

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.102/2015

1. The Executive Engineer,
Works Division VI, GTIDC,
Sarvan, Bicholim-Goa.

2. Special Land Acquisition Officer,
Office of the Special Land Acquisition
Officer (North Goa Tillari Irrigation
Development Corporation),
Karaswada Colvale Road,
Bardez-Goa.

... APPELLANTS

Versus

1. Shri Santosh Y. Dicholkar,
of major age, Indian National,
resident of House No.89,
Gaonkar Wada, Bicholim-Goa.

...RESPONDENT

**Ms. Sapna Mordekar, Additional Government Advocate for the
Appellants-State.**

Mr. S. N. Joshi with Ms. S. Rawool, Advocates for the Respondent.

CORAM:

M. S. SONAK, J.

DATE:

17th February 2022

JUDGMENT:

1. Heard Ms. Sapna Mordekar, learned Additional Government Advocate for the appellant-State and Mr. S. N. Joshi for the respondent.

2. This appeal is directed against the Judgment and Award dated 08.12.2014 made by the Reference Court in Land Acquisition Case No.22/2012 enhancing the compensation by determining the market rate of the acquired land at ₹250/- per sq. mtr. in place of the rate of 175/- per sq.mtr. determined by the Land Acquisition Officer (LAO).

3. By notification under Section 4 of the Land Acquisition Act, 1894 (said Act) dated 05.11.2009, the State acquired the respondents' property admeasuring 1620 sq. mtrs. surveyed under No.69/1 (Part) of village Bicholim for the construction of Pilgao Narve distributor of Sanquelim Branch Canal of LBMC of TIP from ch.0.00 km to 4.850 km in Sarvan Bicholim and Pilgao village of Bicholim Taluka.

4. The LAO by his Award dated 30.06.2011 determined the market rate of the acquired land at ₹175/- per sq.mtr. The Reference Court has now enhanced the compensation by determining the market rate at ₹250/- per sq.mtr. Hence this appeal by the State.

5. Ms. Mordekar, the learned Additional Government Advocate at the outset submitted that the sale instances relied upon by the respondent were post Section 4 notification sale

deeds and therefore, the same should not have been looked into by the Reference Court. In any case, and without prejudice she submitted that the Reference Court failed to de-escalate the rate at 10% p.a. She submitted that there are no reasons for determining the market rate at ₹250/- per sq.mtr. and the award is based on surmises and conjectures. She submitted without prejudice that in this case assuming without admitting that the sale instances could have been looked into, the deductions to the extent of a minimum of 75% were warranted. Based on all this she submitted that the impugned award warrants interference.

6. Mr. Joshi, the learned counsel for the respondent defended the impugned award based on the reasoning reflected therein. He submitted that there is no absolute bar for taking into account the post Section 4 notification sale deeds. He relied on *Chimanlal Hargovinddas v/s. Special LAO, Poona & Ors. – 1988 (3) SCC 751* and the Judgment and Order dated 04.02.2022 in *First Appeals No.77 and 78 of 2015 (The Managing Director, Goa State Infrastructure Development Corporation v/s. Shrikant P. Shirodkar)*.

7. Mr. Joshi submitted that the acquired property was on the border of the limits of the jurisdiction of the Bicholim Municipal Council. He submitted that the acquired land had all

the amenities like water supply, electricity supply, access, etc. He submitted that even the sale instances relied upon by the respondent were in respect of the undeveloped and unconverted plots of land. Based on all this evidence he submitted that there was no error whatsoever in the determination made by the Reference Court and therefore this appeal may be dismissed.

8. The rival contentions now fall for my determination.

9. On the perusal of the impugned award, though the Reference Court had indeed referred to several decisions, the precise basis for arriving at the rate of ₹250/- per sq.mtr. is not clearly discernible. After reference to several principles, the Reference Court has simply observed that keeping in mind all these facts and that there was the potentiality of developing the land though not in the immediate future as well as the fact that the land was of Orchard type, the compensation needs to be enhanced reasonably though not at the rate of enhancement that the applicant claims. After such an omnibus statement the Reference Court has enhanced the compensation from ₹175/- to ₹250/- per sq.mtr. Ms. Mordekar is therefore to a certain extent justified in her criticism.

10. However, having said this, it must be noted that the Reference Court has referred to the evidence on record even though, the evidence may not have been discussed as required under the law. Similarly, the Reference Court has also quite correctly rejected the rates determined by the Registration and Stamping Authorities by reference to the decision of the Hon'ble Supreme Court in the case of *U.P. Jal Nigam, Lucknow v/s. M/s. Kalra Properties (P) Ltd. - 1996 (3) SCC 124*.

11. The Reference Court, at one stage, has rejected the evidence of the sale instances produced by the respondent by observing that these are post Section 4 notification sale deeds. However, later on, the Reference Court has adverted to such sale instances though, it is not clear whether such sale instances form the basis for determination of compensation at ₹250/- per sq.mtr.

12. In the result, it would be only appropriate that this Court assesses the evidence on record and determines the market rate for the acquired land.

13. Normally, the compensation has to be determined based on the comparable sale instances that have taken place before the issuance of Section 4 notification. However, as was held in *Chimanlal Hargovinddas (supra)*, where no pre-Section 4

notification sale instances are available, even post notification instances can be taken into account if they are very proximate, genuine and the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. Further, the Court has to identify the most comparable instances from the proximity of time angle and situation angle. Having identified such instances the price reflected therein can be taken as the norm and the market rate of the land can be deduced by making suitable adjustments for the plus and minus factors vis-a-vis the land under acquisition by placing the two in juxtaposition. A balance sheet of plus and minus factors will have to be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would. The market value must then be determined by loading the price reflected in the instance taken as the norm for plus factors and unloading it for minus factors. This exercise has to be undertaken in a common-sense manner as a prudent man of the world of business would do.

14. Similarly, this Court in *Shrikant P. Shirodkar (supra)* relying on *Assistant Development Officer, Trombay v. Tayaballi – (1933) 35 Bom. L.R. 763* has held that post Section 4 notification sale instance, may not be anathema for price determination provided any doubt the Court being alive to

the position that where lands have been acquired for the development of a locality and the improvement of its communication and amenities, it is a reasonable inference that the value of the property will increase and the Court must consider that the factor, even though it is not directly proved that the transactions in question have been affected by the notification. This is because in such matters direct proof will hardly be available on this aspect.

15. The evidence on record will have to be evaluated by keeping in mind the aforesaid principles.

16. The respondent has examined himself as AW1. He produced sale deeds dated 23.06.2011, 27.06.2011, and 11.12.2012 in support of his claim that the market rate at or around the time of issuance of the Section 4 notification was ₹1,200/- per sq.mtr. Now the sale instance dated 11.12.2012 (Exh.15) is required to be excluded not simply because the same is an instance almost two years post the issuance of Section 4 notification but because this is a sale instance entered into by the respondent himself in respect of his balance unacquired property in the vicinity.

17. Though Mr. Joshi tried to contend that this sale instance was in respect of undeveloped or unconverted property, there is no evidence to this effect. Rather, AW1 deposed that he has developed his property into plots. There is no statement either in the chief or in the cross-examination supporting the contention now raised by Mr. Joshi across the bar. Besides, the possibility of the respondent selling his own property for some higher rate almost two years post the issuance of Section 4 notification cannot be ruled out.

18. Similarly, the sale instance dated 27.06.2011 (Exh.14) can also be excluded because the same pertains to a plot admeasuring 250 sq.mtrs. enclosed by a compound wall and more particularly the location within the municipal limits of Bicholim Municipal Council. In contrast, the acquired property is admittedly within the Village Panchayat limits and is a relatively large area admeasuring 1680 sq.mtrs.

19. The only relevant sale instance is the sale deed dated 23.06.2011, firstly because it concerns a plot in the vicinity of the acquired land also situated within the Village Panchayat limits. Secondly, the area of the property involved in this sale instance is 421 sq.mtrs. Therefore, after making suitable deductions, this sale instance can be considered comparable.

20. Ms. Mordekar is right that de-escalation at the rate of at least 10% p.a. is warranted because even this sale instance is about two years post the issuance of Section 4 notification. The rate reflected in Exh.14 is ₹950/- per sq.mtr. and in the year 2009, as of the date of issuance of Section 4 notification, this rate will have to be taken at ₹770/- per sq.mtr.

21. The sale instance concerns a developed plot bounded with roads on at least two sides. Some deduction is due towards the size of the plot i.e. 421 sq.mtrs. as compared to the acquired plot i.e. 1680 sq.mtrs. The contention that Exh.13 plot was also an undeveloped plot is not borne out from the evidence because no such statement was made in the chief and in the cross-examination. AW1 simply responded by stating that he does not know about this. On account of these minus factors affecting the acquired land vis-a-vis the land in Exh.14, deduction to the extent of 70% is due from the rate of ₹770/- per sq.mtr. as determined above.

22. This means that the market rate, in this case, will have to be determined at ₹231/- per sq.mtr. This according to me will be the reasonable rate that can be determined in this case. There is evidence that though the acquired land or for that matter Exh.14 plot was not within the limits of Bicholim Municipal

Council, it is not as if such lands were very far from such limits. Besides, there is evidence about the various amenities available though it is true that the acquired plot was not a developed plot as such. The acquired plot had the potential for development, no doubt after incurring expenses. All this is taken into account for making deductions to the extent of 70%. A suitable deduction has also been made because Exh.14 was a post Section 4 notification sale instance.

23. This appeal is accordingly partly allowed and the compensation is determined at ₹231/- per sq.mtr. The statutory benefits including interest will now have to be awarded to the respondent based on this rate of ₹231/- per sq.mtr.

24. If the amount of compensation has already been deposited in this Court by the appellants, then, both the appellant and respondent will be entitled to withdraw the same together with the interest if any that may have accrued thereon after submitting and exchanging calculations. The withdrawals will have to abide by the rate now determined in this Judgment and Order.

25. If any amounts have been withdrawn by the respondent, then, adjustments will have to be made to that extent.

26. The Registry to facilitate the withdrawals by making deposits directly into the account of the respondent and the appellants.

27. The impugned award is modified in the aforesaid terms by partly allowing this appeal. There shall be no order for cost.

M. S. SONAK, J.