IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 71 OF 2017

Ponda Municipal Council,
Through its Chief Officer,
Ponda Municipal Building,
Ponda, Goa. ….. Appellant.

Versus

1. Gurudas S. Talaulikar,
   major of age (age not known)
   Indian National, R/o. 137,
   National Co-operative Society,
   Baner Road,
   Pune 411 007.

2. Dy. Collector & SDO Ponda,
   Sub Division Ponda,
   Ponda, Goa. ….. Respondents.

Mr. Pravan Vaze, Advocate *for the Appellant.*

Mr. J. J. Mulgaonkar, Advocate *for Respondent No.1.*

CORAM : M.S. SONAK, J.

Date : 12th August 2022.

ORAL JUDGMENT :

1. Heard the learned Counsel for the parties.

2. The Appellant-Ponda Municipal Council (PMC) challenges the impugned judgment and award dated 7th December 2015 made by District Judge-2, Panaji, sitting at Ponda (Reference Court) in Land Acquisition Case No.50/2014.

3. By the impugned judgment and award, the Reference Court has enhanced the compensation in respect of the acquired land from ₹988.70 per sq. meter to ₹8,000/- per sq. meter.

4. Mr. Vaze, the learned Counsel for the Appellant, submitted that Section 4 notification in the present case was published on 16th July 2010; therefore, the Reference Court was not justified in relying on the sale deeds dated 31st May 2011 and 26th November 2012 as the post-notification sale deeds. He submitted that even otherwise, the sale deeds were not in respect of comparable properties.

5. Mr. Vaze, without prejudice, submitted that the Reference Court has failed to make appropriate deductions because there was evidence that the sale deed plots were developed. The acquired property was only garden land. He submitted that the Reference Court should have considered that the acquired land, in its entirety, was 16,305 sq. meters, though only a portion of 396 sq. meters may have belonged to Respondent No.1. He submitted that the sale deed plots were developed plots, having road frontage. Lastly, he presents that the acquired property was irregular, unlike the sale deed plots.

6. Mr. Vaze submits that if all these aspects were considered, no case was made for enhancement over and above the rate determined by the Land Acquisition Officer. Mr. Vaze relied on the decisions of the Hon'ble Supreme Court in ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and anr.*** (1988) 3 SCC 751; ***State of H.P. vs. Jail Lal and ors***. - (1999) 7 SCC 280); ***Kasturi and ors. Vs. State of Haryana –*** (2003) 1 SCC 354 and a decision of this Court in ***The Managing Director, Goa State Infrastructure Development Corporation Ltd. vs. Shrikant P. Shirodkar -*** First Appeals No.77 & 78/2015 in support of his contentions.

7. Mr. Mulgaonkar, the learned Counsel for Respondent No.1, submits that there can be no absolute bar for considering the post-Section 4 notification sale instances. He submitted that it is not as if the sale instances were not at all proximate to the Section 4 notification date. He submitted that there is overwhelming evidence about the acquired portion being virtually in the heart of Ponda city and benefiting from several amenities. He submits that before the Reference Court, the Appellant had only objected to the enhancement on the ground that the setbacks would have to be maintained by the Respondent to develop the acquired plot. He submits that such a contention is quite misconceived given the law in ***State of Goa and anr. Vs. Gopal Baburao Gaudo and ors.*** – (2009) 10 SCC 686.

8. Mr. Mulgaonkar, relying on ***Sangunthala (Dead) through L.R.s. Vs. Special Tahsildar (Land Acquisition) and ors***. – (2010) 3 SCC 661 submitted that the acquisition, in this case, was for a parking facility in the heart of the city, and such purpose is a relevant factor. He submits the relative advantage and the facilities available on the acquired land also need to be considered.

9. Mr. Mulgaonkar relied on ***Nelson Fernandes and ors. Vs. Special Land Acquisition Officer, South Goa, and ors***. – (2007) 9 SCC 447 to submit that the valuer's report and the sale instances must be considered to determine the market rate. He also relied on ***A. Natesam Pillai vs. Special Tahsildar, Land Acquisition, Tiruchy*** - (2010) 9 SCC 118 to submit how sale instances can be relied upon, if necessary, by making appropriate deductions.

10. Based on the above, Mr. Mulgaonkar submits that this appeal may be dismissed.

11. The rival contentions now fall for my determination.

12. The Reference Court, in this case, has gone entirely by the sale instances dated 31st May 2011 and 26th November 2012, both, admittedly, post-Section 4 notification sale instances. However, as noted earlier, Section 4 notification was published on 16th July 2010. Therefore, the first sale instance was entered after 11 months and the

second sale instance after about 25 months from the date of publication of Section 4 notification.

13. The two sale instances are regarding plots admeasuring 500 sq. meters and 1450 sq. meters. Though the rate reflected is ₹10,000/- and ₹9,103.40 per sq. meter, a perusal of the two sale deeds shows that they are in respect of developed plots, having several amenities. Therefore, there was no serious dispute about the sale instances relating to developed properties.

14. In contrast, there is no dispute that the acquired land is garden land. Mr. Mulgaonkar, however, pointed out that the acquired land is a part of a larger property that was since sub-divided. One of the sub-divided portions is also developed and has a building.

15. Though there is no evidence about the building, the evidence on record does indicate that the acquired property is quite in the heart of Ponda town and has the benefit of several amenities. Thus, though the acquired plot may not have been developed, it certainly had development potential.

16. The Reference Court has gone by the principle that there is typically a 10% enhancement in land value each year. Accordingly, since the Reference Court was dealing with the post-Section 4 notification sale instances, it has reversed the process and made deductions of 10% or 15% to determine the market rate on the date of

Section 4 notification. In my judgment, this may not be entirely a correct approach. The impact of the acquisition on the rates in the vicinity is a factor that cannot be overlooked. It is on account of this factor that, generally, the post-Section 4 notification sale instances are not taken into consideration again for determining the market rate of the acquired land. However, the sale instances cannot be regarded as totally irrelevant. They have to be considered along with other evidence that establishes the central location of the acquired plot and its development potential.

17. Mr. Vaze may not be right in contending that the Court has to consider the extent of the entire acquired land of 16,305 sq. meters. The Respondent's acquired land admeasures hardly 396 sq. meters. Therefore, ten square meters remained to be acquired, and the Reference Court was justified in holding that severance compensation for this portion was due and payable to the Respondent.

18. Based on this evidence on record, though the rate of ₹8,000/- per sq. meter determined by the Reference Court cannot be justified, even the rate of hardly ₹1,000/- per sq. meter determined by the Land Acquisition Officer would constitute a pittance. However, based on the two sale instances, which reflect the average rate of ₹8,000/- to ₹9,000/- per sq. meter, some deductions will have to be made because this rate may also be relatable to the acquisition, which was for parking

purposes. Further, deductions have to be made because the sale instances were in respect of developed plots and the acquired plot was not a developed plot though it may have had development potential. Therefore, if, based on the two sale instances, the rate as of the date of publication of Section 4 notification is taken at ₹8,000/- per sq. meter, as determined by the Reference Court, a deduction of at least 30% is necessary to decide on the market rate in respect of the acquired plot. Such deduction is conservative only because the acquired plot admeasures hardly 396 sq. meters.

19. Further, considering the law *in Gopal Baburao Gaudo (supra),* no deductions are necessary simply because some of the acquired lands might have had to be left for road widening purposes.

20. Upon cumulative consideration of the above aspects and the decisions relied upon by Mr. Mulgaonkar and Mr. Vaze, the market rate can be determined at ₹5,600/- per sq. meter.

21. *Jai Lal (supra)* relates to appreciating expert evidence in a criminal trial. The passage relied upon by Mr. Vaze does not apply to the present case because here, the expert has visited the acquired plot, and his evidence was not merely a matter of opinion. Still, also he was a witness to several factual aspects like location, amenities, etc.

22. *Shrikant Shirodkar (supra)* accepts that post-Section 4 notification sale instances can be looked into subject to certain caveats.

Accordingly, such caveats have been applied for arriving at the rate of ₹5,600/- per sq. meter, as against the rate of ₹8,000/- per sq. metre as determined by the Reference Court.

23. *Kasturi (supra)* speaks about deductions between 30% to 70% when comparing developed and undeveloped lands. Therefore, applying Kasturi (supra) principles, deductions up to 30% are proposed. *Kasturi (supra)* is, however, not an authority for the proposition that in every case, the deduction has to be to the extent of 70% as was suggested by Mr. Vaze.

24. *Chimanlal Hargovinddas (supra)* sets out the principles for the determination of compensation, and it is by applying those very principles that the rate is scaled down from ₹8,000/- per sq. meter awarded by the Reference Court to ₹5,600/- per sq. meter.

25. For all the above reasons, the appeal is partly allowed. The market rate is scaled down from ₹8,000/- per sq. metre awarded by the Reference Court to ₹5,600/- per sq. metre. The Respondent will be entitled to the statutory benefits and interest proportionate to this scaled-down rate. The award towards severance in respect of additional 10 sq. meters which was not acquired is maintained. However, this will have to be paid at the rate of ₹5,600/- per sq. meter.

26. Suppose the Appellant has deposited the awarded amount in this Court which, it appears the Appellant has. In that case, the Appellant

and the Respondent will be entitled to withdraw the same in the proportions to be determined by taking the market rate as ₹5,600/- per sq. metre in place of ₹8,000/- per sq. metre.

27. The parties should exchange their calculations on such a basis, and if there is no dispute, then the Registry should permit withdrawal on usual terms on furnishing identification documents, bank details, etc. However, if there is any dispute, then, liberty is granted to the parties to apply. The parties will be entitled to proportionate interest that shall have accrued on the deposited amount.

28. The appeal is disposed of in the above terms, without any orders for costs.

M.S. SONAK, J.

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