

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 73 OF 2016**

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, with Mr. P. Sawant, Advocates for the
Appellant-Claimant.**

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

**WITH
FIRST APPEAL NO. 89 OF 2016**

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

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

Ms. Susan Linhares, Addl. Govt. Advocate for the

Appellant.

Mr. V.R. Tamba with Mr. P. Sawant, Advocates for the Respondent-Claimant.

CORAM : M. S. SONAK, J.

DATY : 28th April 2022.

ORAL JUDGMENT: -

1. Heard Mr. V.R. Tamba for the Appellant-Claimant and Ms. Susan Linhares and Ms. Sulekha Kamat for the Respondent-State.

2. These appeals are directed against the Judgment and Award dated 29/2/2016 in Land Acquisition Case No. 33/2013, by which the Reference Court enhanced the compensation for the acquired land from ₹ 150/- per sq. meter to ₹ 300/- per sq. meter.

3. The Appellants in First Appeal No.73/2016 are aggrieved by the impugned Award because the Reference Court did not grant them the rate of ₹3800/- per sq. meter. On the other hand, the impugned Award aggrieves the State because the Reference Court has doubled the rate determined by the Land Acquisition Officer. Hence, 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 2625 sq. meters of survey No.59/1-A of Village Chimbel, Tiswadi Taluka was proposed to be acquired for Ribandar Bye-pass. The Land Acquisition Officer, by the Award dated 17/8/2009, determined the rate of ₹150/- per sq. meter. However, by the impugned Award, 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 Land Acquisition Officer 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 equally cursory Award, the Reference Court has disposed of the Reference. She has refused to rely upon the sale instance at Exhibit-C-14 dated 17/7/2006 on the specious plea that the Claimants did not produce this sale instance before the Land Acquisition Officer. In addition, she had

refused to rely upon the evidence of the expert/valuer because this expert stated that the Claimants approached him in August 2006 (the date of inspection of the acquired land by the expert/valuer was 20/8/2006) when Section 4 notification was issued on 31/7/2006.

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 has to treat the Reference as an original proceeding before it and determine the market value afresh based on the material produced before it. The reasoning of the Reference Court, in this case, 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 at Exhibit C-14 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 Land Acquisition Officer.

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 has to 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 where an expert/valuer has visited the acquired land hardly 20 days after the date of Section 4 Notification, his report should be discarded. The

Reference Court, in this case, was not at all justified in even not looking into the Valuer's report on the specious plea that this Valuer had inspected the land hardly 20 days from the date of Section 4 notification.

10. Ms. Linhares and Ms. Kamat submit that the Reference Court, after having held that the Claimants produced no evidence, erred in doubling the rate from ₹150/- per sq. meter to ₹ 300/- per sq. meter. There is a substance in the contention of the learned Addl. Govt. Advocates. The reasoning of the Reference Court is indeed vulnerable, both in her Judgment that there is no evidence on record and thereafter, her doubling of the rate after having judged that there was no evidence on record. However, now that I find that there is evidence on record which was not even looked into, much less considered by the Reference Court, it would be necessary to determine the market rate based on such evidence.

11. Now, firstly, as was pointed out by Ms. Kamat that for the acquisition from the same survey number, under an earlier Section 4 notification dated 7/11/2001, this Court had determined the rate at ₹ 550/- per sq. meter. Such determination was in First Appeal No.94/2010, which was disposed of by a common Judgment and Order dated 22/4/2022. In paragraph 32

of this common Judgment and Order, it is noted that the land admeasuring 575 sq. meters bearing survey No.29 (part) at Chimbhel was acquired under notification dated 7/11/2002 for Ribandar Bye-pass.

12. In his deposition, Shri Vijay Navelcar (AW.1) has himself deposed that the acquired property bearing Survey No.59/1-A at Chimbhel was earlier bearing Survey No.29/0. He then deposed the amalgamation of two survey numbers and the new survey number 59/1-A of Chimbhel Village. This evidence is sufficient to conclude that for acquired of about 575 sq. meters from the same survey number, this Court, as of 7/11/2002, had determined the rate at ₹ 550/- per sq. meter.

13. Secondly, there is evidence that the acquired property abuts the Ribandar Bye-pass, and this was an acquisition for the widening of the bye-pass. The acquired property, therefore, has this vital amenity to its credit. AW.1 and AW.2-Expert/ Valuer have deposed about the schools, shops, banks, pharmacies, restaurants, temples, etc., within a radius of 1 to 2 kilometers of the acquired properties. AW.1 has deposed that the acquired land is flat and falling within a Settlement Zone and, therefore, suitable for construction of buildings and development.

14. No evidence has been produced on the aspect of the acquired land falling within the Settlement Zone. However, there is evidence about the land being suitable for construction and development. There is also evidence about the development that has taken place within a radius of 1 to 2 kilometers from the acquired land. There is evidence about the factors that would support the escalation of rates in the locality. The witnesses have spoken about its proximity to Panaji city, the height of the property, and its use for residential or commercial purposes. The Reference Court did not even look into all this evidence.

15. Thirdly, the Claimants have relied on a Sale Deed dated 17/7/2006. Though this sale deed plot is about 2.5 km. from the acquired land, the same is in Village Baiguinim. This sale deed was in respect of a small developed plot of 336 sq. meters. The rate reflected in this sale deed is ₹3800/- per sq. meter. Again, even this evidence was not even looked into by the Reference Court.

16. Now, if for a moment the sale instance at Exhibit C-14 is kept out of consideration, still a case is made out for relying upon the rate of ₹ 550/- per sq. meter determined by this Court as of 7/11/2002 and then allowing an escalation of about 10 % to 12 % per annum, considering the evidence on record.

17. Based on the above factor, the rate will have to be determined in the region of approximately ₹900/- per sq. meter. But, then again, there is evidence about earlier acquisition for the Ribandar Bye-pass and completion of the bye-pass. Moreover, the present acquisition was for widening the existing bye-pass, a positive factor benefiting the acquired land. Furthermore, after the construction of the bye-pass, there is evidence of overall development in the area as deposed to by AW.1 and AW.2. Therefore, considering all these aspects, the market rate will have to be determined at ₹1,000/- per sq. meter and not just ₹ 300/- per sq. meter, as determined by the Reference Court.

18. At least, in this case, there is no necessity to go into the sale instance at Exhibit C-14. This is because this sale instance is regarding a small developed plot in another Village, Baiguinim. Therefore, although true, the sale instance plot may be 2.5 km. from the acquired land, this sale deed need not be the base for the determination of compensation. The impact of this sale instance and the development of which it is a part is already considered for holding that there is overall development in the area.

19. Thus, First Appeal No.73/2016 is partly allowed, and the market rate is enhanced from ₹ 300/- per sq. meter to ₹ 1,000/- per sq. meter. Consequently, the cross-appeal, i.e., First

Appeal No.89/2016, will have to be dismissed and is, hereby, dismissed.

20. The State is, therefore, directed to pay the Claimants compensation at the rate of ₹ 1,000/- per sq. meter, together with all statutory benefits like solatium, interest, etc. This amount will have to be deposited in this Court within two months from today, with due intimation to the learned Counsel for the Claimants. After the same is deposited, the Claimants will be entitled to withdraw the same by furnishing proper identification and bank details. The Registry to ensure that the amounts are directly deposited into the bank account of the Claimants.

21. Misc. applications, if pending in these appeals, will not survive and are disposed of.

22. There shall be no order for costs.

M. S. SONAK, J.

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