Irrigation Development Corporation* (supra) to submit that the Court is not powerless to grant compensation exceeding the amount claimed by the landowner. In the state of evidence on record, no case is made out for granting compensation over and above what has now been granted by the Reference Court. The evidence on record is barely sufficient to sustain the rate determined. Therefore, the issue dealt with in *Vidarbha Irrigation Development Corporation* (supra) does not even arise for determination in the present matter.

29. Mr. Diniz also relied on *Anjani Molu Dessai vs. State of Goa and anr.*, (2010) 13 SCC 710, in particular paragraph 20, which reads as follows :

“The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there

are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of undervaluation or other price depressing reasons. Consequently, averaging cannot be resorted to. We may refer to two decisions of this Court in this behalf.”

30. The aforesaid observations do not, in any manner, assist the case of the Respondents. Rather, if we consider the values disclosed in the sale deeds dated 8/2/1993 and one dated 1/8/1995, then, the values reflected in the sales are markedly different even after admitting an escalation of 15% per annum. Therefore, in terms of the decision cited, the principle of averaging cannot be resorted to.

31. Now, taking the sale deed of 8/2/1993 and the rate of ₹295/- per sq. metre reflected therein as the basis, a case is certainly made out for increasing this rate by at least 15% per annum for determining the market rate in the year 1999. This is because the evidence on record does indicate that the acquired plot was developed, having the benefit of several civic amenities.

The acquired plot was quite close to the airport i.e about 7-8 km away. The acquired plot was a small plot of 391 sq. metres that will usually have more takers as compared to a big plot. The evidence of AW.2 about marginal price rise in the vicinity in the ensuing 5 years will, to some extent, come in the way of the Respondents' claim for enhancement. However, AW.2's deposition was in the context of the sale instance dated 1/8/1995 in respect of a relatively large plot of land admeasuring 3984.35 sq. metres, and not a small plot like the acquired plot that admeasured only 391 sq. metres. Therefore, it is reasonable to proceed on the basis that the acquired plot would have appreciated and its rate would have increased by 15% per annum. There are several buyers interested in purchasing smaller developed plots, as compared to large plots admeasuring about 4000 sq. metres or thereabouts. Therefore, based upon such escalation or appreciation, the market rate of the acquired plot, as on the date of Section 4 notification, can be taken between ₹ 680 to 700 per sq. metre.

32. Besides, some further escalation is also warranted in the present case because, the evidence on record bears out that the property which was the subject matter of the sale deed dated 1/8/1995, was used for the establishment of a flight kitchen to

cater to the airline passengers at the nearby Dabolim Airport. There is evidence that the acquired plot was at a distance of about 7 to 8 km. from Dabolim Airport. Both, AW.1 and AW.2 have also deposed about several amenities that benefit the acquired plot. The rate of ₹1600/- sq. metre reflected in the sale deed dated 1/8/1995, is also not entirely irrelevant though, Mr. Shirodkar is right in his submission that the sale deed dated 1/8/1995 ought not to have been made basis now that the sale deed dated 8/2/1993 concerning the very acquired plot reflecting the market rate of ₹295/- per sq. metre is available. The impact of all these factors cannot be completely ignored.

33. In this case, the Appellants also did not bother to lead any evidence before the Reference Court or contest the proceedings before the Reference Court. Though this factor does not relieve the Reference Court of the duty of determining the market rate, I think that determination of the market rate at ₹1000/- per sq. metre though marginally on the higher side, warrants no interference. No case is, however, made out by the Respondents for enhancing this rate from ₹1000/- to ₹3000/- per sq. metre.

34. For all the aforesaid reasons, both, First Appeal No.95/2014 and Cross Objections No.3/2014 are liable to be dismissed and are, hereby, dismissed. There shall be no order for costs.

35. If the State has deposited the compensation amount in this Court, then the Respondents will be entitled to withdraw the same. The Registry to facilitate such withdrawal, so that the amount is directly deposited in the bank account of the Respondents.

36. The Appeal and the Cross Objections are disposed of in the aforesaid terms.

M. S. SONAK, J.