Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.63 OF 2015

1. Shri Madhav Atmaram Sahakari,
2. Smt. Vijaya Atmaram Sahakari,
3. Shri Krishna Atmaram Sahakari,
   All majors, r/o Curti, Ponda Goa. … Appellants

Versus

1. The Deputy Collector and S. D.O.,
   Ponda Sub Division,
   Ponda Goa.

2. The Executive Engineer,
   Works Division XVIII (Roads)
   P.W.D., Ponda Goa. ...Respondents

Mr. Ryan Menezes, Advocate for the appellants.
Mr. V. Sardessai, Additional Government Advocate for the respondents.

CORAM: M. S. SONAK, J

DATE : 11th February 2022

ORAL JUDGMENT

1. Heard Mr. R. Menezes, learned counsel for the appellants, and Mr. V. Sardessai learned Additional Government Advocate for the respondents.

2. This appeal takes an exception to the judgment and award dated 19.03.2015 in Land Acquisition Case No.27/2006 made by the reference Court. By the impugned judgment and award, the reference

Court has enhanced the market rate in respect of the acquired land from ₹69.33 per sq. mtrs., as determined by the Land Acquisition Officer to ₹390/- per sq. mtrs. The appellants had however claimed compensation at the market rate of ₹1500/- per sq. mtrs. Hence, the present appeal.

3. In this case, vide notification dated 02.01.2004 issued under Section 4 of the Land Acquisition Act, 1894 (the said Act) the Government proposed to acquire the appellants' land admeasuring 1090 sq. mtrs. from survey No.76/0 of village Curti, Ponda Goa, for construction of road from Mestawada, Curti to Prabhunagar in Ponda Constituency.

4. The Land Acquisition Officer by his award dated 13.10.2004 determined the compensation at the rate of ₹69.33 per sq. mtrs. The appellants aggrieved by such determination sought a reference claiming compensation at the rate of ₹1500/- per sq. mtrs.

5. The reference Court vide impugned judgment and award dated 19.03.2015 has determined the compensation at ₹390/- per sq. mtrs.

6. Mr. Menezes submits that there is an error apparent on the face of the record in the impugned award. He points out that at para 21 of the impugned judgment and award the reference Court has possibly mistakenly taken the date of Section 4 notification as 02.01.2000 where in fact the correct date is indisputably 02.01.2004.

7. Mr. Menezes pointed out that it is on account of the aforesaid error that is apparent on the face of the record, the reference Court blindly relied upon the rate of ₹390/- per sq. mtrs. determined in the judgment dated 11.07.2006 (Exhibit 25). He submits that the rate determined in Exhibit 25 was in the context of Section 4 notification dated 18.10.1999. He submits that the reference Court was duty-bound to appreciate escalation in rates from 1999 to 2004 which it has failed to do. He, therefore, submits that the compensation at the rate of ₹1500/- per sq. mtrs. ought to have been awarded.

8. Mr. Menezes submitted that the appellants had produced comparative sale instances at Exhibits 17, 18, 19, 20, and 21. He submits that the sale instance at Exhibit 20 was dated 23.06.1999 and in terms, thereof the market rate as in 1999 would come to ₹975/- per sq. mtrs. He submits that this sale deed was not appropriately considered by the reference Court and based thereon the compensation at the rate of ₹1500/- has been unjustly denied to the appellants.

9. For all the aforesaid reasons, Mr. Menezes submits that this appeal may be allowed and the market rate be determined at the enhanced rate of ₹1500/- per sq. mtrs.

10. Mr. Sardessai learned Additional Government Advocate defended the impugned judgment and award based on the reasoning reflected therein. In particular, he pointed out that the award at

Exhibit 25 was challenged by these very appellants as well as the State by instituting First Appeal Nos. 295 of 2006 and 56 of 2007. However, this Court by judgment and order dated 08.11.2011 finalized the rate of ₹390/- per sq. mtrs. in respect of the property surveyed under No.79(part), 80(part), and 81(part) which were also acquired for construction of a road from the very appellants. He submits that even this road was in the very same vicinity of Curti, Ponda Goa.

11. Mr. V. Sardessai pointed out that the sale deeds the appellants now pressed for consideration including the sale deed at Exhibit 20 were considered in the award at Exhibit 25 which has attained finality. He, therefore, submits that now it is not open to the appellants to once again raise any claim based on the sale deed at Exhibit 25 or for that matter other sale deeds.

12. Mr. Sardessai for the aforesaid reasons submits that this appeal may therefore be dismissed.

13. The reference Court vide impugned judgment and award has quite correctly relied upon the previous judgment and order dated 11.07.2006 in Land Acquisition Case No.71/2001 (Exhibit 25) involving the very appellants whose lands admeasuring 1075 sq. mtrs. 775 sq. mtrs. and 200 sq. mtrs. under Survey Nos. 79, 80, and 81 of Curti, Ponda had been acquired for the construction of a road.

14. According to me, the award at Exhibit 25 was the best evidence and the same was quite correctly taken into account by the reference Court. This award pertains to the property owned by the very appellants. This award pertains to the properties in the immediate vicinity that were acquired for the construction of a road. There is evidence about the comparability of the lands and the reference Court, therefore, was undoubtedly justified in placing reliance on Exhibit 25.

15. Even this Court's judgment and order dated 08.11.2011 in First Appeal No. 295 of 2006 instituted by these very appellants or their near relation (represented by these appellants as the power of attorney holder) and First Appeal No.56 of 2007 instituted by the State indicates that the rate of ₹390/- per sq. mtrs. determined in Exhibit 25 was upheld by this Court.

16. Therefore, the award at Exhibit 25 could have been regarded as the base. However, the reference Court fall into error in not appreciating the rate of ₹390/- per sq. mtrs that was determined in the award at Exhibit 25 was in the context of Section 4 notification dated 18.10.1999. This means that the rate was appropriately determined at ₹390/- per sq. mtrs. as of 18.10.1999. In the present case, Section 4 notification was issued on 02.01.2004 and therefore, the reference Court was duty-bound to consider the impact of escalation between the period 18.10.1999 to 02.01.2004 which the reference Court has failed to take into account.

17. Normally the enhancement at the rate of 10% per annum has to be allowed in such matters. Based thereon, the market rate as of 02.01.2004 would come to approximately ₹580/- per sq. mtrs. Besides, as pointed out by Mr. Menezes, some additional escalation is certainly due because the previous acquisition was for a road and by the year 2004 the price of the property would have appreciated on account of the said road. The market rate can in such circumstances be safely determined at ₹600/- per sq. mtrs. as on 02.01.2004.

18. The contention of Mr. Menezes about the rate being ₹1500/- per sq. mtrs. is based on the sale deeds at Exhibits 17 to 21. Now, most of these sale deeds include in particular the sale deed at Exhibit 20 was already considered by the reference Court in its award at Exhibit 25 made on 11.07.2006. The award at Exhibit 25 was considered by this Court where again a plea was made for enhancement upto ₹1000/- per sq. mtrs. Thus, upon consideration of these very sale deeds including the sale deed at Exhibit 20, the rate of ₹390/- per sq. mtrs. as of 18.10.1999 was approved by this Court. There was no further challenge to the Hon'ble Supreme Court. Therefore, based on this very material, it will not be appropriate to once again consider the sale deeds for any further enhancement.

19. Thus, the market rate, in this case, can be safely determined and is hereby determined at ₹600/- per sq. mtrs. instead of ₹390/- per sq. mtrs. determined by the reference Court in the impugned judgment and award.

20. This appeal is partly allowed to the aforesaid extent. Needless to add that the appellants will be entitled to all statutory benefits corresponding to this market rate of ₹600/- per sq. mtrs.

21. The respondents are directed to deposit the enhanced compensation including all statutory benefits within two months from today. Upon such deposit, the registry to facilitate withdrawal by the appellants directly into the bank accounts to be indicated by them.

22. The appeal is disposed of accordingly. There shall be no order for costs.

M. S. SONAK, J