

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 45 OF 2016**

1. Shekar S. Sheth,
son of Sadanand Shet, 41 years of age,
businessman, r/o SM 101, Nova Cidade
Complex, Alto Porvorim, Goa through
Power of Attorney Rajesh Sheth

2. Rajesh S. Sheth,
S/o. Sadanand Shet, 40 years of age,
r/o Miramar, Panaji, Goa

3. Bhuvanesh S. Sheth,
S/o. Sadanand Shet, 37 years of age,
businessman, Nova Cidade Complex,
Alto Porvorim, Goa, through Power of
Attorney Rajesh Sheth.

..... Appellants.

Versus.

The Executive Engineer,
Works Division – VII (NH)
Patto, Patto, Panaji, Goa.

..... Respondent.

**Mr. Nitin Sardesai, Senior Advocate, with Ms. Gautami
Kamat, Advocate *for the Appellants.***

**Ms. Priyanka Kamat, Additional Govt. Advocate *for the
Respondent-State.***

**WITH
FIRST APPEAL NO. 128 OF 2016**

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

..... Appellant.

Versus.

1. Shekar S. Sheth,
2. Rajesh S. Sheth,
3. Bhuvanesh S. Sheth,

Resident of Nova Cidade Complex, Alto
Porvorim, Goa, 403 521

..... Respondents.

**Ms. Priyanka Kamat, Addl. Govt. Advocate for the
Appellant.**

**Mr. Nitin Sardesai, Senior Advocate, with Ms. Gautami
Kamat, Advocate for the Respondent-Claimant.**

CORAM : M. S. SONAK, J.

DATE : 16th JUNE 2022.

ORAL JUDGMENT: -

1. Heard Mr. Nitin Sardesai, learned Senior Advocate who appears along with Ms. Gautami Kamat for the Appellant in First

Appeal No.45/2016 and the Respondents in First Appeal No.128/2016.

2. Heard Ms. Priyanka Kamat learned Additional Govt. Advocate for the Appellant in First Appeal No.128/2016 and the Respondent in First Appeal No. 45/2016.

3. Both these appeals are directed against the Judgment and Award dated 30/01/2016 made by the Reference Court in Land Acquisition Case No.7/2014, determining the market rate of the acquired land at ₹ 300/- per sq. meter, in place of ₹ 150/- per sq. meter determined by the Land Acquisition Officer (LAO). Accordingly, the Appellant in First Appeal No. 128/2016 is aggrieved by the enhancement. However, the Appellants in First Appeal No.45/2016 contend that the enhancement should have been at least ₹2,500/- per sq. meter. Accordingly, it is only appropriate for a common judgment and order to dispose of both these Appeals.

4. By a notification under Section 4 of the Land Acquisition Act, 1894 (said Act) dated 31/7/2006, the Claimants' land measuring 4,270 sq. meters, surveyed under No.143/4-A Ela, Old Goa, was acquired for road widening (Ribandar Bypass). The LAO, by his award dated 17/8/2009, determined the

rate at ₹150/- per sq. meter. However, by the impugned award dated 30/1/2016, the Reference Court has enhanced this rate to ₹ 300/- per sq. meter.

5. The Reference Court, in this case, has dealt with the matter extremely cursorily. She has failed to even look into, much less consider the evidence on record. Besides, she did not appreciate that she was not sitting in appeal against the Award of the LAO and has virtually treated the reference proceedings as a challenge to such an Award. Based on these fundamental errors, the impugned award must be set aside. The evidence is before this Court to determine the market rate here. A remand will unnecessarily delay the matters.

6. In an extremely brief but cursory award, the Reference Court has disposed of the Reference. She has refused to rely upon the sale instance dated 29/6/2006 on the specious plea that the Claimants did not produce this sale instance before the LAO. In addition, she had refused to rely upon the evidence of the expert/valuer because the valuation undertaken by him was as of 1/9/2006 when the Section 4 notification was admittedly issued on 31/7/2006. The Reference Court has reasoned that since the valuation was not done as on the date of Section 4 notification, the valuer's report and testimony should be ignored.

7. In *Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona, and ors.* AIR 1988 SC 1652, the Hon'ble Supreme Court has held that a reference under Section 18 of the Land Acquisition Act is not an appeal against the award, and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court. So also, the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer. The material he utilized for valuation cannot be used by the Court unless produced and proved before it. It is not the function of the Court to sit in an appeal against the award, approve or disapprove its reasoning, correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer as if it were an appellate Court. Hon'ble Supreme Court further held that the Court must treat the Reference as an original proceeding before it and determine the market value afresh based on the material produced before it. In this case, the Reference Court's reasoning is precisely contrary to what has been held by the Hon'ble Supreme Court in *Chimanlal Hargovinddas* (supra).

8. Therefore, even if the sale instance dated 29/6/2006 were to have been produced before the Land Acquisition Officer, the Claimants would not be entitled to rely upon the same unless the same was produced before the Reference Court and proved in accord with the law. Accordingly, the Claimants could not have been faulted for not producing this sale instance before the LAO.

9. So also, the expert/valuer's report can be discarded where the expert/valuer has visited the acquired land long after the date of issue of Section 4 notification. The rate must be determined as of the date of Section 4 notification. The expert/valuer who visits the acquired land long after this date may not be in the best position to comment upon the facilities available or the topography of the acquired land as of the date of Section 4 notification. However, this does not mean that his report should be discarded when an expert/ valuer has visited the acquired land hardly 2 months after the date of Section 4 Notification. In this case, the Reference Court was not justified in even not looking into the valuer's report on the specious plea that this valuer had inspected the land a few days after the date of Section 4 notification.

10. The sale instance dated 29/6/2006, no doubt, reflects the rate of ₹ 3300/- per sq. meter. However, this sale instance is in

respect of a developed plot, having all amenities. Moreover, this sale instance is in the village of Bainguinim. Mr. Sardessai contended that Bainguinim and Ela form a part of the same village within the jurisdiction of Village Panchayat of Se Old Goa. Even if this is correct, the sale instance relied upon by the Claimants can, at the highest, be looked into for determining that there was an overall development in the area, but not strictly as a comparable instance.

11. In First Appeals No.72 & 89 of 2016, this Court was concerned with the acquisition of an area of 2625 sq. meters from the village Chimbél acquired under the same notification dated 31/7/2006. In those appeals, reliance was placed on a sale instance dated 17/7/2006 of a small plot of 336 sq. meters in Bainguinim village. However, even after considering the same, the rate of ₹1,000/- per sq. meter was determined for acquisition in Chimbél village. Chimbél village is, admittedly, closer to Panaji than Ela, Old Goa.

12. In First Appeal No.132/2010, this Court was concerned with the acquisition of an area of 503 sq. meters bearing Survey No.147/1(part) at Ela, Old Goa itself. This was an acquisition in pursuance of the notification dated 7/11/2002. In this first appeal, the rate determined was ₹580/- per sq. meter. The rate so

determined can undoubtedly be taken as the basis for determining the market rate in this matter.

13. Incidentally, the acquisition from Ela, Old Goa, under notification dated 7/11/2002, was also for constructing the Ribandar Bye-pass. The notification dated 31/7/2006 with which we are concerned was for further widening the same road (Ribandar Bye-pass).

14. Now that this Court has determined the rate of lands at Ela, Old Goa, as of 7/11/2002 at ₹580/- per sq. meter, this rate can be regarded as the base rate. Generally, there is an appreciation of about 10% per annum. However, the record evidence indicates overall development in the area, mainly after the lands were acquired for construction of the Ribandar Bye-pass vide notification dated 7/11/2002. Mr. Sardesai pointed out that though Chimbél may be closer to Panaji, the Village of Ela, Old Goa boasts of heritage churches, an international well-known tourist spot in Goa. Therefore, he submitted that the appreciation in this area should be taken at a minimum of 15% per annum.

15. Ms. Kamat learned Additional Govt. Advocate, however, pointed out the findings recorded in paragraphs 16 to 19 of the impugned award and submitted that there was no evidence

justifying any enhancement above ₹ 150/- per sq. meter. Without prejudice, she submitted that the rate reflected in First Appeal No.132/2010 could be considered. She submitted that there was no evidence about appreciation and, in any case, no evidence about appreciation beyond 10% per annum.

16. Considering the rival contentions, as also the material on record, appreciation of a little higher than 10% per annum is due in the present matter. This is because the Claimants would be entitled to the benefit of the previous acquisition under notification dated 7/11/2002 vide which lands were acquired about four hears earlier for construction of the Ribandar Bye-pass. The present acquisition was for the widening of the roads. If appreciation is 12% per annum, the market rate comes to ₹ 910.50 per sq. meter. The interests of justice will be met if the rate is determined at ₹ 900/- per sq. meter by taking appreciation at a little lesser than 12% per annum.

17. As noticed earlier, for the acquisition under the same notification, but of lands in Chimbel village, the market rate of ₹ 1000/- per sq. meter has already been determined in First Appeal No. 73/2016. Though Ela, Old Goa may have its advantage, it is further away from the city of Panaji compared to the lands in Chimbel. Therefore, it would be appropriate to

determine the market rate of the acquired land at ₹900/- per sq. meter.

18. The reasoning in paragraphs 16 to 19 of the impugned award is not entirely sustainable for the reasons already discussed. The Reference Court was apparently under an erroneous impression that she was sitting in appeal over the award of the LAO. The entire approach of the Reference Court was contrary to the law laid down by the Hon'ble Supreme Court in *Chimanlal Hargovinddas* (supra). Therefore, the submissions of Ms. Kamat cannot be accepted.

19. For all the reasons above, First Appeal No.128/2016 is hereby dismissed, and First Appeal No.45/2016 is partly allowed, and the market rate is enhanced to ₹900/- per sq. meter. Accordingly, the Claimants shall be entitled to proportionate statutory benefits and interest.

20. The Respondent in First Appeal No.45/2016 is directed to deposit the enhanced compensation amount within two months from today, after due notice to the learned Counsel for the Claimants. Ms. Kamat points out that an amount of ₹25,85,753/- has already been deposited in this Court in First Appeal No.128/2016. Therefore, now that First Appeal

No.128/2016 is dismissed, the Claimants are permitted to withdraw this amount with interest that may have accrued on the same.

21. Both the Appeals are disposed of on the above terms.

22. There shall be no order for costs.

M. S. SONAK, J.

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