

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.94/2014

1. Land Acquisition Officer, P.W.D. (Cell)
Altinho, Panaji, Goa.

2. Executive Engineer,
Works Division XVIII(R),
Ponda, Goa. V/s.

...APPELLANTS

Versus

Shri Pandurang Vishwanath
Naik Gaonkar, Major of age,
R/o Tamsuli, P.O Marcel,
Goa-403601.

...RESPONDENT

Ms. Sulekha Kamat, Additional Government Advocate *for the Appellant-State.*

CORAM: M. S. SONAK, J.

DATED: 10th February 2022

JUDGMENT:

1. Heard Ms. Sulekha Kamat, learned Additional Government Advocate for the appellant-State.

2. The State by instituting this appeal challenges the Judgment and Award dated 21.12.2013 made by the Reference Court in Land Acquisition Case No.3/2007 enhancing the

compensation from ₹53/- per sq. mtr. for the acquired land falling within the settlement zone to ₹120/- per sq.mtr. and from ₹20/- for the land falling within the orchard zone to ₹90/- per sq. mtr.

3. By notification dated 28.01.2002, the Government proposed to acquire land admeasuring 4366 sq. mtrs. at Betqui Candola of Ponda Taluka. The acquisition was for improvement and black-topping of the road from Palsari diversion to Tamsuli. The acquired property bears Survey No.99(Part) of Village Candola of Ponda Taluka. Out of this, property admeasuring 987 sq. mtrs. belongs to the respondent.

4. The Land Acquisition Officer (LAO) by his Award dated 15.12.2004 awarded compensation of ₹53/- per sq.mtr. for an area of 450 sq.mtrs. falling within the settlement zone and ₹20/- per sq.mtr. for the balance area of 537 sq.mtrs. falling within the orchard zone.

5. The respondent, dissatisfied with the rate awarded, applied for reference under Section 18 of the Land Acquisition Act (said Act) claiming compensation at ₹200/- per sq.mtr. for the land in the settlement zone and ₹100/- per sq.mtr. for the land in the orchard zone.

6. The Reference Court by the impugned Judgment and Award has enhanced the compensation by determining the market rate for the land in the settlement zone at ₹120/- per sq.mtr. and ₹90/- per sq.mtr. for the land in the orchard zone. Hence the present appeal.

7. Ms. Sulekha Kamat learned Additional Government Advocate firstly pointed out that the sale deed dated 26.08.2004 (Exh.13) relied upon by the Reference Court was a post Section 4 notification sale deed. She submits that such a sale deed could not have been taken into consideration by the Reference Court. She relies on *Kolkata Metropolitan Development Authority v/s. Gobinda Chandra Makal and Anr. – (2011) 9 SCC 207* in support of this contention.

8. Ms. Kamat secondly submits that the sale instance at Exh.13 was not at all a comparable sale instance. She points out that the respondent in his evidence had not deposed on the aspect of comparability but had merely produced this sale deed. She points out that no expert witness had been examined in support of comparability. She submitted that since this sale instance was not comparable, the same could not have been relied upon even after making deductions as made by the Reference Court. She relies on *Land Acquisition Officer, Hyderabad & Ors. v/s.*

Male Pullamma & Ors. – (1996) 8 SCC 247 in support of this contention.

9. Ms. Kamat submits that in this case there is no evidence about any income, either agricultural or otherwise, from the acquired property. Therefore, the compensation, in this case, could not have been determined by the capitalization method. She submits that even the sale instances cannot mechanically relied upon because there can be a marked difference between the amenities and facilities available to the sale deed plot and the acquired land. In support of this contention, she relies on *Special Deputy Collector and Anr. v/s. Kurra Sambasiva Rao & Ors. – AIR 1997 SC 2625* and *Deputy Collector (Dev) & LAO, Panaji & Anr. v/s. Vithal Biku Patekar – 1998 (2) Goa L.T. 474*.

10. For all the aforesaid reasons Ms. Kamat submits that the impugned award warrants interference.

11. As regards the first contention raised by Ms. Kamat, it is true that normally post Section 4 notification sale instances are not to be taken into account. However, from this, it does not follow as an inflexible rule that the post Section 4 notification sale instances are completely irrelevant and can never be relied upon.

12. In *Chimanlal Hargovinddas v/s. Special LAO, Poona & Ors. – 1988 (3) SCC 751* the Hon'ble Supreme Court held that even post Section 4 notification sale instances can be taken into consideration 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 development prospects.

13. In *Chindha Vithal Sonawane v/s. Spl. LAO – 1975 MLJ 469*, the Division Bench of this Court has approved the view expressed in *Assistant Development Officer, Trombay v. Tayaballi – (1933) 35 Bom. L.R. 763*. The legal position, as it appears in the head-note of *Tayaballi (supra)*, has been quoted by the Division Bench in paragraph 10, which reads as follows :

“In estimating the market value of property compulsorily acquired under the provisions of the Land Acquisition Act, 1894, it cannot be laid down as a general rule that post-notification transactions should necessarily be ignored altogether. All transactions are relevant which can fairly be said to afford a fair criterion of the value of the property as at the date of the notification. If any considerable interval has elapsed the Court will naturally attach little or no value to subsequent sales, just as transactions long prior to the notification will usually be discarded; but transactions only a month or two after the notification may sometimes perhaps have some value as evidence. It must largely depend on the purpose of the acquisition. If, for instance,

lands have been acquired for the development of a locality and the improvement of its communications and amenities, it is a reasonable inference that the value of the property will increase, and the Court must consider that factor, even though it is not directly proved that the transactions in question have been affected by the notification. Direct proof would hardly ever be available"

14. Based on the aforesaid, the Division Bench has held that there is no general rule that post-notification transactions are to be ignored altogether. On the other hand, all transactions would be necessary to be relevant which could afford fair criteria for the value of the property as at the date of the notification under Section 4. The distance of time by which a particular transaction is divorced from the date of relevant notification will have a bearing on the probative value and impact of that transaction while determining the fair market value of the property acquired. As has been stated in the aforesaid head-note, it must generally depend upon the purpose of acquisition and the question of whether any particular transaction, even if it be a post-notification transaction, is relevant and can afford a guide for determining the fair market value of the property acquired as at the date of the Notification will depend upon the facts and circumstances of each case. Just as transactions long before the notification may be of no value, similarly the transactions long after the notification would be of no value.

15. In paragraph 12, the Division Bench has specifically approved the law laid down in *Tayaballi (supra)*. This means that the post-Section 4 notification sale instances cannot be outrightly rejected though the weight to be attached to those transactions might vary according to the facts and circumstances of each case.

16. In *Special Land Acquisition Officer (N) & Anr. V/s. Ramesh Mahadev Sinai Mulgaonkar (Dr.)*, Section 4 notification was published on 13.10.1995 and the sale instance sought to be relied upon, was dated 05.12.1995. But the same was possibly a few days after the date of Section 4 notification. In these peculiar circumstances, this Court held that a deduction of 20% from the consideration mentioned in the sale deed would be appropriate since the possibility of the people in the locality coming to know in advance about the proposed acquisition, cannot be ruled out. This means that even though the gap between Section 4 notification and the sale instance was of hardly a few days, still the deduction to the extent of 20% was ordered.

17. In *Land Acquisition Officer, P.W.D. Cell, Altinho, Panaji-Goa & Anr. V/s. Kalidas Atmaram Savaikar*, the gap between Section 4 notification and the sale deed relied upon, was of about 2 years, but even there the deduction to the extent of only 20% was ordered by reference to *Ramesh Mahadev*

Sinai Mulgaonkar (supra). But the facts in *Kalidas Atmaram Savaikar (supra)* were considerably different and it is based on several other circumstances after making an overall deduction of 70%, the market rate was determined. In paragraph 15 in *Kalidas Atmaram Savaikar (supra)*, it is clear that 20% was deducted to offset the post-Section 4 notification sale instance; 40% was deducted towards the development and 10% because the acquired land was in the orchard zone. Thus, the deductions in *Kalidas Atmaram Savaikar (supra)*, were to the extent of 70%.

18. In *Kolkata Metropolitan Development Authority (supra)*, the question involved for consideration was not whether in all circumstances post Section 4 notification sale instances must be excluded from consideration but the question involved was on the interpretation of the expression “*date of publication of notification under Section 4*” as it appears in Section 23(1) of the said Act. The land owner or rather the land looser had contended that this expression would mean the last of the dates of such publication and giving of public notice as explained in the proviso to Section 6 of the said Act. The Hon’ble Supreme Court negated this contention and held that even the same expression can have different meanings in different contexts. Therefore, *Kolkata Metropolitan Development Authority (supra)* is not an authority for the proposition that under no circumstances post

Section 4 notification sale instances can be taken into consideration. From the precedents discussed earlier, such sale instances can be taken into account but the evidentiary value of such instances will depend upon the facts and circumstances of each case.

19. In the present case, there is no direct evidence that the purpose of acquisition contributed to the inflation of prices of the property which is the subject matter of Exh.13. Nevertheless, as pointed out in *Tayaballi (supra)* some inference on this aspect will have to be drawn because normally in such matters direct proof is difficult to come by. The acquisition was for improvement and black-topping of the road and upon execution of this purpose, the possibility of the prices of property in the area increasing, cannot be ruled out. The owners of the lands which are the subject matter of the notification and the owners of the neighboring land will come to know of the proposed acquisition as was observed in *Kolkata Metropolitan Development Authority (supra)* and there is likely to be some spurt in the rates. Therefore, even though post Section 4 notification sale instances cannot be rejected outright, some deductions will have to be made.

20. The Reference Court in this case had made a deduction to the extent of 20% simply because of the precedents cited before the Reference Court that were delivered in the facts peculiar to the said precedents, had made a deduction of 20%. According to me, even if the sale instance at Exh.13 is to be taken into consideration then a deduction to the extent of at least 40% is due from the rate of ₹300/- per sq.mtr. reflected in the said sale instance.

21. The deduction has to be to the extent of 40% and not merely 20% simply because there is a gap of almost two years between the date of notification of the said Act and the execution of the sale deed dated 26.08.2004. As noted earlier, the impact of the purpose of acquisition on the rates cannot be ruled out in this case. This means that the rate in respect of the acquired plot will have to be taken at ₹180 per sq.mtr. after making a deduction to the extent of 40%.

22. Then again, there is evidence that the sale deed plot was developed. Therefore, some deductions are due if the sale deed plot is to be compared to the acquired land.

23. The acquired land in this case comprised of two parts. The first part admeasuring 450 sq.mtrs. is in the

settlement zone and the second part admeasuring 537 sq.mtrs. is in the orchard zone. Ms. Kamat tried to contend that there is no evidence for such distinction. The evidence on record does suggest the necessity of distinction. In any case, it is not open to the State to contend this because the LAO in his Award has himself made this distinction by awarding compensation at the higher rate of ₹53/- per sq.mtr. for the land within the settlement zone and compensation of ₹20/- per sq.mtr. for the land falling within the orchard zone.

24. Insofar as the acquired land admeasuring 450 sq.mtrs. which is already in the settlement zone is concerned, deduction to the extent of 30% can be made towards development. This is because the plot areas are comparable. The distance between the acquired land and the plot is also not at all considerable. Therefore, the amenities which have been deposited by the respondent will more or less be the same as are available to the sale deed plot. Upon such deduction of 30% the rate comes to ₹126/- per sq.mtr. in respect of the area of 450 sq.mtrs. falling within the settlement zone. The Reference Court has determined the rate at ₹120/- per sq.mtr. Therefore, this determination calls for no interference even though the basis of such determination adopted by this Court differs from the basis adopted by the Reference Court.

25. Insofar as the balance area of 537 sq.mtrs. which falls within the orchard zone is concerned, deduction to the extent of at least 40% is due. Thus, after making this deduction the rate slightly exceeds ₹90/- per sq.mtr. which is what has been awarded by the Reference Court. For this reason, also the impugned award warrants no interference.

26. In *Male Pullamma (supra)*, the Hon'ble Supreme Court after concluding that the instance relied upon by the claimant was not at all comparable, proceeded to hold that there was no question of thereafter making any deduction. Since in this case, the instance relied upon is comparable though after making the deductions, the principle in *Male Pullamma (supra)* will not apply.

27. In *Kurra Sambasiva Rao (supra)* it is held that the burden of proof is on the claimant and the Court should evaluate the evidence based on normal human conduct. This principle is followed whilst determining the compensation. Even in terms of area, the sale instance and acquired land are quite comparable and therefore the observations about the incomparability of huge areas of land with small plots do not apply in the present case. In *Vithal Biku Patekar (supra)*, this Court has held that comparing has to be shown between the acquired plot and the sale deed plot

for market value. In this case, both the plots are in the same vicinity and the same village. The claimant has deposed that in the unacquired portion abutting the acquired land, there is a farmhouse and two wells. He has deposed that the acquired land is at a distance of 10 mtrs. from Marcela-Savoiverem road. He has deposed that the office of Village Panchayat of Betqui-Candola is situated at a distance of 25 mtrs. from the acquired land. He has deposed that the Primary Health Center is situated at a distance of 250 mtrs. from the acquired land.

28. The respondent has also deposed that the acquired land is situated at a distance of 50 mtrs. from the land belonging to the Dhupkar family. He has deposed that plots of land sold by the Dhupkar family were at the rate of ₹300/- per sq.mtr. and thereafter, he produced several sale deeds by which the Dhupkar family sold its plots.

29. In paragraph 6 of the affidavit in lieu of examination in chief, there are statements about the cultivation and development in the acquired plot and the unacquired portion and the income from the activity in the acquired plot. The respondent has deposed that the village of Marcel is situated at a distance of 1.5 kms. from the acquired plot and the rate at Marcel varies from ₹1,500/- per sq.mtr. to ₹2,200/- per sq.mtr.

30. This means that there is clear evidence about the comparability. The sale instance in the present case is in respect of one of the plots belonging to the Dhupkar family. There is evidence that these plots are hardly about 50 mtrs. away from the acquired plot and consequently will enjoy the same or similar benefits as are enjoyed by the acquired plot. Thus, there is compliance with the observations in *Vithal Biku Patekar (supra)*.

31. This appeal is therefore dismissed but without any order for cost.

32. This Court appreciates the efforts put in by Ms. Sulekha Kamat in presenting this case after thorough research and in an extremely fair manner.

M. S. SONAK, J.