Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.86/2017

The Executive Engineer,
Work Division XVII,
Fatorda, Ponda, Goa. ... Appellant.

Versus

1. Smt. Swarupa Mohandas Naik,
r/o. Simepaine, Mardol, major of age
Ponda, Goa.

2. Mohandas Krishna Naik,
r/o. Simepaine, Mardol, major of age
Ponda, Goa. ... Respondents.

Mr. Maria Correia, Additional Govt. Advocate *for the Appellant*.

Mr. Sameer Pundalik Khedekar, Advocate *for the Respondents.*

CORAM: M. S. SONAK J.

DATED: 11th March 2022

ORAL JUDGMENT:-

1. Heard Ms. Maria Correia for the Appellant and Mr. Sameer Khedekar for the Respondents (Claimants).

2. This appeal is directed against the Judgment and Award dated 30/11/2015 made by the Reference Court in Land Acquisition Case No.44/2014, enhancing the compensation in respect of the acquired land from ₹ 53/- per sq. meter to ₹ 250/- per sq. meter.

3. By a notification under Section 4 of the Land Acquisition Act, 1894 (said Act) dated 2/5/2005, the Appellant proposed to acquired the Claimants' land admeasuring 1362 sq. meters surveyed under No.395/1, Marcaim, Goa for a public purpose of road widening.

4. The Land Acquisition Officer (LAO), by his Award dated 29/8/2007, determined the rate of the acquired land at ₹ 53/- per sq. meter and offered the same to the Claimants. The Claimants, dissatisfied with the offer, sought a reference under Section 18 of the said Act, which came to be registered before the Reference Court as Land Acquisition Case No.44/2014. By the impugned Judgment and Award dated 30/11/2015, the Reference Court has now enhanced the rate to ₹ 250/- per sq. meter. Hence this appeal by the State.

5. Ms. Maria Correia, learned Addl. Govt. Advocate pointed out that the sale deeds relied upon by the Reference Court were post-Section 4 instances. She pointed out that the sale instances at Exhibits 18 and 19 were executed 55 and 71 days after the date of issuance of Section 4 notification. She submitted that the possibility of the rates being hiked up in anticipation of the acquisition, cannot be ruled out.

6. Ms. Correia submitted that the sale deeds, in any case, were not comparable sale instances because, the sale deed plots were developed plots, situated at quite a distance from the acquired property. She states that the evidence about the nature of the plots was quite confusing with both, the Claimants and their expert taking contrary stances. She submits that the Reference Court has not made any suitable deductions when comparing a developed plot with an undeveloped plot, like the acquired property.

7. Ms. Correia submits that there is evidence that the acquired property was zoned as an orchard. She submits that the acquired property or rather a portion of it fell within the road widening areas. All these factors have not even been considered by the Reference Court and based upon the two sale instances, the rate has been enhanced to ₹ 250/- per sq. metre.

8. Ms. Correia points out that there is no evidence of whether the amenities deposed to by the Claimant were in existence at the time of issuance of Section 4 notification. She points out that the expert valuer (AW.2) admitted that he had not visited the sale deed plots before preparing his opinion or deposing in the Court.

9. For all the aforesaid reasons, Ms. Correia submits that this appeal may be allowed and the impugned award be set aside.

10. Mr. Sameer Khedekar, learned Counsel for the Claimants defends the impugned Award based on the reasoning reflected therein. He pointed out the various amenities that attach to the acquired property. He pointed out that there was clear evidence that these amenities are available for the last 25 years, or thereabouts. He pointed out that the acquired property is near the Marcaim Industrial Estate and several developments have taken place around the acquired property.

11. Mr. Khedekar submitted that the sale instances are of the plots in the same village. He submits that the sale instances are hardly a few days or a couple of months after issuance of Section 4 notification. He pointed out that suitable deductions have been made by the Reference Court and, therefore, there is no warrant for interference.

12. Mr. Khedekar relies on ***State of Goa and another vs. Gopal Baburao Gaudo and ors.*** (2009) 10 SCC 686 to submit that the lands within the road widening areas also deserve to be compensated. He relies on ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and anr.*** (1988) 3 SCC 751 to point out that the acquired land has several positive factors to its credit.

13. For all the aforesaid reasons, Mr. Khedekar submits that this appeal may be dismissed.

14. The rival contentions now fall for my determination.

15. In this case, AW.1 (Claimant) has deposed that the acquired land is ideally situated near residential areas, schools, hospitals, famous football ground, market, and educational institutions. He also deposed that the acquired land is very close to the famous Navdurga Temple.

16. AW.1 also significantly deposed that the acquired land did not require any development work as it was level and could be easily used for establishing SSI units, godowns, etc. He deposed that the acquired land has a great potentiality for development, particularly, because it abuts the main road leading to Marcaim Industrial Estate. He has also deposed to the acquired land having facilities like water connection, telephone, transportation, etc. He also deposed that even he had purchased this land for putting up an SSI unit.

17. In the cross-examination, there was no serious challenge to the aforesaid deposition. All that has come in the cross-examination is that AW.1 was unaware whether the acquired land has been zoned as orchard land. AW.1 also stated that the sale deed plots were cashew plantations and denied that the sale deed plots were developed plots.

18. On the aspect of the sale deed plots not being developed plots, the deposition of AW.1 cannot be accepted. This is because the expert (AW.2), who was examined by the Claimants, in his deposition, clearly admitted that the sale deed plots were developed plots. Ms. Correia also pointed out to the sale instances at Exhibits 18 and 19 which contain a recital that the two plots admeasuring 313 and 370 sq. meters were indeed sub-divided.

19. The evidence on record, therefore, indicates that the acquired land was undeveloped, but had the potential for development. The acquired land also had certain advantages over the sale deed plots, particularly because the sale deed plots were almost about a kilometer or two, away from the acquired land and, therefore, the amenities spoken of by AW.1 were also at this distance from the sale deed plots. Besides, there is evidence that one of the sale deed plots, was slightly in the interior.

20. In ***Chimanlal Hargovinddas*** (supra), the Hon'ble Supreme Court has held that 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 the development prospects. The two sale instances are hardly a few days after issuance of Section 4 notification and, therefore, they pass proximity muster. Though Ms. Correia tried to urge that the sale instances are not genuine, such a contention cannot be accepted. There is nothing on record to establish the genuineness of such sale instances. No suggestions were put to AW.1 and AW.2 about the genuineness of the sale instances. There is also no evidence that the price which is reflected in the sale instances was inflated or otherwise increased on account of the resultant improvements in the development process.

21. The sale instances concern plots admeasuring 313 and 370 sq. meters, respectively, and the acquired land, in this case, is 1362 sq. meters. The acquired land is almost four times bigger than each of the stale deed plots. It is not as if the acquired land is some small area and, therefore, incomparable with the sale deed plots. The sale deed plots are in the same village and can be safely taken as an exemplar, though some deductions are certainly warranted for some of the factors adverted by Ms. Correia.

22. Normally, when a developed plot is being compared with an undeveloped plot, deductions that can range between 20% to

70%, can be made depending upon the fact situation. In this case, the evidence on record bears out that the acquired property would not have required too much expenditure for its development. There is also evidence that the acquired property was level land and there is no serious dispute that the acquired property is abutting the main road. The acquisition is itself for the widening of this main road. Though some deduction is due because the sale instances are of a few days after issuance of Section 4 notification, the deduction on this score need not be too much.

23. Upon considering the plus and the minus factors that obtain in this case, a deduction of approximately 33% will be appropriate when comparing the rates reflected in the sale instances and the rate of the acquired land. The rate of the plot in the sale instance is ₹ 300/- per sq. meter. Therefore, the rate in respect of the acquired property can be safely determined at ₹ 200/- per sq. meter. The Reference Court, in this case, was not justified in making only a 5% or 10% deduction and determining the market rate at ₹ 250/- per sq. meter. Deductions to the extent of 33% were warranted in the present case because of the comparison between the developed plots and the undeveloped property.

24. In ***Gopal Baburao Gaudo and ors.*** (supra), the Hon'ble Supreme Court has held that a long strip of land measuring two-thirds of acre adjoining highway, cannot be treated as a land without value or without any potential for development, merely because that strip of land fell within the road widening areas and construction was prohibited therein. The Hon'ble Supreme Court held that the potential of such land could be realized by annexing or merging said strip of land with land to its rear. In that event, the strip of land would become access to rear side land from the main road and would also become a frontage of the aggregate land, thereby enhancing the potential and value of rear side land, as also creating a potential for its use. In that case, the rate of ₹ 200/- per sq. meter was approved based on Section 4 notification dated 14/2/1991 in Curti Village for construction of the Ponda Bypass.

25. Upon overall consideration of all the above factors, as well as the evidence on record, this Appeal will have to be partly allowed and the rate will now have to be determined at ₹ 200/- per sq. meter, instead of ₹ 250/- per sq. meter determined by the Reference Court. The other directions in the impugned Award about payment of statutory benefits, solatium, interest, etc. warrant no interference.

26. This Appeal is partly allowed. The rate in respect of the acquired land is now determined at ₹ 200/- per sq. meter. Except for this modification, other directions in the impugned Award are not interfered with and maintained.

27. The Appellant has deposited the awarded amount in this Court. The Respondents (Claimants) will now be entitled to withdraw from the deposited amount the compensation at the rate now determined, together with proportionate interest. The Appellant will be entitled to withdraw the balance amount, together with proportionate interest. Registry to facilitate the withdrawals. The Respondents (Claimants) will have to furnish identification and bank details so that the Registry can transmit their shares in their respective bank accounts.

28. The Appeal is disposed of in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL Date: 2022.03.14 11:29:16 +05'30'