Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.106 OF 2016

Shri Gopal Naik Panvelkar,
represented by Power of Attorney
Holder, Shri Vivek Panvelkar,
son of late Govind Vishnum Panvelkar,
Resident of Savitri Bungalow,
Altinho, Panaji-Goa. ...APPELLANT

Versus

1. Member Secretary, North Goa
Planning & Development Authority,
Through its Member Secretary,
Mala, Panaji i.e.
Acquiring Department.

2. Greater Panaji Planning
Development Authority,
Through the Member Secretary,
Office at Archdiocese Building
Mala link Road, Panaji-Goa 403001. …RESPONDENTS

Mr. Shivan Desai with Ms. M. Viegas, Advocates *for the Appellant.*

Mr. S. Karpe with Ms. Gabe Mendes, Advocates *for Respondent No.2*.

CORAM: M. S. SONAK, J.

DATED: 22nd APRIL 2022

ORAL JUDGMENT:

1. Heard Mr. Shivan Desai for the appellant and Mr. Somnath Karpe for respondent no.2.

2. The appellant, whose lands were acquired, appeals the judgment and award dated 17.02.2016 made in Land Acquisition Case No.34/2010 by the Reference Court, rejecting the reference and declining any enhancement.

3. By Notification dated 14.11.2005 under Section 4 of the Land Acquisition Act, 1894 (said Act), the following lands in which the appellant claimed interest were proposed to be acquired:

7	Land Acquired details	Survey No.	Area
		89/3	325 sq.mts.
		89/12	900 sq.mts.
		89/13	915 sq.mts.
		89/15	1320 sq.mts.
		73/2	**200 sq.mts.**
		87/8	621 sq.mts.

4. The Land Acquisition Officer (LAO), by his award dated 02.06.2008, determined the compensation at ₹300/- per sq. mtr. By the impugned judgment and award, the Reference Court has rejected the reference and denied any enhancement over and above the rate offered by the LAO. Hence this appeal.

5. Mr. Desai submitted that the Reference Court has not considered the evidence on record in its proper perspective. If the same were to be considered, enhancement, as claimed, was warranted. Without prejudice, he submitted ample evidence on record to establish that a portion of the acquired property admeasuring 200 sq.mtrs. surveyed under No.73/2 was in the settlement zone. He referred to the sale instances at Exh.39 and Exh.40 to submit that they were comparable and based upon the same enhancement up to ₹2,500/- as claimed should have been granted at least for this parcel of the acquired land. Mr. Desai submitted that there had been no proper consideration of this evidence by the Reference Court.

6. Mr. Karpe defends the impugned award based on the reasoning reflected therein. He submits that there is evidence that the acquired land was morod land and a bandh. He submitted that no evidence was led wither about any agricultural income or about building potential. He submitted that the parcel bearing survey no.73/2 was co-owned by the Communidade. He submitted that there was no evidence about the comparability with the sale instances in Exh.39 and Exh.40. Based upon all this Mr. Karpe submitted that this appeal warrants dismissal.

7. The rival contentions now fall for my determination.

8. The evidence on record bears out that most of the acquired property except the property surveyed under no.73/2 and admeasuring 200 sq. mtrs. was morod land and a bandh. Mr. Karpe is justified in contending that there is no evidence of agricultural income or building potential concerning such lands. The Reference Court has analyzed the evidence on record. There is no case made to disturb this analysis insofar as the acquired properties other than the property surveyed under no.73/2 admeasuring 200 sq. mtrs. Therefore, there appears to be no infirmity in maintaining the rate of ₹300/- per sq. mtr. for the significant portion of the acquired property save and except the part surveyed under no.73/2 admeasuring 200 sq. mtrs.

9. However, the Reference Court was not justified in ignoring the peculiar features of the property surveyed under no.73/2, admeasuring 200 sq. mtrs. The potential of this portion was required to be considered separately based on the evidence on record, and this portion should not have been clubbed with the rest of the acquired property and treated accordingly.

10. There is clear evidence that the portion of the acquired property surveyed under no.73/2 admeasuring 200 sq. mtrs. fell within the settlement zone as per the ODP and was classified as S-3. This was deposed to by AW1 in clear and categorical terms. The respondent, in this case, is a planning authority and, therefore, can be presumed to be in the knowledge of this position. Significantly, in the detailed cross-examination of AW1, not even a suggestion was put denying this aspect. Therefore, there is clear evidence on record about the portion of the acquired property bearing survey no.73/2, admeasuring 200 sq. mtrs. falling within the settlement zone (S-3) in the outline development plan. This evidence has not been considered adequately.

11. Exh.39 is a sale instance dated 18.01.2005. The evidence on record bears out that this sale deed plot is in the same village at less than 1 km. The area of this sale deed plot is 482 sq. mtrs. True, the sale deed plot was developed, and perhaps, therefore, the rate reflected in it is ₹4,150/- per sq. mtr. However, this instance was not irrelevant, at least when determining the rate for the portion of the acquired property surveyed under no.73/2.

This was a sale instance about ten months before the Section 4 notification.

12. Similarly, the sale instance at Exh.40 is dated 17.02.2004 and is about a plot admeasuring 282 sq. mtrs. Again, this plot is in the same village and close to the acquired land. The rate reflected is ₹3,500/- per sq. mtr. But Mr. Karpe pointed out that this includes an existing house.

13. Even if the sale instance at Exh.40 is excluded from consideration, there is no reason to exclude the sale instance at Exh.39, proximate in the distance, size, and time. Since the acquired portion surveyed under no.73/2 was already in the settlement zone (S-3), this would constitute evidence of building potential. But then there is evidence that this portion was low-lying to some extent, and therefore, the expenditure would have to be incurred for actual development. On this core, some deductions are warranted from the rate reflected in the instance at Exh.39.

14. The deductions, in this case, could be in the range of about 50% or slightly higher. With such deductions, the rate of ₹2,000/- per sq. mtr. would be appropriate, at least when it comes to the portion of the acquired property surveyed under no.73/2 admeasuring 200 sq. mtrs. This, in my view, would be the market rate, at least insofar as this portion is concerned.

15. There is no evidence of this portion being co-owned by the Communidade. In any case, that is a matter between the Communidade and the appellant. Mr. Karpe could not point out whether there is any apportionment dispute pending between them. In these proceedings, we are concerned with determining the market rate. Even if some small allowance is made for arguments, if at all, the rate of ₹2,000/- appears to be appropriate because the deductions from the exemplar will then be slightly higher than 50%.

16. For the reasons above, this appeal is partly allowed. The rate insofar as the portion surveyed under no.73/2 admeasuring 200 sq. mtrs. is enhanced from ₹300/- per sq. mtr. to ₹2,000/- per sq. mtr. However, the rate concerning the balance portion of the acquired property is maintained at ₹300/- per sq. mtr. On the enhanced amount, the appellant will be entitled to all statutory benefits like solatium, interest, etc.

17. Respondent No.2 is directed to deposit the enhanced compensation amount within six weeks from today in this Court with intimation to the learned counsel for the appellant. After that, the appellant can withdraw the same by furnishing proper identity documents and bank details. The Registry to ensure that the amounts are directly deposited in the appellant's bank account.

18. The appeal is partly allowed in the terms above. Accordingly, there shall be no order for costs.

M. S. SONAK, J.