Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.14 OF 2011, CROSS-OBJECTIONS NO.9 OF 2011, FIRST APPEAL NO.88 OF 2016, FIRST APPEAL NO.94 OF 2010, FIRST APPEAL NO.132 OF 2010, FIRST APPEAL NO.42 OF 2012, FIRST APPEAL NO.74 OF2016

FIRST APPEAL NO.14 OF 2011

State of Goa,
(through Land Acquisition Officer)
(Collector under Land Acquisition
Officer Act 1894) PWD (Cell),
Altinho, Panaji, Goa 403 001. …. Appellant

Versus

1. Miss Gita R.P. Navelcar,
(deceased)
daughter of Late Ramchandra S.P.
Navelcar, Aged 55 years, spinster.

2. Mrs. Vanita P.P. Navelcar,
widow of Pradip R.P.Navelcar,
aged 40 years.

3. Miss Siddhi P.P. Navelcar,
daughter of Vanita P.P. Navelkar,
age 8 years.
(through duly appointed guardian ad
litem, respondent no.4)

4. Mr. Dilip R.P. Navelcar,
son of Late Ramchandra S.P.
Navelcar, aged 50 years, married,

All Indian Nationals and residents of
House no. 81, Near Police Outpost,

Ribandar, Goa 403 006.

5. Mrs. Nutan D.P. Navelcar,
wife of Dilip R.P.Navelcar, aged 48
years, Indian National, resident of 6,
Matruchaya Building, Dhobhi Aali,
Thane (West) Maharashtra).

6. Mr. Dilip P.Dalvi,
Son of Prabhaker Dalvi,
aged 48 years, married.

7. Mrs. Smitha D. Dalvi,
wife of Dilip P. Dalvi, aged 45 years,

Both Indian Nationals, And
residents of Chaitanya Co-operative
Hsg. Society, Building no.14A,
Navelcar Estate, Baiguinim, Old
Goa, 403 402 .

All Indian Nationals and residents of
House no. 73, Near Ex-Hospital,
Now by Goa Institute of
Management, Ribandar, Ilhas, Goa,
Pin code 403 006.

Applicant nos. 1, 2, 3, 5, 6 and 7
are represented by their Power of
Attorney/guardian applicant no.4
Mr. Dilip R.P. Navelcar,
Son of late Ramchandra S.P,
Navelcar, Aged 50 years, married,
resident of House no. 81, Near
Police Outpost, Ribandar,
Goa 403 006. …Respondents

Ms. Susan Linhares, Additional Government Advocate *for the Appellant.*

Mr. A. Gaonkar, Advocate *for Respondent Nos.1 to 7.*

WITH
CROSS-OBJECTIONS NO.9 OF 2011

1. Miss Gita R.P. Navelcar, (deceased)

2. Mrs. Vanita P.P. Navelcar,

3. Miss Siddhi P.P. Navelcar,

4. Mr. Dilip R.P. Navelcar,

All r/o H. No. 81,
Near Police Outpost,
Ribandar, Goa Pin 403 006.

5. Mrs. Nutan D.P. Navelcar,
r/o 6, Matruchaya Bldg.,
Dhobhi Aali, Thane (W)
Maharashtra.

6. Mr. Dilip P.Dalvi,

7. Mrs. Smitha D. Dalvi,

Both r/o Chaitanya Co-operative
Hsg. Society, Building no.14A,
Navelcar Estate, Baiguinim,
Old Goa, 403 402. …. Appellants

Versus

State of Goa,
through the Land Acquisition
Officer, PWD Cell, Altinho,
Panaji, Goa 403 001. …. Respondent

Mr. A. Gaonkar, Advocate *for the Appellants.*

Ms. Susan Linhares, Additional Government Advocate *for the Respondent.*

WITH
FIRST APPEAL NO.88 OF 2016

The Executive Engineer
Works Division-VII (NH), PWD,
Patto, Panaji-Goa. .... Appellant

Versus

M/s. Navelkar Estate Developers
Ganesh Prasad Building,
Dr. A. Borkar road,
Panaji-Goa. .... Respondent

Mr. Vishwadh Sardessai, Additional Government Advocate *for the Appellant.*
Mr. V.R. Tamba, Advocate *for the Respondent*.

WITH
FIRST APPEAL NO.94 OF 2010

M/s. Navelkar Estate Developers,
Ganesh Prasad, 3rd floor,
Next to Hotel Rajdhani,
Dr. Atmaram Borcar road,
Panaji-Goa 403 001. .... Appellant

Versus

The Executive Engineer
Works Division-VII, PWD,
Patto, Panaji-Goa. .... Respondent

WITH
FIRST APPEAL NO.132 OF 2010

Shri Gajanan Vishwanath Dukle
r/o. Gajanan Niwas Fontainhas

Panaji Goa. .... Appellant

Versus

1. The Executive Engineer
Works Division-VII, PWD,
Patto, Panaji-Goa.

2. Government of Goa,
through Chief Secretary. .... Respondents

Mr. V.R. Tamba, Advocate *for the Appellant*.
Ms. Susan Linhares, Additional Government Advocate *for the Respondents.*

WITH
FIRST APPEAL NO.42 OF 2012

The Executive Engineer,
Works Division-VII (NH),
PWD, Patto, Panaji-Goa. .... Appellant

Versus

M/s. Navelkar Estate Developers,
Ganesh Prasad, 3rd floor,
Next to Hotel Rajdhani,
Dr. Atmaram Borkar road,
Panaji-Goa. .... Respondent

Ms. Susan Linhares, Additional Government Advocate *for the Appellant.*
Mr. V.R. Tamba, Advocate *for the Respondent*.

WITH
FIRST APPEAL NO.74 OF2016

M/s. Navelkar Estate Developers,
Ganesh Prasad Building,
Dr. A. Borkar Road,

Panaji-Goa. .... Appellant

Versus

The Executive Engineer,
Works Division-VII (NH),
Public Works Department,
Patto, Panaji-Goa. .... Respondent

Mr. V.R. Tamba, Advocate *for the Appellant*.
Ms. Sulekha Kamat, Additional Government Advocate *for the Respondent.*

CORAM : M. S. SONAK, J.

Reserved on : 21st APRIL 2022
Pronounced on : 22nd APRIL 2022

JUDGMENT :

1. Heard learned Counsel for the parties.

2. The learned Counsel for the parties agree that all these appeals can be disposed of by a common judgment and order because the subject matter of these appeals is the market rate of the land acquired under common Section 4 Notification dated 07.11.2002 for the construction of the Ribandar bypass.

3. By notification dated 07.11.2022, lands in Panaji, Baiguinim, and Chimbel were proposed for acquisition to construct the Ribandar bypass. In most cases, the Land

Acquisition Officer offered the rate of ₹150/- per sq. mtr. The Reference Court has dismissed some of the references but has granted enhancement in others. Accordingly, appeals have been instituted by the State and the landowners. It is only appropriate that all these matters are considered together and disposed of by a common judgment and order.

4. For the reasons separately indicated, First Appeal Nos.73/2016 and First Appeal No.89/2016 were detagged from this group because the said two appeals concern lands acquired under notification dated 31.07.2006. Therefore, these two appeals will be considered separately, and the same are now posted for final hearing on 28.04.2022.

5. In First Appeal No.14/2011 and Cross-objection No.9/2011 therein, properties admeasuring 9700 sq. mtr. Surveyed under No.23/1 and 9850 sq. mtrs. Surveyed under No.24/1 in Baiguinim village came to be acquired under the notification dated 07.11.2002 for the Ribandar bypass. The Land Acquisition Officer, by his award dated 16.02.2008, determined the rate at ₹150/- per sq.mtr. The Reference Court, vide impugned judgment and award dated 16.04.2010, has enhanced this rate to ₹660/- per sq.mtr.

6. Ms. Linhares learned Additional Government Advocate submitted that this increase was not at all justified. She refers to judgment and order dated 17.02.2015 in ***First Appeal No.109/2010 (The Executive Engineer V/s. Shri Ravindra S. Kenkre (dec.) through LR.)*** to submit that this Court under the same notification for lands acquired in Panaji has determined the compensation at the rate of ₹580/- per sq. mtr. She submits that if the compensation for land in Panaji is ₹580/- per sq. mtr. then the compensation in respect of lands at Baiguinim village, which is further away from Panaji, should be much lesser. She submits that the Special Leave Petition against the judgment and order dated 17.02.2015 in First Appeal No.109/2010 was also dismissed by the Hon'ble Supreme Court on 28.09.2015.

7. Ms. Linhares also referred to the judgment and order dated 13.07.2017 in ***First Appeal No.13/2011 (The Executive Engineer V/s. Shri Savio De Sa & Anr.)***. Under the same notification, compensation was determined at ₹660/- per sq. mtr. but in respect of lands from Panaji. She submits that there can be no comparison between the lands in Panaji and lands in Baiguinim and, therefore, compensation for lands in Baiguinim could never be ₹660/- per sq. mtr.

8. Finally, Ms. Linhares also referred to the judgment and order dated 30.01.2015 in ***First Appeal No.110/2010 (State of Goa & Ors. V/s. Mrs. Millicent Felica Pinto Sa & Ors.)*** where under the same notification for lands in Panaji compensation was determined at ₹660/- per sq. mtrs. She points out that the Hon'ble Supreme Court also dismissed the Special Leave Petition against this judgment and order on 14.08.2015.

9. However, Mr. Gaonkar quite ably assisted by Mr. Dilip R.P. Navelcar, the landowner, submitted that the lands acquired are almost touching the municipal limits of Panaji and even included within such municipal limits. They pointed out that the land admeasuring 9850 sq. mtrs. Surveyed under no.24/1 was a fully converted and developed land. They pointed out that the land's amenities in survey nos.24/1 and 23/1 were comparable to all urban amenities. They pointed out that at least two of the plots from out of the property surveyed under no.24/1 were sold on 22.02.2000 and 24.03.2020 at the rate of ₹575/- per sq. mtrs. Considering the enhancement of property values in the area, as of 07.11.2002, they submitted that the rate should be at least ₹935/- per sq. mtr. as deposed to by the expert valuer examined by the landowners. They pointed out that the State had not led any evidence in the matter.

10. Mr. Gaonkar and Mr. Navelcar also pointed out the sale deed concerning the Army Welfare Housing Organization in the village of Chimbel, which was hardly 1km from the acquired properties. They pointed out that the rate in the said sale deed was ₹650/- per sq. mtr. Therefore, they submitted that after suitable enhancement, the acquired lands should be compensated at ₹935/- per sq. mtr.

11. The evidence indicates that the property in survey no.24/1 admeasuring 9850 sq. mtrs. was a part of the developed and converted property. Moreover, there is evidence about how even conversion fees of ₹18,93,255/- were paid by the landowners for conversion of the larger property admeasuring 1,26,217 sq. mtrs. from out of the parcel surveyed under no.24/1. Approved layout plans have also been placed on record.

12. Though there is no similar evidence regarding the property admeasuring 9700 sq. mtrs, surveyed under no.23/1, there is evidence that even the property bearing survey no.23/1 was just opposite to the property bearing survey no.24/1 separated by only a public road. In fact, the acquisition of the Ribandar bypass is nothing but a widening of this road. Accordingly, lands from survey nos.23/1 and 24/1 on either side of this earlier road were proposed to be acquired.

13. Therefore, the properties surveyed under no.23/1 and 24/1 will have to be considered separately, though they have several common features. But one of the most distinguishing features is that property bearing survey no.24/1 was fully developed and converted, and the property bearing survey no.23/1 was not. Nevertheless, the property bearing survey no.23/1 had almost similar features to the survey no.24/1. Consequently, it had all the building and development potentials otherwise possessed by the property bearing survey no.24/1.

14. Regarding the property bearing survey no.24/1, there are two Sale Deeds on record dated 22.02.2000 and 24.03.2000. These Sale Deeds are in respect of developed plots from out of the property surveyed under no.24/1. The rate reflected in these Sale Deeds is ₹300/- per sq. mtr. However, if these Sale Deeds are perused, it is clear that this rate is based upon agreements dated 20.12.1997. Moreover, the Section 4 notification, in this case, is 07.11.2002. Therefore, even if a modest escalation of 10% per annum is taken into account, the rate as of 07.11.2002 would come to ₹841.45/- in respect of the property under survey no.24/1.

15. However, the acquired property from out of survey no.24/1 is 9850 sq. mtrs. as compared to the sale instances of hardly 300 sq. mtrs. each. The acquired property was already earmarked for road widening, so actual plots were not laid out in this area. Considering these factors, the award of the rate of ₹841.45/- will not be appropriate. Therefore, some deductions are necessary for these factors.

16. The decisions relied upon Ms. Linhares consider the Sale Deed dated 11.10.2001 concerning the Army Welfare Housing Organization. This land was about 1km away from the acquired land, and the rate was ₹650/- per sq. mtrs. Since the landowners now have sale instances from the part of the land acquired, that will constitute the best evidence. In ***Dollar Company, Madras V/s. Collector of Madras***[1], the Hon'ble Supreme Court has held that the best evidence of the property's value is the sale of the very property to which the claimant is a party. Therefore, some credence will have to be given to the Sale Deed dated 22.02.2000 and 23.03.2000 when it comes to determining compensation for property surveyed under no.24/1.

17. Therefore, upon making applicable deductions from the rate of ₹841.45, the market rate regarding property admeasuring 9850 sq. mtrs. survey no.24/1 can be determined at ₹715/- per sq. mtr. instead of ₹660/- per sq. mtr. In making such

1 AIR 1975 SC 1670

determination, cognizance is also taken that proportionate conversion fees were ₹1,47,750/- were paid by the landowners regarding property surveyed under no.24/1. The deductions are made because the comparison was between small and large parcels. Some deduction is due because even otherwise, the acquired portion was not directly the part of the layout, though adjacent. The rate of ₹715/- per sq. mtr. however, includes the proportionate conversion fee already paid by the landowners.

18. However, when it comes to property admeasuring 9700 sq. mtrs. surveyed under no.23/1, there is no case made out for any enhancement over and above the rate determined by the reference court. The compensation of ₹660/- per sq. mtr. can, however, be maintained because even this property though not actually converted or developed, had the same potential for development as compared to property surveyed under no.24/1. Moreover, this parcel was across the road that separated the converted and developed portion surveyed under no. 24/1.

19. There is evidence led by the landowners and their expert witnesses about the several amenities that the acquired lands had at the time of Section 4 notification. This evidence was not seriously dented in the cross-examination. The State also did not lead any independent evidence. In the cases relied upon by Ms.

Linhares, the Court went by the evidence that the parties led. Here, landowners have shown proof regarding the sale of the portions of the same property which was ultimately acquired. This evidence has to be considered, given the law in *Dollar Company (supra).* Additional compensation is also due to the particular evidence about development and proximity to the developed parcel.

20. Accordingly, **First Appeal No.14/2011 instituted by the State will have to be dismissed, and cross-objections No.9/2011 will have to be partly allowed by enhancing the rate of property admeasuring 9850 sq. mtrs. bearing survey no.24/1 from ₹660/- per sq. mtr. to ₹715/- per sq. mtr. The rate of ₹660/- per sq. mtr. regarding property admeasuring 9700 sq. mtrs. bearing survey no.23/1 is, however, maintained.**

21. The First Appeal No.14/2011 is accordingly dismissed, and cross-objections no.9/2011 are partly allowed to the extent indicated above.

22. In First Appeal No.74/2016, we are concerned with property admeasuring 4878 sq. mtrs. bearing survey no.18/1-E of Baiguinim village acquired under the notification dated

07.11.2002 for the Ribandar bypass. The Land Acquisition Officer awarded ₹150/- per sq. mtr. but by the impugned award, the Reference Court has enhanced this rate to ₹300/- per sq. mtr. Therefore, the claimants have instituted this appeal claiming ₹907.50 per sq. mtr.

23. The Appellant has relied upon a sale instance dated 11.10.2001 executed by Krishnaraj N. Naik Sukerkar with Army Welfare Housing Organisation for property admeasuring 24,281 sq. mtrs. from Survey No.30/1 of village Chimbel. The evidence is that this is a comparable property located hardly 2.5 kms away from the acquired land.

24. The Reference Court, in this case, has relied upon its award in Land Acquisition Case No.33/2010 (incorrectly referred to as 33/2013), in which compensation was allegedly determined at ₹300/- per sq. mtr. However, if the record is perused, there is only an award dated 04.08.2011 in Land Acquisition Case No.33/2010 regarding the same Ribandar bypass road concerning property surveyed under no.18/1-E of Baiguinim village land admeasuring 13,550 sq. mtrs. for which the rate determined was ₹907.50 per sq. mtr. This award is challenged by the State in First Appeal No.88/2016. Therefore, there appears to be an error apparent on the face of the record of the impugned award dated 29.02.2016.

25. The rate awarded in Land Acquisition Case No.33/2010 is ₹907.50 per sq. mtr. is excessive and warrants a decrease based on the evidence produced in the said case itself. Therefore, it would not be appropriate to adopt the stated rate mechanically. The Reference Court had taken the Sale Deed of 11.10.2001 made by Mr. Sukerkar as the base but enhanced the rate by 10% per annum up to 10.11.2003 when, in fact, the Section 4 notification was issued on 07.11.2002. In terms of this enhancement, the rate could never exceed ₹825/- per sq. mtr. Besides, the issue of comparability of the Sale Deed plot and the acquired plot is also not adequately considered.

26. Instead, it would be safer to go by the rates in First Appeal No.13/2011 and 110/2010 relied upon by Ms. Linhares, in these matters, this Court had determined the rate at ₹660/- per sq. mtr. as it is this rate which was not disturbed by the Hon'ble Supreme Court in the SLP. Now, this rate was in respect of the properties in Panaji. But, as noted, the acquired lands are virtually on the boundary and have similar amenities. Therefore, it would be appropriate if the rate determined in these two decisions is taken as the base and some deductions are made.

27. Considering the evidence on record in First Appeal No.74/2016, the rate of ₹600/- per sq. mtr. will be appropriate. This is because the acquired lands have several urban amenities. Therefore, they cannot get the same rate as was granted to the properties within Panaji. Still, there need not be too much difference because the acquired lands are virtually at a distance of hardly a kilometer or so from the Panaji lands. This is a case of acquisition of bypass that goes through Panaji, Baiguinim, and Chimbel areas.

28. Accordingly, **First Appeal No.74/2016 is partly allowed, and the rate is enhanced from ₹300/- per sq. mtr. to ₹600/- per sq. mtr.** As a result, the Appellant will be entitled to all statutory benefits proportionately. Accordingly, First Appeal No.74/2016 is disposed of accordingly.

29. First Appeal No.88/2016 was a cross-appeal to First Appeal No.74/2016 because the State had challenged the same judgment and award dated 29.02.2016 in Land Acquisition Case No.34/2013. Now that First Appeal No.74/2016 is partly allowed, **First appeal No.88/2016 will have to be dismissed, which is hereby dismissed**.

30. First Appeal No.42/2012 questions the judgment and award dated 04.08.2011 in Land Acquisition Case No.33/2010. For some reasons set out while disposing of the challenge in First Appeal No.74/2016 and 88/2016, this appeal will have to be allowed, and the rate of ₹907.50 per sq. mtr. will have to be substituted with the rate of ₹600/- per sq. mtr.

31. The sale instance dated 11.10.2001 could have been regarded as a comparable instance but with some appropriate deductions. This is because the acquired property was at a distance of about 2.5 kms from the acquired property. Moreover, the impact of rates finalized for the Panaji properties was also relevant having regard to the decisions cited by Ms. Linhares. **First Appeal No.42/2012 is accordingly partly allowed, and the impugned award is modified by determining the rate at ₹600/- per sq. mtr. instead of ₹907.50 per sq. mtr.**

32. First Appeal No.94/2020 challenges the impugned judgment and award dated 08.04.2010 in Land Acquisition Case No.16/2009, by which the Reference Court dismissed the reference and maintained the rate of ₹150/- per sq. mtr. In this appeal, we are concerned with land admeasuring 575 sq. mtrs. bearing survey no.29 (part) at Chimbel acquired under the same notification dated 07.11.2002 for the Ribandar bypass.

33. Considering the decisions made by Ms. Linhareas and the view taken in the connected appeals, this appeal will have to be allowed. Accordingly, the compensation will have to be determined at the rate of ₹550/- per sq. mtr. in respect of the acquired land at Chimbel. This is not a case where the claimant led no evidence, but Reference Court has failed to consider this evidence and, therefore, enhancement is due. **Thus, First Appeal No.94/2010 is allowed, and compensation must be determined at the rate of ₹550/- per sq. mtr.** The Appellant will be entitled to all statutory benefits like solatium and interest on the enhanced amount.

34. First Appeal No.132/2010 is directed against the judgment and award dated 08.04.2010 in Land Acquisition Case No.9/2009. Here again, we are concerned with the area admeasuring 503 sq. mtrs. bearing survey no.147/1 (part) at Ella Old Goa acquired under the same notification dated 07.11.2002. The Reference Court has rejected the reference. The impugned award, in this case, is identical to the impugned award in First Appeal No.94/2020.

35. Although the land acquired is in Ella Old Goa, considering the evidence on record, enhancement is up to ₹580/- per sq. mtr. is due. This acquired plot is better than the Chimbel plot though not better than the Panaji plots. The Reference Court should not have rejected the evidence on record and mechanically dismissed the reference. Therefore, even **First appeal No.132/2010 is partly allowed, and compensation is determined at the rate of ₹580/- per sq. mtr. The Appellant will be entitled to all the statutory benefits like solatium and interest on the enhanced amounts.**

36. Misc. Civil Applications in each of these appeals, if any, do not survive, and even the same are hereby disposed of.

37. As a result, all these appeals are disposed of in the terms above by making the following orders and awards;

(a) First Appeal No.14/2011 is hereby dismissed, but cross-objections No.9/2011 therein are partly allowed, and the rate is enhanced from ₹660/- per sq. mtr. to ₹715/- per sq. mtr. in respect of property admeasuring 9850 sq. mtrs, bearing survey no.24/1. The rate of ₹660/- per sq. mtr. in respect of property admeasuring 9700 sq. mtrs. bearing survey no.23/1 is, however, maintained.

(b) First Appeal No.74/2016 is partly allowed, and the rate is enhanced from ₹300/- per sq. mtr. to ₹600/- per sq. mtr.

(c) First appeal No.88/2016, being a cross-appeal to First Appeal No.74/2016, is hereby dismissed.

(d) First Appeal No.42/2012 is partly allowed by determining the rate at ₹600/- per sq. mtr. instead of ₹907.50 per sq. mtr.

(e) First Appeal No.94/2010 is allowed, and compensation is determined at the rate of ₹550/- per sq. mtr.

(f) First Appeal No.132/2010 is partly allowed, and compensation is determined at the rate of ₹580/- per sq. mtr.

(g) In appeals where enhancement is granted, the Appellants will be entitled to all statutory benefits like solatium, interest, etc.

(h) The parties are permitted to withdraw amounts deposited in this Court together with interest, if any, after exchanging and submitting proper calculations in terms of this award.

(i) The civil misc. applications, if pending, are also disposed of.

38. There shall be no order for costs in all these appeals.

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.04.22 16:23:19 +05'30'