Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.46 OF 2016

Shri Caetano Nelson Azavedo,
R/o Inan Vaddo, Goltim,
Piedade, Divar, Ilhas Goa … Appellant

Versus

1. Block Development Officer,
Office of the Block Development Officer,
Tiswadi, Panaji Goa.

2. Village Panchayat of
Goltim-Navelim (Piedade),
Having its Office at
Goltim, Piedade, Divar, Tiswadi, Goa.

3. State of Goa,
through its Revenue Secretary. … Respondents

Mr. Andre Pereira, Advocate for the Appellant.
Mr. Manish Salkar, Government Advocate for Respondent Nos. 1 and 3.
Mr. Ryan Menezes and Mr. Nigel Fernandes, Advocates for Respondent No.2.

CORAM: M. S. SONAK, J.

RESERVED ON: 12th August 2022

PRONOUNCED ON: 17th August 2022

JUDGMENT

1. Heard the learned counsel for the parties.

2. The Appellant challenges the judgment and award dated 18.01.2016 made by the Principal District Judge, North Goa, Panaji (Reference Court) in Land Acquisition Case No. 38/2009, dismissing his reference under Section 18 of the Land Acquisition Act, 1894 (the said Act) seeking enhancement of compensation.

3. The Appellant's land, admeasuring 1822 square metres from out of survey No.6/8 (Part) of the village Goltim, Navelim of Tiswadi Taluka, was proposed to be acquired vide Notification under Section 4 of the said Act published on 30.11.2006 for the public purpose of a Panchayat Ghar.

4. The Land Acquisition Officer (LAO), by his award dated 27.12.2007, determined the market rate at ₹200/- per square metre. The LAO also awarded compensation of ₹1,74,062/- for the existing house and ₹15,200/- for the trees. Thus, the total compensation awarded was ₹7,95,306/- together with statutory benefits under the said Act.

5. The Appellant not satisfied with the compensation awarded applied for enhancement up to ₹4500/- per square metre for the acquired land and ₹30 lakhs for the house. However, by the impugned judgment and award dated 18.01.2016, the Reference Court has rejected the reference. Hence, this appeal.

6. Mr. Andre Pereira, learned counsel for the Appellant, submits that oral and documentary evidence justified the enhancement, but such evidence was excluded from consideration. He pointed out that post Notification sale deeds are not always entirely irrelevant, and the same can be looked into after making appropriate deductions. He pointed out that the evidence in the form of such sale deeds and the expert evidence justified the enhancement.

7. Mr. Pereira, without prejudice, pointed out that even the LAO had referred to the sale deed of land bearing Survey No.14/2 in the village of Goltim dated 31.05.2005, which was sold at the rate of ₹251/- per square metre. He pointed out that this land was hardly a kilometer away from the acquired land, and the Reference Court should have at least considered the same for grant of enhancement.

8. Mr. Pereira, therefore, submitted that this appeal may be allowed and suitable enhancement be granted.

9. Mr. Salkar learned Government Advocate for Respondent Nos.1 and 3, and Mr. R. Menezes, learned counsel for Respondent No.2, defended the impugned judgment by relying on the reasoning reflected therein. First, they submitted that the Appellant led no cogent evidence to justify enhancement. Second, they pointed out that the expert visited the acquired land much after the publication of Section 4 Notification. Third, they pointed out that sale instances were post-Section 4 Notification and, in any case, not comparable. Finally, they submitted that the burden was on the Appellant to justify the enhancement, and he did not discharge such burden. Based on all this, they proposed that this appeal may be dismissed.

10. The rival contentions now fall for determination.

11. Mr. Salkar and Mr. Menezes are justified in contending that the evidence on record does not justify enhancement up to ₹4500/- per square metre for the land or ₹30 lakhs for the house. However, that does not mean that the Appellant has not made a case for any enhancement whatsoever.

12. The Appellant has relied upon sale deeds dated 01.08.2007 (Exhibit 20) and 21.11.2007 (Exhibit 21). Though these sale deeds were entered after the publication of Section 4 Notification on 30.11.2006, it is not as if such sale deeds were executed or entered long after the publication of Section 4 Notification. Besides, this was an acquisition for Panchayat Ghar. It was the case of the Respondents that the Appellant's existing house was already being used as a Panchayat Ghar pursuant to some arrangements with the Appellant. Therefore, it is not as if the acquisition impacted the rate in Exhibits 20 and 21. However, Mr. Salkar and Mr. Menezes are justified in contending that such sale deeds cannot be relied upon mechanically without going into the issue of comparability.

13. The sale deed at Exhibit 20 is in respect of property admeasuring 8025 square metres along with the house situated therein. The composite sale price was ₹1.75 crores. However, there is no bifurcation between land price and house price. The sale deed concerns property surveyed under No.4/2 at Goltim, not quite far from the acquired land. The acquired land was also situated in village Goltim and surveyed under No.6/8 (Part).

14. The sale deed at Exhibit 20 and the plan annexed to it shows that the vendor had constructed a house at around 100 square metres. Therefore, even if the house component's price is at ₹75 lakhs, the rate in respect of the land component comes to ₹1246.10 square meters.

15. According to the expert Shri Subhashchandra Narayan Bhobe (CW2), the rate reflected in the second sale deed at Exhibit 21 for the land component works out to ₹625/- per square metre. This sale deed is in respect of a plot admeasuring 8775 square metres at Navelim, Tiswadi Goa. The evidence is that the plots in sale deeds at Exhibits 20 and 21 are about 100 metres from each other.

16. The impugned award refers to the sale deed of 31.05.2005 in respect of land bearing survey No.14/2 in Goltim village, reflecting the rate of ₹251/- per square metre. Even if this rate is enhanced by 10%, then, by 30.11.2006 i.e. the date of publication of Section 4 Notification, the rate reflected would be closer to ₹300/- per square metre.

17. The Appellant and his expert have deposed that they had an old spacious traditional style heritage type house in the acquired property admeasuring 450 square metres having high plinth and good ceiling height, thick laterite masonry, sloppy Mangalore tile roofing and the number of architectural features. There is evidence that the Panchayat

Ghar was operating from these premises. The LAO has awarded separate compensation in respect of this house; the same is ₹1,74,062/-. The expert (CW2) has determined the house valuation at ₹11,47,500/- and the compound wall at ₹35,000/-.

18. In the cross-examination, some suggestions were made about the house being dilapidated and the Panchayat Ghar having to move its office to another place. However, there is evidence about the Panchayat Ghar operating from this house. There are suggestions about the house not admeasuring 450 square metres but only 100 square metres or at least the Panchayat Ghar occupying 100 square metres.

19. According to the expert, the valuation for the house and the compound wall comes to ₹11,82,500/-. This was based upon the house area being 450 square metres. Even if the house area is taken at 100 square metres, the compensation of ₹2,62,777/- at least should have been awarded. The acquired property is situated on the island of Diwar, which has several old Portuguese architecture houses. There is evidence about the acquired property being very close to a five-star hotel. There is evidence of several amenities that were available to the property. The Reference Court was not justified in holding that there was no evidence about electricity and water supply when the evidence points to the existing house used as Panchayat Ghar. Thus, the evidence on record justifies an award of ₹3 lakhs towards the house portion.

20. If the evidence of two sale deeds is taken into account, then the average price could be in the region of ₹800/- to ₹900/- per square metre. However, this is the price post Section 4 Notification. Besides, the sale deeds properties appear to have had much better amenities than the acquired land. The sale deed dated 31.05.2005 relied upon by the LAO and referred to by the Reference Court establishes the rate of ₹251/- per square metre in 2005.

21. Therefore, considering the above evidence, the market rate can be determined at ₹325/- per square metre in place of ₹200/- per square metre determined by the LAO. Accordingly, this appeal is partly allowed. The compensation for the acquired land shall be determined at the rate of ₹325/- per square metre. Concerning the house portion, the compensation is determined at ₹3 lakhs. The Appellant shall be entitled to statutory benefits on this enhanced amount.

22. The Respondents are jointly and severally directed to pay the enhanced amount to the Appellant by depositing the same in this Court within eight weeks from today. The deposit will have to be made after giving due intimation to the Appellant.

23. Upon deposit, the Appellant will be entitled to withdraw the same after furnishing proper identification documents and bank details. Registry to ensure that the amount is paid directly into the bank account of the Appellant.

24. The appeal is partly allowed. There shall be no order for costs.

M. S. SONAK, J.