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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.136/2012

THE EXECUTIVE ENGINEER,
WORKS DIVISION VII (NH)
PWD, PANAJI-GOA.

...APPELLANT

Versus

DEVON REAL ESTATE AND
CONSTRUCTION PVT. LTD.
Salgaonkar House of Dr. Francisco
Luis Gomes Road, Vasco-da-Gama,
Goa 403 802.

...RESPONDENT

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

Mr. A. D. Bhobe, Advocate for the Respondent.

**WITH
CROSS OBJECTIONS NO.5/2013
IN
FIRST APPEAL NO.136/2012**

DEVON REAL ESTATE AND
CONSTRUCTION PVT. LTD.
Salgaonkar House of Dr. Francisco
Luis Gomes Road, Vasco-da-Gama,
Goa 403 802.

...CROSS-OBJECTOR

Versus

THE EXECUTIVE ENGINEER,
WORKS DIVISION VII (NH)
PWD, PANAJI-GOA.

...RESPONDENT

Mr. A. D. Bhobe, Advocate for the Cross-Objector.
Ms. Susan Linhares, Additional Government Advocate for the Respondent-State.

CORAM: M. S. SONAK, J.

DATED: 18th January 2022

JUDGMENT:

1. Heard Ms. Susan Linhares, learned Additional Government Advocate for the appellant-State and Mr. Ashwin Bhobe for the respondent-claimant.

2. This appeal and cross-objections are directed against the Judgment and Award dated 10.02.2012 made by the Reference Court in Land Acquisition Case No.10/2010.

3. This case concerns acquisition of the respondent's land admeasuring 3275 sq. meters. surveyed under ~~Survey Nos. 28 and 38~~ ^{Survey No.} (Part), Chimbél Goa which came to be acquired along with several other lands for construction of Ribandar by-pass in terms of Notification under Section 4 of the Land Acquisition Act, 1894 dated 07.11.2002.

4. The Land Acquisition Officer (LAO) by award dated 16.02.2008 determined the compensation at ₹150/- per sq. meter. The Reference Court vide impugned Judgment and Award

Corrections carried out as per Order dated 10.02.2022 in MCA No.17/2022.

dated 10.02.2012 has enhanced this compensation from ₹150/- to ₹660/- per sq. meter.

5. The Executive Engineer/State, aggrieved by the enhancement has instituted First Appeal No.136/2012. The respondent-claimant, dissatisfied with even the enhanced compensation and the failure to award any compensation in respect of the rubble stone wall, has preferred Cross-objections No.5/2013.

6. Ms. Linhares, learned Additional Government Advocate pointed out that the sale instances relied upon by the respondent-claimant were in respect of small and developed plots whereas the acquired land was an agricultural land. She submits that the sale instances were not comparable and the Reference Court erred in relying upon the same. She submits that no evidence was lead on the aspect of cost of the rubble stone wall and even otherwise, there was no evidence to grant any enhancement. For these reasons, Ms. Linhares submitted that the impugned award warrants interference.

7. Mr. Bhobe, learned counsel for the respondent submitted that the sale deeds were in respect of the comparable instances and in any case the same should have been considered

by making suitable deductions. He submits that evidence was produced with regard to the rubble stone wall, including the valuation report and the Reference Court clearly erred in denying compensation.

8. Learned counsel for the parties have placed for consideration of the Court Judgment and Order dated 17.02.2015 in First Appeal No.109/2010 and Judgment and Order dated 13.07.2017 in First Appeal No.13/2011. Learned counsel have also placed on record Order dated 28.09.2015 by which the Hon'ble Supreme Court dismissed the Special Leave Petition questioning this Court's Judgment and Order in First Appeal No.109/2010. Learned counsel for the parties agree that both these decisions pertain to acquisition of land under the very same Notification dated 07.11.2002. As was noted earlier, the present acquisition also is under Notification dated 07.11.2002.

9. In First Appeal No.109/2010, the market rate was determined at ₹580/- per sq. meter. Ms. Linhares, without prejudice, urged that even in this case the compensation could not have exceeded ₹580/- per sq. meter. However, Mr. Bhobe pointed out that though the land which was the subject matter of First Appeal No.109/2010 was acquired under the Notification dated 07.11.2002, the same pertains to the Village of Ribandar.

10. The land which was the subject matter of First Appeal No.13/2011 was in the Village of Chimbél. The acquired land in the present appeal is also in the Village of Chimbél. In respect of the land in Chimbél, this Court, has determined the market value at ₹660/- per sq. meter. This rate has not been challenged by the State Government and therefore, is deemed to have been accepted by the State Government. This Court, in First Appeal No.13/2011, in fact, upheld the award made by the LAO on 29.04.2010 in Land Acquisition Case No.11/2009 arising under the same Notification. This is the very award which was relied upon by the Reference Court in the impugned Judgment and Award dated 10.02.2012 which is the subject matter of the present appeal.

11. The relevant discussion on the aforesaid aspect is to be found in paragraph 15 of the impugned Judgment and Award which reads as follows:-

“15. Admittedly, the respondent has neither led any evidence nor produced any material/evidence to rebut the case of the applicant. Similarly, the respondent has failed to create any dent in the deposition of AW1, J. da Costa and AW2, Tamba who have withstood the test of cross examination. The market value of the acquired land, if not to be fixed on the basis of sale deeds produced by the applicant at exhibits 14 and 15, which is over and above Rs.800/- per sq. meters as claimed by the applicant but in

no case, it could be fixed lower than Rs.660/- per sq. meter, which was fixed in respect of the land acquired vide Award at Exhibit 16 and as such, the applicant is entitled to an amount of Rs.660/- per sq. meter as passed in Award dated 29.4.2010 in Land Acquisition Case No.11/2009 arising from the same notification which would be reasonable market value of land acquired on the date of passing of the award, which the applicant is entitled to along with other benefits. Hence, the above contentions of Advocate A. Monteiro cannot be accepted. It is therefore the above issue is partly answered in the affirmative.”

12. From the aforesaid, it is quite clear that the Reference Court in determining the market rate at ₹660/- per sq. meter has not gone by the sale deeds but has basically gone by the Award dated 29.04.2010 in Land Acquisition Case No.11/2009. Now that this Court, in First Appeal No.13/2011, has upheld the Award dated 29.04.2010 in Land Acquisition Case No.11/2009 and maintained the rate of ₹660/- per sq. meter, the appeal instituted by the State Government will have to be dismissed.

13. There is evidence on record about the comparability of the land involved in Land Acquisition Case No.11/2009 and First Appeal No.13/2011 on one hand and the land which is the subject matter of the present appeal on the other. Therefore, the reasoning in Judgment and Order dated 13.07.2017, by which

First Appeal No.13/2011 came to be disposed of will equally apply in the present case as well.

14. For the aforesaid reasons First Appeal No.136/2012 will have to be dismissed and is hereby dismissed.

15. Now coming to the Cross-objections again, the reasoning in Judgment and Order dated 13.07.2017 in First Appeal No.13/2011 will have to be taken into account and based thereon it will have to be held that no case has been made out by the respondent for enhancement over and above the rate of ₹660/- per sq. meter. Even otherwise, the evidence on record justifies the determination at ₹660/- per sq. meter and the Reference Court, in the impugned Judgment and Award has given cogent reasons as to why the rate cannot exceed ₹660/- per sq. meter.

16. On the aspect of compensation for the rubble stone wall however, the Reference Court erred in making no award on the ground that the respondent had failed to produce documentary evidence regarding the cost of rubble stone wall in the acquired portion. The respondent had produced the valuation report and had also examined AW1 and AW2 in support of this claim. Based on their evidence, compensation of

at least ₹25,000/- should have been awarded towards the rubble stone wall and the wire fencing that was existing in the acquired land. This will amount to a reasonable compensation in the state of evidence on record.

17. Therefore, the Cross-objections are partly allowed and the respondent is awarded additional compensation of ₹25,000/- over and above what has been already determined by the Reference Court in the impugned Judgment and Award. The impugned Judgment and Award is modified to this limited extent of awarding an additional compensation of ₹25,000/- to the respondent in respect of the rubble stone wall.

18. There is no case made out by either of the parties to interfere with the award of statutory benefits under the Land Acquisition Act.

19. The appeal is therefore dismissed and the Cross-objections are only partly allowed. There shall be no order as to costs.

M. S. SONAK, J.