

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.18/2017

1. Shri Cholu D. Rosar
2. Smt. Ganga C. Rosar
3. Smt. Abolem M. Rosar
4. Shri Vitu Rosar
5. Smt. Shevtu V. Rosar
6. Shri Mahadeo Rosar (deceased)
by his heirs and legal representatives
- (a) Rama alias Ramdas Mahadeo Rosar @
Parvatkar
- (b) Narendra Mahadeo Rosar @ Parvatkar
- (c) Ashok Mahadeo Rosar @ Parvatkar

All major of age,
all residents of H.No.271,
Near Railway Bridge,
Corlim Malar, Tiswadi-Goa.

... APPELLANTS

Versus

Special Land Acquisition Officer,
North Goa District, (KRC),
Panaji-Goa.

...RESPONDENT

Mr. P. Kholkar, Advocate for the Appellants.

Mr. E. Afonso, Advocate for the Respondent.

CORAM: M. S. SONAK, J.

Reserved on: 18th February 2022

Pronounced on: 22nd February 2022

JUDGMENT:

1. Heard Mr. P. Kholkar, learned Advocate for the appellants, and Mr. E. Afonso learned Advocate for the respondent.

2. This appeal is directed against the Judgment and Award dated 28.12.2015 made by the Reference Court in Land Acquisition Case No.244/1996 dismissing the appellants' reference under Section 18 of the Land Acquisition Act, 1894 (said Act).

3. The Government vide notification dated 13.06.1991 under Section 4(1) of the said Act, acquired the appellants' property admeasuring 19,564 sq. mtrs. surveyed under No.110 (P) of village Ella, Tiswadi Taluka for the public purpose of construction of a new B.G. Line between Roha and Mangalore in the villages of Ella and Carambolim, Tiswadi Taluka, Goa.

4. The Land Acquisition Officer (LAO) by his Award dated 03.01.1994 determined the market rate of the acquired land at ₹30/- per sq.mtr. The appellants sought reference under Section 18 of the said Act claiming compensation at ₹400/- per sq.mtr. The Reference Court vide Award dated 18.12.2003 rejected the reference. This Court vide its Judgment and Order dated

12.08.2011 set aside the Award dated 18.12.2003 and remanded the matter to the file of the Reference Court to decide the reference afresh after allowing all the parties to lead further evidence in the matter. The Reference Court did permit the parties to lead further evidence but by the impugned Award dated 28.12.2015, once again dismissed the reference. Hence this appeal by the appellants/claimants.

5. Mr. Kholkar, learned Advocate for the appellants submits that the Reference Court has failed to consider the evidence on record and apply the correct principles in matters of determining the market rate in land acquisition cases. In particular, he submitted that the evidence led by the appellants after remand was either not assessed at all or not properly assessed. The reasons in the impugned award for rejecting this further evidence are untenable. On these grounds, he submits that the impugned award warrants interference.

6. Mr. Kholkar submits that under the very same notification, comparable land in the immediate adjacent village of Carambolim was acquired and this Court determined the market rate as ₹90/- per sq.mtr. He pointed out that this land was almost one km. away from the national highway and in contrast, the appellants' land was touching the national highway. He submits

that there was evidence of comparability on record which has not been properly appreciated by the Reference Court. Based on the instance at Exh.53 alone, the market rate should have been determined much above ₹90/-per sq.mtr. He submits that if the instance at Exhs.54 and 55 were to be properly considered, then, the compensation at the rate claimed deserved to be awarded.

7. Mr. Afonso learned Advocate for the respondent (Konkan Railway) defended the impugned award based on the reasoning reflected therein. He submitted that in such matters it is not sufficient to produce sale instances or awards but evidence about comparability is crucial. He submits that there was no evidence about comparability and therefore the reference was correctly rejected by the Reference Court.

8. Mr. Afonso submits that the Award at Exh.53, though under the same notification, was in respect of the land in a different village i.e. Carambolim. He submits that this Award was in respect of a developed property admeasuring 4000 sq.mtrs. that was used for industrial purposes. In contrast, the acquired land in the present appeal had a water body and a paddy field. He pointed out that no evidence about the yield and income was led by the appellants. He, therefore, submitted that the impugned award is quite correct and warrants no interference.

9. The rival contentions now fall for my determination.
10. In this case, as pointed out earlier, the Reference Court vide its Award dated 18.12.2003 had dismissed the reference that was registered as Land Acquisition Case No.244/1996.
11. The above Award dated 18.12.2003 was set aside by the Division Bench of this Court vide Judgment and Order dated 12.08.2011 after making the following significant observations at para 7:

“7. The above appeal was heard along with First Appeal No.23/2004 in view of an order passed by this Court dated 12/04/2004. The parties agree that the land involved in both the appeals was sought to be acquired pursuant to the same notification. Considering the contention of Shri Kholkar to the effect that the appellants desire to produce the judgments/awards passed by this Court determining the market value of the land in other land acquisition proceedings, which according to him are comparable to the land acquired, we find that based on the evidence on record there is nothing to suggest the comparability of the land acquired herein with the land which was the subject matter of the said judgments referred to by this Court whilst disposing of First Appeal No.23/2004. The matter therein has been remanded to the Reference Court for a fresh decision of the reference after permitting the appellants to produce the judgments and awards passed by this Court and adduce evidence to establish the comparability, if any. No doubt the respondents will be at liberty to lead evidence in rebuttal to dispute any such evidence adduced

by the appellants. For the reasons stated in the said judgment passed today, there is no reason not to pass similar orders in the recent proceedings. The point for determination is answered accordingly."

12. After remand, the parties led fresh evidence before the Reference Court.

13. Cholu D. Rosar, the first appellant *inter alia* produced on record the Judgment and Award dated 31.03.2011 (Exh.53) made in First Appeal Nos.39 and 232 of 2006 in which this Court determined the market rate of the land that was the subject matter of the said appeals at ₹90/- per sq.mtr. Cholu deposed that the land which was the subject matter of Judgment and Award dated 31.03.2011 was also acquired by the Government under the very same notification dated 13.06.1991. He deposed that this land was belonging to Smt. Maria Manuela S. De Sequeira and was located in the immediately adjacent village of Carambolim (Sequeira land). He deposed that the Sequeira land was similar to the acquired land.

14. Cholu also produced on record the Award dated 20.06.2001 in First Appeal No.234/2000 (Exh.54), Award dated 15.10.1998 in First Appeal No.87/1996 (Exh.55) and Award dated 05.07.2010 in First Appeal No.103/2001 (Exh.56). The

awards at Exhs.54 and 55 concern the acquisition of the year 1985 and the award at Exh.56 concerns the acquisition of the year 1982. Since in this case, the award under the same notification (Exh.53) is available on record, there is no reason to advert to the awards at Exhs.54 and 55 that determine the rate almost six years before the date of issuance of Section 4 notification in the present case and Exh.56 which determines the rate almost ten years before the date of issuance of Section 4 notification.

15. Cholu Rosar was cross-examined in this matter *inter alia* in the context of the award at Exh.53. He admitted that in the Sequeira land there was a small structure in which Coca-Cola crates were stored. He denied the suggestion that the Sequeiras had purchased small developed plots. He stated that the Sequeira property admeasured around 6000 sq.mtrs. and denied the suggestion that the Sequeira property was less than 500 sq.mtrs. He denied the suggestion that the Sequeira property was not comparable to the acquired property. The rest of the cross-examination is not relevant because it is in the context of the awards at Exh.54, 55, and 56.

16. Before the remand, the appellants had examined Kiran Kumar Gedam (AW6) as an expert witness. The evidence of

AW6 was rejected by the Reference Court by simply observing that this expert had visited the acquired property much after the Section 4 notification. This was not correct because Mr. Abhay Dhuri (DW1) who deposed on behalf of the respondent has categorically admitted in his evidence that except for the construction of the railway track, the remaining portion of the acquired land was in the same state as it was at the time of issuance of Section 4 and Section 6 notifications. This statement was made by DW1 sometime in the year 2014.

17. Besides, even otherwise the entire evidence of Kiran Kumar Gedam (AW6) was incorrectly rejected by the Reference Court. For example, AW6 deposed that the acquired plot admeasured 19,564 sq.mtrs. out of which the area in the settlement zone was 12,490 sq.mtrs. and in the agricultural zone was 8874 sq.mtrs. He deposed that even the land in the agricultural zone can be converted into a settlement zone after seeking permissions from the Planning Authorities, etc. Most importantly he deposed that the Regional Plan classifying the lands in the settlement zone and agricultural zone was prepared in the year 1990 and he even produced a plan in support of this statement. Further, he deposed that the position which obtained in the year 1990 continues till date (AW6 deposed this on 11.09.2001). AW6

deposed that he has confirmed from records that there were no changes in the zones.

18. Though AW6 was extensively cross-examined, there was no dent in his evidence on the aspect of zoning of the property. At the highest, some dent was made in the evidence about the sale instance dated 02.04.1997 concerning the Madkaikar Builders. In this matter, it is not proposed to rely upon this sale instance. However, the evidence about 12,490 sq.mtrs. of the acquired property being in the settlement zone and the balance 8874 sq.mtrs. being in the agricultural zone is relevant and was incorrectly ignored or rejected by the Reference Court.

19. Mr. Abhay Dhuri (DW1) was examined on behalf of the respondent-Konkan Railway. In his affidavit in evidence at para 6, all that he deposed in the context of Exh.53 and the Sequeira land is as follows:

“ 6) *The land of Manuela Sequeira is a developed plot and not comparable to the acquired land ?*”

20. Mr. Abhay Dhuri (DW1), in his cross-examination, admitted that the acquired land admeasured 19,564 sq.mtrs. and was touching the National Highway-4 (NH-4). He admitted that

the petrol pump would be at a distance of 500 mtrs. from the acquired land. He claimed that he could not say anything to the suggestion that the Ella Farm was at a distance of 200 mtrs. from the acquired land. He admitted that there were residential houses and buildings on either side of the road as one proceeds from the acquired land upto the by-pass junction. He claimed not to know whether there existed a petrol pump at a distance of 50 mtrs. from the bridge and the acquired land. He admitted that after Ella village lies the Khorlim Industrial Estate of Khorlim village. He also produced the plan of the acquisition (Exh.72). He identified the acquired land on the said plan with the alphabet 'C'. He deposed that the acquired land was on the lower side and it has not been developed till the date of his deposition (28.07.2014) except for the laying of a railway track.

21. Mr. Abhay Dhuri (DW1) admitted that except for the construction of the railway track the remaining portion of the acquired land was in the same state as it was at the time of issuance of Section 4 and Section 6 notifications. He however denied that the area surrounding the acquired land is well developed by the construction of buildings. He denied the suggestion about the acquired property falling within the settlement zone of Ella village.

22. Mr. Abhay Dhuri (DW1) in his cross-examination admitted to the acquisition of the Sequeira property under the same notification. He initially claimed that he was not aware of the market rate determined in the said case. However, later on, he admitted that this Court vide Exh.53 had determined the market rate at ₹90/- per sq.mtr.

23. Mr. Abhay Dhuri (DW1) deposed that the acquired land was in the village of Ella and the Sequeira property was in the village of Carambolim which are two different villages. He also claimed that the Sequeira property was a developed property and an open plot. He denied the suggestion that the Sequeira property was not developed. He claimed that he did not know whether the acquired land has a better potential than the Sequeira property. He admitted that the Sequeira property is at a distance of 1 km. from the national highway alongside the railway track and that the acquired land was touching the national highway. He admitted that the properties of Khorlim and Carambolim adjoin the village Ella.

24. Mr. Abhay Dhuri (DW1) was specifically asked in his cross-examination the basis on which he stated that the Sequeira property was a developed plot. To this, he only responded by saying that according to him the Sequeira property was a

developed plot *"because it is an open land"*. He denied any knowledge about a construction project known as Edmar Apartments in the near vicinity of the acquired land at Ella that was also touching the NH-4. He denied about the existence of Vijaynagar Housing Society at a distance of about 300 mtrs. from the acquired land. He however admitted that the old railway bridge constructed by the Konkan Railway was touching the acquired property. He denied knowledge whether the acquired property was shown in the settlement zone in the Regional Plan of 1990.

25. Thus, Mr. Abhay Dhuri (DW1) apart from saying that the Sequeira land was a developed plot failed to justify this statement even though he was repeatedly questioned about the same. He however admitted that the petrol pump, residential and other buildings were in the near vicinity of the acquired lands. He admitted that the Khorlim Industrial Estate of Khorlim village was in the village adjacent to Ella village where the acquired property was located. He admitted that the Sequeira property was at a distance of 1 km from the national highway but the acquired property was touching the national highway. He also admitted that the villages of Khorlim and Carambolim adjoin the village Ella where the acquired property was located. He simply

denied knowledge about the several projects that had come up in the near vicinity of the acquired property.

26. On assessment and evaluation of the aforesaid evidence on record including the evidence of AW6 on the aspect of zoning and the evidence in form of Exh.53 concerning the Sequeira property in the adjoining village, a case has been made out for grant of enhancement by treating Exh.53 as the basis.

27. Exh.53 concerns the Sequeira property admeasuring around 4000 sq.mtr. There is evidence that there was a small structure in this property that was used for the storage of Coca-Cola crates. However, there is no evidence that this property was developed or that this property is comprised of small plots of 500 sq.mtrs. each as was sought to be suggested in the course of the cross-examination. DW1 Abhay Dhuri did describe the Sequeira plot as a developed plot but was unable to elaborate on this aspect or state why he regarded the Sequeira property as developed property. At one stage he merely deposed that because the Sequeira property was open property he regarded the same as developed property. Cholu Rosar has deposed about the comparability of the acquired property and the Sequeira property. Therefore, there is evidence of comparability.

28. As noted earlier the Sequeira property admeasured 4000 sq.mtrs. and the acquired property admeasures 19,564 sq.mtrs. To that extent, the Sequeira property would require fewer expenses for actual development. Similarly, the existence of shed/structure in the Sequeira property suggests that the same was also in the settlement zone. The area of 12,490 sq.mtrs. from the acquired property was in the settlement zone and the balance 8874 sq.mtrs. was in the agricultural zone.

29. But, the acquired property had certain advantages over the Sequeira property. The acquired property was touching NH4 and also an old railway bridge. In contrast, the Sequeira property was almost 1 km away from NH4. There is evidence about the acquired property being in close vicinity of Industrial Estate and residential and other building projects, petrol pumps, and other amenities.

30. Merely because the Sequeira property was situated in the adjacent Village of Carambolim and the acquired property was situated in Ella, there is no scope to hold that the two properties were not comparable. The two properties were acquired for the very same purpose. Though this may not be a relevant factor, the evidence on record does indicate that the two properties were very much comparable. The two properties were in the villages

adjoining each other. The distance between the two properties was also not much. There were some plus factors concerning the acquired property and some minus factors as discussed above. Upon consideration of all these factors, the market rate will have to be determined by treating Exh.53 as the basis.

31. In Exh.53, this Court by its Judgment and Order has determined the market rate of the Sequeira property as ₹90/- per sq.mtr. There is no appreciable difference between at least the portion of the acquired property admeasuring 12,490 sq.mtrs. situated in the settlement zone. The topography and other features of this portion are almost similar to the Sequeira property. Further, the acquired property was touching NH4 and the Sequeira property was 1 km away from NH4. On the balance of these factors, the rate in respect of 12,490 sq.mtrs. of the acquired property falling within the settlement zone can be determined at ₹72/- per sq.mtr. by making a deduction of up to 20% from the rate of ₹90/- per sq.mtr. determined by this Court in Exh.53 in the context of Sequeira property.

32. Insofar as the balance area of 8874 sq.mtrs. of the acquired property which falls within the agricultural zone, the market rate can be determined at ₹54/- per sq.mtr. by making a deduction of up to 40% from the rate of ₹90/- per sq.mtr. determined by this

Court in Exh.53. Such deduction at 40% is warranted because additional expenditure will have to be incurred for converting this property from an agricultural zone to a settlement zone. Even this portion of the property, as noted earlier, touches NH4 in contrast with the Sequeira property which was almost 1 km away from NH4.

33. The Reference Court in this case has attempted to consider the evidence in the form of Exhs.53, 54, 55, and 56 altogether and has thereafter chosen to reject all these instances without evaluating the evidence on record about each of such instances. In this matter, as noted earlier the most comparable instance is Exh.53 and therefore, there is no necessity to consider the awards in Exhs.54, 55, and 56. If there was no comparable instance under the very same notification dated 13.06.1991, then, possibly, the instances under the previous notifications could have been taken into account. The Reference Court was however not justified in rejecting all the instances produced on record by the appellants, including in particular Exh.53.

34. For all the aforesaid reasons this appeal is partly allowed and the market rate in respect of the area of 12,490 sq.mtrs. falling in the settlement zone from the acquired property is determined at ₹72/- per sq.mtr. and the market rate in respect of

the area of 8874 sq.mtrs. falling in the agricultural zone is determined at ₹54/- per sq.mtr. The appellants will be entitled to the statutory benefits commensurate to these enhanced rates now determined in this judgment and order.

35. The Respondents are directed to deposit the compensation at the enhanced rate as determined above along with all the statutory benefits like interest, solatium, etc. in this Court within two months from today. Upon such deposit, the appellants will be entitled to withdraw the said amount upon proper identification and after furnishing bank details. The Registry to ensure that the amount is deposited directly in the bank accounts of the appellants.

36. The appeal is partly allowed in the aforesaid terms. There shall be no order for cost.

M. S. SONAK, J.