

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.57 OF 2014

1. Mr. Avelino Rodrigues,
son of Alex Santan Rodrigues,
age 52 years, married and his wife.
2. Mrs. Carolina Ana Rodrigues,
W/o Avelino Rodrigues,
Both r/o H.No.164/03,
Brittowaddo, Parra, Bardez Goa. ... Appellants

Versus

Executive Engineer,
Works Division VII,
Goa Tillari Irrigation Development Corp.
Shargal, Pernem Goa. ...Respondent

Mr. Gajendra Usgaonkar, Advocate for the appellants.
Mr. Vishwadh Sardessai, Advocate for the respondent.

CORAM: M. S. SONAK, J

DATE : 10th February 2022

ORAL JUDGMENT :

1. Heard Mr. Usgaonkar, learned counsel for the appellants, and Mr. Sardessai learned Additional Government Advocate for the respondent.

2. This appeal takes an exception to the judgment and award dated 04.01.2014 made by the learned Reference Court in Land Acquisition Case No.42/2009 dismissing the appellants' reference

under Section 18 of the Land Acquisition Act, 1894 (the said Act) seeking enhancement of compensation.

3. By notification dated 06.12.2006 issued under Section 4 of the said Act, the State proposed to acquire the appellants' property admeasuring 19,611 square meters surveyed under No.153/2 of Torcem Pernem Goa for Tillari Irrigation canal.

4. The Land Acquisition Officer by his award dated 29.05.2009 determined the market rate at ₹40/- per square meter. Dissatisfied with this rate, the appellants applied for reference under Section 18 of the said Act claiming compensation at the rate of ₹1000/- per square meter for coconut garden area and ₹400/- for cashew garden area.

5. The reference Court vide impugned judgment and award dated 04.01.2014 has however dismissed the reference and maintained the rate awarded by the Land Acquisition Officer. Hence, this appeal.

6. Mr. Usgaonkar, learned counsel for the appellants submits that in this case there were no comparable sale instances available and therefore, the reference Court was obliged to adopt the capitalization method which it has failed to adopt. He relied on *the Union of India and another Vs Shanti Devi and others*¹, *Airports Authority of India Vs Satyagopal Roy and others*², *Special Land Acquisition*

1 (1983) 4 SCC 542

2 (2002) 3 SCC 527

*Officer, Davangere Vs P. Veerabhadarappa and others*³ in support of this submission.

7. Mr. Usgaonkar then submitted that in this case, the settlement report prepared under the Land Revenue Code was available for Pernem Taluka where the acquired property is situated. He submits that this settlement report was duly tendered in evidence. Based upon this settlement report, the market rate in so far as the cashew lands are concerned should have been taken at least ₹400/- per square meter. He referred to the affidavit in lieu of examination in chief tendered by the appellants and in the absence of any significant cross-examination to submit calculations provided by the appellants ought to have been accepted. He relied on *Special Land Acquisition Officer, M. I. W., Jalgaon Vs Chindha Fakira Patil*⁴, *Lal Chand Vs Union of India and another*⁵ and the decision of the learned Single Judge of this Court in Writ Petition No.786 of 2011 decided on 15th December 2011 in the petition instituted by the present appellants.

8. Mr. Usgaonkar submitted that the reference Court erred in relying on the sale deed dated 18.03.1998 (Exhibit 16) by which the appellants purchased the larger property of which the acquired property is only a part because such sale deed was entered into in the year 1998 and the Section 4 notification, in this case, was issued in the

3 (1984) 2 SCC 120

4 (2007) 2 BCR 370

5 (2009) 15 SCC 769

year 2006. He submitted that for want of proximity in time the sale deed could not have been regarded as a comparable instance. He submitted that there can be several reasons why the vendors sell and the vendees purchase the property for a particular price. He gave instances of difficulties faced by vendors who then sell the properties for suppressed rates. He submitted that there is no legal bar for a vendor to sell and for a vendee to purchase the property at any price. He submitted that in this case in the absence of any comparable sale instance, the only correct method for determination of the market rate was the capitalization method based on the agricultural yield of the acquired property. He submitted that fortunately, in this case, the settlement report prepared under Land Revenue Code by the expert was available, and based thereon the market rate in respect of only cashew land would come to ₹400/- per square meter.

9. Mr. Usgaonkar also submitted that on account of the canal passing through the property, the balance portion of the property purchased by the appellants vide sale deed dated 18.03.1998 (Exhibit 16) has been wasted and cannot be used properly by the appellants. He, therefore, submitted that the compensation at the rate of ₹500/- per square meter ought to have been awarded even in respect of the balance area of 19,389 square meters by way of severance.

10. For all the aforesaid reasons, Mr. Usgaonkar submitted that the impugned award warrants interference and the rate awarded warrants enhancement as prayed for.

11. Mr. V. Sardesai learned Additional Government Advocate submits that the sale deed dated 18.03.1998 (Exhibit 16) was the very sale deed by which the appellants purchased the larger property admeasuring an area of 39,000 square meters of which the acquired property admeasuring 19611 sq. mtrs. forms a part. He submits that this was the best evidence available on record and based thereon the reference Court has quite correctly dismissed the reference. He pointed out that there is a calculation error in para 17 of the impugned award since the rate even after an increase of 10% per annum comes to hardly ₹26/- per square meter and not ₹35/- per square meter. He however conceded that it does not make any significant difference that the award of the LAO, in this case, was for ₹40/- per square meter.

12. Mr. Sardesai relied on *the State of Goa and others Vs Joao Dias*⁶, *U. P. Jal Nigam, Lucknow Vs Kalra Properties (P) Ltd., Lucknow and others*⁷ and *Vitthalbhai Bakorbhai Vs Executive Engineer*⁸, in support of his submissions.

13. Mr. Sardesai submits that in this case there was no evidence about actual yield and in any case, there was a question of resorting to the method of capitalization because the best evidence in terms of the sale deed by which the appellants purchased the acquired property was

6 2012(1) ALLMR 679

7 (1996) 3 SCC 124

8 (1996) 3 SCC 592

very much available on record. He submitted that there is no error in the impugned award and therefore, this appeal may be dismissed.

14. Based on the rival contentions, the following issues arise for determination.

(a) Whether the Reference Court was justified in relying on the sale deed dated 18.03.1998 (Exhibit 16) for the determination of the market rate in this matter?

(b) Whether the reference Court, in this case, was obliged to determine the market rate by adopting the capitalization method and its failure to do so vitiates the impugned award?

(c) Whether the reference Court erred in not even advertng to the issue of severance raised by the appellants in this matter?

15. In so far as the first point is concerned, it is true that the reference Court has relied upon the sale deed dated 18.03.1998 (Exhibit 16) as the base for determining the market value of the acquired land. This is clear from the discussion in paras 16 and 17 of the impugned award.

16. The sale deed dated 18.03.1998 (Exhibit 16) was produced by the first appellant (AW1) in his evidence. This is the sale deed by which the appellants purchased the larger property admeasuring 39,000 square meters surveyed under No.153/2 of Torcem, Pernem

Goa, for total consideration of ₹4,87,500/-. There is no dispute that the acquired portion admeasuring 19611 square meters is a part of the larger property purchased by the Appellants vide the sale deed dated 18.03.1998. This means that the rate at which the appellants themselves purchased this property on 18.03.1998 comes to approximately ₹12.50 per square meter.

17. Now there is absolutely nothing in the evidence of AW1 or for that matter in the cross-examination of AW1 to even remotely suggest that this sale deed dated 18.03.1998 which is in respect of acquired land itself does not reflect a sale by a willing seller to a willing purchaser. There is not a whisper in the evidence of AW1, the sole witness examined in this matter that this sale was some sort of distress sale on account of various factors suggested by Mr. Usgaonkar in the course of his submissions across the bar. There is no evidence whatsoever that the rate of ₹12.50 per square meter as reflected in the appellants' own sale deed dated 18.03.1998 concerning the acquired property itself was for some depressed rate. In the absence of any such hint, much less legal evidence, the reference Court was quite justified in relying on the sale deed dated 18.03.1998 (Exhibit 16). This sale deed was the best evidence and if the reference Court were to ignore this best evidence and rely on any other method for determination of market rate, that perhaps may have amounted to error.

18. The reference Court upon determining the market rate of the acquired land as of 18.03.1998 as ₹12.50 per square meter has

proceeded to make an addition at the rate of 10% per annum and then concluded at para 17 that the market rate in the year 2006 would be in the range of ₹35/- per square meter. There is an arithmetical error in this calculation. If the base of 10% per annum enhancement is taken into account, the rate in 2006 would come to ₹26.51 or ₹27/- per square meter and not ₹35/- per square meter.

19. However, as was rightly pointed out by Mr. Sardesai, the aforesaid calculation error will make no difference because it is well settled that the State, cannot renege on the offer of ₹40/- per square meter made by the Land Acquisition Officer. The reference Court was therefore justified in rejecting the reference in this case. The first point for determination is answered accordingly.

20. In so far as the second point for determination is concerned, based on the decisions relied upon by Mr. Usgaonkar, it is quite evident that there was no obligation on the reference Court to resort to the method of capitalization since the comparable sale instance method could be and was legitimately adopted. In this case, the sale deed dated 18.03.1998 (Exhibit 16) was a comparable instance because the same concerned the very acquired property. There could be no better or comparable instance. The sale deed was in fact the best possible evidence in a matter of this nature and ignoring the same or resorting to the capitalization method may have been an error that was rightly avoided by the reference Court.

21. The circumstance that the sale deed was executed in the year 1998 and the Section 4 notification was issued in the year 2006 does not mean that the sale deed was not a comparable sale instance. The reference Court has taken into account the time gap and has awarded enhanced compensation by accepting that there would be an increase in the rate of 10% per annum.

22. There is no evidence placed on record by the appellants about any improvement made to the acquired land which is admittedly an agricultural property between the years 1998 and 2006. The Appellant has not even produced any cogent evidence on record about the actual agricultural operations and the yield. The entire attempt was to simply rely on the settlement report prepared under the Land Revenue Code and based thereon to make a hypothetical and inflated claim ranging between ₹400/- to ₹1000/- per square meter.

23. If the contention of the appellants were to be accepted then for the property purchased by them in the year 1998 at the rate of ₹12.50 per square meter, they would have to be awarded compensation at the rate of ₹1000/- per square meter or at least ₹400/- per square meter. In respect of agricultural lands located in an area like Pernem, such an award would certainly not be justified. As noted earlier, there is no evidence whatsoever about improvement, if any, done to the agricultural land after its purchase in the year 1998 and till its acquisition in the year 2006.

24. *Chindha Fakira Patil* (supra) and *Lal Chand* (supra) to a certain extent do hold that the settlement reports prepared under the Land Revenue Code may not be irrelevant for determining the market rate of the acquired land. In *Lal Chand* (supra), the Hon'ble Supreme Court has also distinguished the decision in the case of *U. P. Jal Nigam* (supra) by holding that the Basic Valuation Register prepared in the context of the Stamp Act had no statutory basis for the determination of market value under Section 23 of the said Act. The Hon'ble Supreme Court in *Lal Chand* (supra) held that the position of the settlement reports prepared under the Land Revenue Code after following the procedure prescribed is not the same as the value entered into the Basic Valuation Register.

25. The settlement report produced on record by the appellants determines the standard rate per hectare in respect of the cashew plantation at ₹172/- per hectare and in respect of coconut lands at ₹450/- per hectare. Now, this is not the market rate as of the date of the preparation of the settlement report but this is only the standard rate for the determination of land revenue to be levied. This standard rate is in terms of Section 75 of the Code. Based upon this, the appellants seek to employ the capitalization method and determine the market rate at ₹400/- per square meter in respect of the cashew portion of the acquired property. In the first place, for reasons discussed above, there was no question of resorting to the capitalization method. Secondly, there was no legal evidence about any serious agricultural operations and the annual yield therefrom. Based

on some complex calculations suggested by the Appellants, no case for enhancement was made out.

26. Now in *Shanti Devi* (supra), relied upon by the appellants, the Hon'ble Supreme Court at para 12 expressed dissatisfaction with the method adopted by the Land Acquisition Officer, the reference Court, and even the High Court for determining the compensation. In para 12, the Hon'ble Supreme Court observed that all these three authorities failed to adopt the well-known methods of valuation of land namely, the price paid within a reasonable time in bonafide transactions in respect of the land acquired or adjacent lands which possess similar advantages, the price which a willing buyer was prepared to pay to a willing seller of such land or the opinion of valuers or experts. Instead, the authorities followed the capitalization method by adopting 20 years purchase rule. The Hon'ble Supreme Court then held that in the absence of any reliable evidence to adopt the other methods of valuation, even the Hon'ble Supreme Court was driven to adopt the very same capitalization method in disposing of the appeals.

27. The aforesaid means that the Hon'ble Supreme Court favored the adoption of comparable sale method or method of the opinion of experts preferable to capitalization method. Only because no reliable evidence was available on record as regards the preferable method did the Hon'ble Supreme Court tolerated the adoption of the capitalization method. In this case, the best possible evidence in terms

of the sale deed dated 18.03.1998 by which the appellants themselves purchased the acquired property was very much available on record. Therefore, there was no error on the part of the reference Court in not adopting the capitalization method in this case.

28. In *Airports Authority of India* (supra) the entire discussion is about the proper meaning and the proper manner concerning the capitalization method. This decision can be of no assistance to the appellants in the present case because in this case, there was no error on the part of the reference Court in not adopting the capitalization method.

29. In *Special Land Acquisition Officer, Davangere* (supra), the Hon'ble Supreme Court has held that the proper method to determine the valuation of the land may be : (1) Opinion of experts, (2) The prices paid within a reasonable time in bonafide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages and (3) A number of years' purchase of the actual or immediately prospective profits of the lands acquired. *Normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available.*

30. Further, the Hon'ble Supreme Court in *Special Land Acquisition Officer, Davangere* (supra), held that where definite material is not forthcoming either in the shape of sales of similar lands in the neighborhood at or about the date of notification under Section 4 or otherwise, the Court has no other alternative but to fall back on the method of valuation by capitalization.

31. In this case, as noted earlier, the evidence in the shape of the sale of the same acquired land was available on record and therefore, the reference Court quite correctly did not resort to the method of capitalization. The decision in *Special Land Acquisition Officer, Davangere* (supra) therefore assists the respondent and not the appellants.

32. Thus, the second point for determination will also have to be determined by holding that there was no error on the part of the reference Court in not relying on the method of capitalization in the present case.

33. On the aspect of severance compensation, except for bare statements in the application seeking reference under Section 18 of the said Act, there is not a whisper on this aspect in the evidence led by the appellants. Mr. Usgaonkar did point out the plan of acquisition on record. The plan at the highest indicates that the canal is passing through the property of 39,000 square meters purchased by the appellants vide the sale deed dated 18.03.1998. However, based on

this plan, it cannot be said that any portion of the appellants' property has been wasted. Since an irrigation canal now passing through the property, the appellants' balance property can be said to be benefited by the acquisition. Therefore, even the third point for determination will have to be answered by holding that no case for award of any severance compensation has been made out.

34. For all the aforesaid reasons, this appeal will have to be dismissed and is hereby dismissed. There shall be no order for costs.

M. S. SONAK, J