

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.32 OF 2018

1. Land Acquisition Officer,
PWD Cell, Altinho,
Panaji Goa.
2. The Executive Engineer
WD XV (NH), Ponda Goa. ... Appellants

Versus

Shri Sudan Gopal Pednekar,
Major, married, Indian National,
R/o. Bella Vista,
Near Gautam Hotel,
Sangolda, Bardez Goa. ...Respondent

Mr. Deep Shirodkar, Additional Government Advocate for the appellants.

Mr. Ajit R. Kantak, Advocate for the respondent.

CORAM: M. S. SONAK, J

DATE : 17th March 2022

ORAL JUDGMENT

1. Heard the learned counsel for the parties.
2. The challenge in this appeal is to the judgment and award dated 13.07.2016 made by the Reference Court in Land Acquisition Case No.86/1999 enhancing the compensation for the acquired land from ₹250/- per square meter to ₹475/- per square meter. The reference Court also awarded compensation at the rate of ₹475/- per square

meter in respect of unacquired portion admeasuring 365 square meters by invoking the principle of severance.

3. By notification under Section 4 of the Land Acquisition Act, 1894 (the said Act) dated 25.09.1989 the State proposed to acquire the respondent's land admeasuring 1110 square meters surveyed under No.239 Part of Village Bandora, Ponda Goa (the acquired property) from out of the total area of 1475 square meters in which the respondent had established interest.

4. The Land Acquisition Officer by his award dated 15.03.1992 determined the rate of the acquired land at ₹250/- per square meter. The reference Court initially determined the rate at ₹308/- per square meter but made no award in respect of severance.

5. The State as well as the respondent appealed and this initial award was set aside and the matter remanded to the Reference Court. This Court directed the reference Court to frame an additional issue on severance and to determine the same.

6. Upon remand, the reference Court once again determined the rate at ₹308/- per square meter and awarded 20% of this rate towards severance compensation.

7. The respondent this time appealed to this Court. The appeal was allowed and the matter was once again remanded to the reference

Court for determining the rate for the acquired land and the severance compensation. No cross-appeal or cross-objections were filed by the State challenging the rate of ₹308/- per square meter.

8. Upon remand the reference Court by the impugned judgment and award dated 13.07.2016 has determined the rate for the acquired land at ₹475/- per square meter. The reference Court has also awarded compensation at the same rate of ₹475/- per square meter in respect of the unacquired portion of 365 square meters by invoking the principle of severance. Hence, this appeal by the State.

9. Mr. Shirodkar learned Additional Government Advocate submitted that the reference Court erred in relying upon the sale instance at Exhibit AW1/I dated 01.03.1989 because this sale instance concerns a developed plot located in the heart of Ponda Town very close to Ponda Municipal Council and central commercial zone. He submits that in contrast, the acquired property is in the village of Bandora and consequently incomparable to the plot which was the subject matter of the sale instance.

10. Mr. Shirodkar also pointed out that the sale plot admeasures only 400 square meters and the acquired property admeasures 1110 square meters by excluding the unacquired portion of 365 square meters. He pointed out that Exhibit AW1/I refers to the land price at only ₹1,14,000/- and development cost at ₹76,000/-. He submits that the rate as reflected by Exhibit AW1/I, therefore, comes to ₹285/- per

square meter and not ₹475/- per square meter as was incorrectly held by the reference Court.

11. Mr. Shirodkar submits that the reference Court completely erred in awarding the same rate in respect of the allegedly severed plot of 365 square meters. He submits that there is no evidence about this severed portion being rendered useless and in any case, the respondent continued to own the severed plot. He relied on *Jacinto Baretto Miranda Vs. Deputy Collector and Land Acquisition Officer & Anr¹*, to submit that severance compensation at the rate of 20% of the market rate could have been awarded in this matter. He also relied on common judgment and order dated 01.08.2014 in First Appeal No.27 of 2002 and connected matters to submit that under the same notification much lesser compensation was awarded for the other acquired lands.

12. For all the aforesaid reasons, Mr. Shirodkar submits that the impugned award warrants interference.

13. Mr. Kantak, learned counsel for the respondent has defended the impugned award based on the reasoning reflected therein. He however pointed out that the reference Court was not right in discarding the agreement of sale based on which the respondent acquired an interest in the acquired property almost four years before

the Section 4 notification was issued. He submitted that this agreement reflects the rate of ₹800/- per square meter.

14. Mr. Kantak pointed out that the acquired plot had a conversion sanad, panchayat permission, and approval from the planning authority much before the issuance of Section 4 notification. He submits that the acquired plot was bounded at least two sides by a public road. He submits that from this the reference Court has quite correctly inferred that the acquired property was developed. Mr. Kantak also submitted that the acquired property was virtually touching the boundary limits of Ponda Municipal Council. He submitted that the sale instance at Exhibit AW1/I was at a distance of hardly 800 meters from the acquired property. He submits that the acquired property had benefits of several amenities and was itself a developed plot. Based on all this, Mr. Kantak submitted that there was no warrant for any interference with the impugned award at the behest of the State.

15. Mr. Kantak also pointed out that the severed portion of 365 square meters was rendered completely useless due to setbacks etc. He submitted that there was no error on the part of the reference Court in awarding the same rate as was awarded for the acquired property. He relies on *Shamba Sinai Budkule and others Vs Addl. Deputy Collector and Land Acquisition Officer & Anr.*², where compensation at the same rate was awarded to the severed portion.

16. Mr. Kantak pointed out that the decision in First Appeal No.27 of 2002 and connected matters will not apply because in this case clear and cogent evidence has been led by the respondent.

17. Based on the aforesaid, Mr. Kantak submitted that this appeal may be dismissed.

18. The rival contentions now fall for determination.

19. The first point to be determined is the rate that will be appropriate in respect of acquired property admeasuring 1110 square meters at Bandora, Ponda Goa. The reference Court has relied upon Exhibit AW1/I and based upon the same determined rate of ₹475/- per square meter.

20. Though I agree with the reasoning of the learned reference Court that the sale instance at Exhibit AW1/I was indeed a comparable instance, I do feel that upon comparison, some deductions were required to be made from the rate of ₹475/- per square meter that was reflected in the sale instance at Exhibit AW1/I.

21. The evidence on record reflects that the plot which was the subject matter of sale instance at Exhibit AW1/I admeasured 400 square meters and was completely developed. The evidence on record establishes that this was a proper sub-divided plot having the benefits of several amenities like open spaces, roads, etc. Besides, this plot was a

part of a developed layout which in turn comprises some plots that were zoned as a central commercial zone in the Ponda zoning plan.

22. Though, plot No. R13 that was the subject matter of sale instance at Exhibit AW1/I may not have itself been a plot in a commercial zone, the material on record establishes that this commercial zone was a part of the entire developed layout and such commercial plots were therefore hardly some meters away from the plot R13. The evidence on record also establishes that this entire area where the development has taken place was virtually in the heart of Ponda Town. It was very close to Ponda Municipal Council and it was surrounded by several residential and commercial developments.

23. In contrast, the acquired property was in the village of Bandora. Mr. Kantak submitted that the acquired plot was virtually touching the limits of Ponda Municipal Council. Though there is no clear evidence on this aspect, there is evidence that the acquired property was at a distance of about 800 meters to a kilometer from the sale instance at Exhibit AW1/I. To that extent, the submission of Mr. Kantak can be accepted that the acquired property was virtually on the outskirts of Ponda Municipal Council limits. Nevertheless, the fact remains that the acquired property was within the limits of the village panchayat of Bandora and almost one kilometer away from the heart of Ponda Town where the plot in the sale instance at Exhibit AW1/I was situated. This factor alone calls for reasonable deductions.

24. Secondly, the plot which was the subject matter of sale instance at Exhibit AW1/I admeasured only 400 square meters. In contrast, the acquired property admeasures 1110 square meters i.e. almost three times the size of plot R13. This also calls for some deductions from the rate of ₹475/- per square meter as is reflected in the sale instance at Exhibit AW1/I. The demand for smaller developed plots is much greater because a greater number of buyers are usually available to buy such smaller and fully developed plots as compared to larger plots.

25. However, except for the above two significant negative factors, the acquired property also had several positive factors which will contribute to sustaining at least some of the enhancement awarded by the reference Court. For instance, Mr. Kantak pointed out that even before issuance of Section 4 notification, the respondent had already secured a conversion sanad, permission from the panchayat, and approval from the planning authority for the construction of a residential house in the acquired property. The evidence on record establishes that the acquired property was bounded at least two sides by a public road. There is evidence that the acquired property was substantially developed and in that sense the plot at Exhibit AW1/I and the acquired property were comparable to each other.

26. Mr. Kantak tried to place reliance upon agreement for sale dated 22.12.1985 based upon which the respondent claims to have acquired an interest in the acquired property. The reference Court for very cogent reasons has discarded this agreement which reflects the

rate of ₹800/- per square meter way back in the year 1985. Even the expert examined on behalf of the respondent deposed that in the year 1988-1989 the rate was between ₹350/- to ₹595/- per square meter in respect of developed plots. At the stage when the agreement dated 22.12.1985 was purportedly entered the acquired property was admittedly not developed. Therefore, the reference Court was quite justified in casting serious doubt on this agreement.

27. The agreement is not registered. The vendors were not examined as witnesses. The affidavit filed by the vendors before the LAO was never tested in the cross-examination. Even the affidavit makes a bare statement that the entire consideration was received without referring to the precise amount of consideration. Some receipts of payment up to ₹9,00,000/- were produced but were never proved. Such receipts cannot be even regarded as legal evidence. The shortfall was simply sought to be explained by stating that no receipts are available. All payments were purportedly made in cash. These are more than ample circumstances to not only doubt the genuineness of the agreement for sale but to sustain the findings of the reference Court discarding the same.

28. Based on the evidence on record, therefore, the sale instance at Exhibit AW1/I can be considered as a comparable instance after making suitable deductions for the two negative factors discussed above. In my opinion, the deductions to the extent of about 15% to 20% would be appropriate. A deduction of 15% would mean that the

market rate can be taken at ₹403.75 per square meter. A deduction of 20% would mean the market rate can be taken at ₹380/- per square meter.

29. In the peculiar facts of the present case, however, I am inclined to determine the market rate at ₹403.75 which can be rounded to ₹405/- per square meter. This is because there is some merit in the contention of Mr. Kantak that the respondent had taken efforts to obtain permission from the authorities for putting up a residential house in the acquired property and just before he could construct his house, the property was acquired. Mr. Kantak also pointed out that the respondent incurred expenses for obtaining such permissions and is required to be compensated for that purpose. Therefore, the market rate of the acquired property can be determined at ₹405/- per square meter.

30. Now coming to the severance compensation, Mr. Shirodkar is quite right in his submission that the compensation could not have been awarded at the same rate at which the compensation has been awarded for the acquired property. The respondent continues to retain an interest in the severed portion of 365 square meters. Both the respondent as well as the expert witness Mr. Bruno Furtado (AW2) did depose about the setbacks that would have to be maintained to construct something in the severed portion. However, both of them claimed that they had not calculated the area that would have to be left for setbacks and the areas that would remain for construction

purposes. At least the expert should have made such calculations. The expert was specifically asked this question in cross-examination but he accepted that he had not done this crucial calculation.

31. Therefore, the reasoning of the reference Court that the severed portion was rendered completely useless cannot be accepted. The severed portion, no doubt, would suffer from certain restrictions that would otherwise not apply if there were no acquisitions. Based upon all this, the compensation of at least 50% of the market rate can be awarded to the respondent. The decisions in *Shamba Sinai Budkule* (supra) relied upon by Mr. Kantak and *Jacinto Miranda* (supra) relied upon by Mr. Shirodkar turn down on facts. Neither of the decisions lay down any legal proposition that the severance compensation has to be to the extent of 100% of the market rate or 20% of the market rate. These are the matters that will have to be determined on the case-to-case basis and the evidence that the parties led before the Court. Based on evidence on record, I think that the severed portion of 365 square meters will have to be compensated at the rate of ₹202.50 per square meter.

32. The decision in First Appeal No.27 of 2002 and the connected matters is distinguishable because the same does not pertain to the areas entirely comparable to the area in which the acquired property was located. This was a case of acquisition for the bypass which covers considerable distance and therefore, traverses through several panchayats and municipal areas. The decision in the First Appeal turns

on evidence led by the claimant therein. This matter will have to be decided based on the evidence led by the parties in this reference.

33. For all the aforesaid reasons, this appeal is partly allowed and disposed of by making the following order:

- (a) The impugned judgment and award is modified and the rate of ₹475/- is reduced to ₹405/- per square meter in respect of acquired property admeasuring 1110 square meters;
- (b) The compensation in respect of unacquired portion of 365 square meters is determined at the rate of ₹202.50 per square meter;
- (c) The impugned award is modified to the aforesaid extent only;
- (d) Rest of the directions about payment of interest and other statutory benefits are maintained;
- (e) Parties are permitted to proportionately withdraw the amount that has been deposited by the appellants in this Court together with the proportionate interest that might have accrued on the said amount;
- (f) The parties can file their calculations before the registry and make their withdrawals;
- (g) Parties to furnish their bank details so that the amount can be directly deposited in their bank accounts;
- (h) There shall be no order for costs.

M. S. SONAK, J