Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.28/2014

The Flag Officer Commanding,
Head Quarters, Goa Naval Area,
Vasco-Da-Gama, Mormugao, Goa. ... APPELLANT

Versus

1. Collector and District Magistrate, South Goa, Margao, Goa.

2. Mr. Daulatrao Y. Chowgule, major in age, r/o. House of Chowgules, Mormugao, Harbour, Goa 403803. ...RESPONDENTS

Mr. Mahesh Amonkar, Central Govt. Standing Counsel *for the appellant*.

Mr. Vishwadh Sardessai, Addl. Govt. Advocate *for Respondent No. 1.*

Mr. V.A. Lawande, with Mr. Parimal Redkar and Ms. Pushpinder Kaur, Advocates *for respondent No. 2.*

WITH
FIRST APPEAL NO.30 OF 2014

Union of India,
Ministry of Defence, through
the Director General of
Defence Estate, Defence Estate Officer
/Asst. Defence Estate Officer. ... Appellant

Versus

1. Collector and District Magistrate,

South Goa, Margao, Goa.

2. Mr. Cosme Antonio Eleuterio Azaredo
Silveira, major in age, r/o. House No.99,
Azaredo House,
Deusa, Chicalim, Goa. ... Respondents

Mr. Mahesh Amonkar, Central Govt. Standing Counsel *for the appellant*.

Mr. Vishwadh Sardessai, Addl. Govt. Advocate *for Respondent No.1*.

Mr. V.A. Lawande, with Mr. Parimal Redkar and Ms. Pushpinder Kaur, Advocates *for respondent No. 2*.

WITH
FIRST APPEAL NO.31 OF 2014

Union of India,
Ministry of Defence, through
the Director General of
Defence Estate, Defence Estate Officer
/Asst. Defence Estate Officer. ... Appellant

Versus

1. Collector and District Magistrate,
South Goa, Margao, Goa.

2. Smt. Padma Srinivas Mahale,
major in age, 1st Floor, Gabmar Apts.,
Vasco Da Gama, (since deceased
represented by her legal heirs),

2(a) Megha Dhirendra Thakker,
major in age, D/o. of late
Smt. Padma S. Mahale,

major in age,

(b) Dhirendra Sunderlal Thakker,
major in age; husband of
Megha Dhirendra Thakker,
major in age,

(c) Varsha Pramodchandra Deshpande,
major in age, D/o. of late
Smt. Padma Shrinivas Mahale,
major in age,

(d) Pramodchandra Balkrishna Deshpande,
major in age, husband of
Varsha Pramodchandra Deshpande,

All/ro. 1st floor, Gabmar Apts,
Vasco Da Gama, Goa. ... Respondents

Mr. Mahesh Amonkar, Central Govt. Standing Counsel *for the appellant*.

Ms. Sulekha Kamat, Addl. Govt. Advocate *for Respondent No.1*.

Mr. V.A. Lawande, with Mr. Parimal Redkar and Ms. Pushpinder Kaur, Advocates *for respondent Nos. 2(a) to 2(d)*.

WITH
FIRST APPEAL NO.67 OF 2015

1. Union of India,
Ministry of Defence, through
the Defence Estate Officer
Head Quarters, Goa Naval Area,
Vasco-Da-Gama, Mormugao, Goa.

2. The Flag Officer Commanding,
Head Quarters, Goa Naval Area,

Vasco-Da-Gama, Mormugao, Goa. … Appellants

Versus

1. M/s. Rajaram Estate,
Swatantra Path, Vasco da Gama, Goa.

2. Mr. Suvarn Bandekar,
Swatantra Path, Vasco da Gama, Goa.

3. Collector and District Magistrate,
Vasco Da Gama, Goa. ... Respondents

Mr. Mahesh Amonkar, Central Govt. Standing Counsel *for the appellants.*

Mr. E. Dias, Advocate *for Respondents No.1 & 2.*

Ms. Sulekha Kamat, Addl. Govt. Advocate *for Respondent No.3.*

WITH
CROSS OBJECTION NO.6/2015
WITH
MISC. CIVIL APPLICATION NO.553/2016
IN
CROSS OBJECTION NO.6/2015

1. M/s. Rajaram Estate,
Swatantra Path, Vasco da Gama, Goa.

2. Mr. Suvarn Bandekar,
Swatantra Path, Vasco da Gama, Goa. … Cross-Objectors

Versus

1. Collector and District Magistrate,
South Goa, Margao, Goa.

2. The Flag Officer Commanding,
Head Quarters, Goa Naval Area,
Vasco-Da-Gama, Mormugao, Goa.

3. Union of India,
Ministry of Defence, through
the Defence Estate Officer,
R/o. Raksha Sampada Bhawan,
Ulaanbaatar Marg, Delhi. … Respondents

Mr. E. Dias, Advocate *for the Cross-Objectors*.

Ms. Sulekha Kamat, Addl. Govt. Advocate *for Respondent No.1*.

Mr. Mahesh Amonkar, Central Govt. Standing Counsel *for Respondents No.2 & 3*.

WITH
FIRST APPEAL NO.42 OF 2016

Mr. Cosme Antonio Eleuterio Azaredo
Silveira, major in age, r/o. House No.99,
Azaredo House,
Deusa, Chicalim, Goa. … Appellant

Versus

1. Collector and District Magistrate,
South Goa, Margao, Goa.

2. The Flag Officer Commanding,
Head Quarters, Goa Naval Area,
Vasco-Da-Gama, Mormugao, Goa.

3. Mrs. Verodiana Vaz Azaredo
c/o. Franis Menezes,
Opp. Mes. Inspection Bungalow,
Altinho, Panaji, Goa.

(Deleted vide order dated
15.09.2016) … Respondents

Mr. V.A. Lawande, with Mr. Parimal Redkar and Ms. Pushpinder Kaur, Advocates *for the Appellant*.

Mr. Vishwadh Sardessai, Addl. Govt. Advocate *for Respondent No.1*.

Mr. Mahesh Amonkar, Central Govt. Standing Counsel *for Respondents No.2*.

CORAM : M. S. SONAK, J.

Reserved on : 3rd March 2022
Pronounced on : 7th March 2022

JUDGMENT: -

1. Heard learned Counsel for the parties.

2. The learned Counsel for the parties agree that all these Appeals can be disposed of by a common judgment and order because they arise out of a common notification dated 16/3/1992 issued by the Government of India under Section 3 of The Works of Defence Act, 1903 (said Act), imposing restrictions upon the use and enjoyment of lands under Section 7(b) of the said Act in Village Chicalim, Mormugao, Goa.

3. All these appeals, including First Appeal No.67/2015, were taken up for final disposal on 3rd March 2022 and after hearing the learned Counsel for the parties, the same were reserved for orders.

4. First Appeal No.67/2015 and the Cross Objection therein, was taken up for final hearing on 24/2/2022 and was disposed of by a Judgment and Order made on the said date. However, on the very next day i.e. 25/2/2022, by an order made on the said date, the Judgment and Order dated 24/2/2022 was recalled and even the First Appeal No.67/2015 was posted for final hearing together with other matters in the group. The reasons for this, have already been spelled out in the order dated 25/2/2022 made in First Appeal No.67/2015 and the cross-objections therein. The reasons are, therefore, not repeated in this Judgment and Order. Suffice to state that even First Appeal No.67/2015 and the Cross Objection No.6/2015 therein, were taken up for final hearing on 3/3/2022, along with all the connected matters. Mr. E. Dias appeared on behalf of the Respondents/Cross Objectors.

5. In all these matters, the Central Government *i.e.* the Appellants herein, by a Notification dated 16/3/1992, imposed restrictions upon the use and enjoyment of lands that are the subject matter of these Appeals in the Village Chicalim, Mormugao-Goa in terms of Section 7(b) of the said Act. The Collector of South Goa, Margao vide his Award dated 16/3/2001, determined the market rate of the restricted lands at ₹ 28/- per sq. meter and awarded 5% of the said market value as compensation on account of such restrictions.

6. The restricted landholders, thereupon applied under Section 18 of the said Act for enhancement of compensation, claiming substantially higher rates both, as to the market value of the restricted lands and towards valuation of the restrictions imposed. The Collector, then made references to the District Court, South Goa, at Margao, which references came to be styled as Land Acquisition Cases and were assigned separate numbers.

7. The Reference Court, in most of the matters, rejected the references. The restricted landholders appealed to this Court by instituting several appeals. The appeals were allowed and the matters were remanded to the District Court for deciding the references afresh, after giving the parties to lead additional evidence, if they so desired. Most of the parties led additional evidence and the Reference Court has now made the impugned Awards that are the subject matter of all these Appeals.

8. In First Appeal No.28/2014, the restricted lands admeasure 24,595 sq. meters and bear Survey Nos. 148/1(part), 148/2(part), and 148/3 in the Village of Chicalim, Mormugao – Goa. By the impugned Award dated 15/11/2013, the Reference Court has determined the market rate of the restricted lands at ₹ 200 per sq. meter and has assessed the value of the restrictions at 35% i.e. ₹70 per sq. meter. The restricted landholder was, therefore, awarded compensation at ₹ 70/- per sq. meter, along with the statutory benefits in terms of Section 23(2) of the said Act.

9. In First Appeal No.30/2014, the restricted land admeasures 9,900 sq. meters and bears Survey No. 143/15 of the Village of Chicalim, Mormugao – Goa. By the impugned Award dated 15/11/2013, the Reference Court has determined the market rate of the restricted land at ₹200 per sq. meter and has assessed the value of the restrictions at 35% *i.e.* ₹ 70 per sq. meter. The restricted landholder was, therefore, awarded compensation at ₹70/- per sq. meter, along with the statutory benefits in terms of Section 23(2) of the said Act.

10. In First Appeal No.31/2014, the restricted lands admeasure 33,000 sq. meters and bear Survey No. 129/1 in the Village of Chicalim, Mormugao – Goa. By the impugned Award dated 15/11/2013, the Reference Court has determined the market rate of the restricted land at ₹200 per sq. meter and has assessed the value of the restrictions at 35% i.e. ₹70 per sq. meter. The restricted landholder was, therefore, awarded compensation at

₹70/- per sq. meter along with the statutory benefits in terms of Section 23(2) of the said Act.

11. In First Appeal No.67/2014, the restricted land admeasures 20,350 sq. meters and bears Survey No. 126/1 in the Village of Chicalim, Mormugao – Goa. By the impugned Award dated 18/04/2015, the Reference Court has determined the market rate of the restricted land at ₹200 per sq. meter and has, however, assessed the value of the restrictions at 10% i.e. ₹ 20 per sq. meter. The restricted landholder was, therefore, awarded compensation at ₹ 20/- per sq. meter along with the statutory benefits in terms of Section 23(2) of the said Act.

12. In First Appeal no.42/2016, the restricted land admeasures 18,350 sq. meters and bears Survey No. 129/3 in the Village of Chicalim, Mormugao – Goa. By the impugned Award dated 30/4/2015, the Reference Court once again, rejected the reference. Hence, this is an appeal instituted by the restricted landholder.

13. In most of these cases, the restricted landholders examined themselves as AW.1 before remand. The restricted landholders examined themselves once again, in pursuance of the liberty after the remand. In most cases, the restricted landholders also examined some witnesses and experts as AW.2 and AW.3. Ramesh Kumar, General Manager of the Naval Armament Depot (Goa) was examined on behalf of the Union of India, before remand. After remand, no evidence was led on behalf of the Union of India.

14. In most of these matters, there is evidence that portions of larger properties, immediately abutting the Naval Armament Depot in the Village of Chicalim, were acquired in the year 1972 and, at that time, the Collector had determined the market rate of the acquired property at ₹ 20/- per sq. meter. There is also evidence on record that the Reference Court had enhanced this compensation by determining the market rate of the acquired property at ₹ 30/- per sq. meter. Thus, there is clear evidence in all these matters that a portion of the larger property of which the restricted lands forms but a part were acquired in the year 1972, and the market rate in respect of such acquired property was determined at ₹ 30/- per sq. meter as of the year 1972.

15. There is also no dispute that this determination of the market rate was not appealed by any parties and, therefore, it would be safe to proceed on the basis that the market rate even of the restricted lands, which are mostly adjoining the acquired lands, or in the near vicinity of the acquired lands, would be at

₹ 30/- per sq. meter as of the year 1972. There is nothing in the evidence of Mr. Ramesh Kumar to reject this premise. Even, the learned Counsel for the Union of India was unable to dispute this basic premise. Significantly, pursuant to the remand, the Union of India did not even bother to lead any further evidence before the Reference Court even though liberty was granted by this Court to all the parties to lead fresh evidence, if they so desired.

16. The Reference Court, in most of these matters except, perhaps, First Appeal No.42/2016, has taken escalation at 10% per annum and based thereon, arrived at the market rate of ₹200/- per sq. meter. In some of the matters, evidence has been produced on the aspect of escalation as well. But, even on evaluation of such evidence, I agree with the reasoning of the Reference Court that no case was made out to depart from the normal rate of escalation i.e. about 10% p.a. in such matters.

17. Although, Chicalim, where the restricted lands are situated, has indeed seen substantial all-round development on account of its proximity to the airport, railway station, major port, and the KTC Bus Stand, nevertheless, the fact remains that the lands with which we are concerned, surround the Naval Armament Depot and this feature impacts the land prices in this area. Therefore, except in First Appeal No.67/2015, none of the restricted landholders have bothered to file any cross-objections. In First Appeal No.42/2016, the Reference Court has dismissed the reference in its entirety and that is why the restricted landholder has chosen to institute First Appeal No.42/2016.

18. Mr. Lawande, the learned Counsel for the Appellant in First Appeal No.42/2016, however, pointed out that the Reference Court in Land Acquisition Case No.65/2003 concerning land admeasuring 8800 sq. meters surveyed under No.151/1 and upon which restrictions were imposed vide the very same notification dated 16/3/2001, had determined the market rate at ₹ 270/- per sq. meter and had valued the restrictions at 30% per annum of such market rate. He pointed out that this 30% would come to ₹ 81/- per sq. meter. The Reference Court, in its award dated 10/8/2006 made in Land Acquisition Case No.65/2003 had, by making an arithmetical error, valued the restrictions at ₹ 71/- per sq. meter. He pointed out that this Award dated 10/8/2006 made in Land Acquisition Case No.65/2003, was not even appealed by the Union of India and consequently, the rate determined therein has, to a certain extent, attained finality. He submitted that vide Misc. Civil Application No.447/2016 taken out in First Appeal No.42/2016, leave has been granted by this Court vide its Order dated

14/10/2016 to produce on record the Award dated 10/8/2006 in Land Acquisition Case No.65/2003. Mr. Lawande, based on this Award, submitted that the market rate of the restricted lands has to be determined at ₹ 270/- per sq. meter and valuation of the restrictions at ₹ 81/- per sq. meter, at least in First Appeal No.42/2016. He further submitted that based on this very evidence, First Appeals No.28/2014, 30/2014, 31/2014, and 67/2015, are required to be dismissed because the Reference Court has determined the value of restrictions at ₹ 70/- per sq. metre and not even ₹ 71/- per sq. metre. He relies on ***Shri Arvind Shuka Acharya vs. Special Land Acquisition Officer, South Goa Anr.***[1] and ***Delhi Development Authority vs. Bali Ram Sharma and ors.***[2] to submit that the value adopted for compensation for acquired plots of land will hold good for several plots of land if the acquisition is made pursuant to the same preliminary notification.

19. Mr. E. Dias, learned Counsel for the Respondents/Cross Objectors in First Appeal No. 67/2015 and Cross Objection No.6/2015, adopted the submissions made by Mr. Lawande but pointed out that this is a fit case where First Appeal No.67/2015 ought to be dismissed, but Cross Objections No.6/2015 are

1. 2011 (7) All MR 80.
2. (2004) 6 SCC 533

required to be allowed and the market rate of the property be determined at ₹ 270/- per sq. meter and the value of the restrictions at ₹ 81/- per sq. meter. He, therefore, prayed for dismissal of First Appeal No.67/2015 and that cross objection therein be allowed.

20. Mr. Amonkar, learned Standing Counsel for the Union of India submitted that the Reference Court had not properly appreciated the evidence on record and there were flaws in the determination of both, market rate, as well as the value of the restrictions. He submitted that most of the lands had issues of access. He submitted that the lands were agricultural and no proper evidence about the yields, was produced by the restricted landholders. Based on all this, he submitted that the Appeals instituted by the Union of India, be allowed and First Appeal No.42/2016, and Cross Objection No.6/2015 in First Appeal No.67/2015, be dismissed.

21. To the query from the Court as to whether the award dated 10/8/2006 in Land Acquisition Case No.65/2003 (Umakant Sarmalkar vs. Collector and District Magistrate, South Goa, Margao, and ors.) was at all appealed by the Union of India, Mr. Amonkar, on instructions, submitted that no appeal was filed against the said award that had determined the market rate at ₹

270/- per sq. meter and the value of the restrictions at ₹ 71/- per sq. meter. He, however, tried to urge that there was some difference between the land involved in Land Acquisition Case No.65/2003 and the lands which form the subject matter of these appeals.

22. At this stage, it is necessary to recount that the Reference Court in the earlier round, had either rejected the references or had failed to award any significant enhancement. This Court, upon being apprised about the Award in Land Acquisition Case No.65/2003 and yet another award made under the same notification dated 16/3/1992, had set aside the awards made by the Reference Court and had remanded the matters to the Reference Court for fresh adjudication, after granting liberty to the parties to lead fresh evidence.

23. The restricted landholders did lead additional evidence, in which they referred to the Award in Land Acquisition Case No.65/2003. Though there is no clarity as to whether the same was actually produced on record, there is evidence about the comparability of the lands which were the subject matter of Land Acquisition Case No.65/2003 and the lands which are the subject matter of the appeals which are now being disposed of by this Judgment and Order. Even, otherwise, the restricted lands are in the Village Chicalim itself and the restrictions were imposed on them under the same notification dated 16/3/1992. The restricted lands virtually surround the Naval Armament Depot. The amenities that are available to the land which was the subject matter of Land Acquisition Case No.65/2003, are equally available to the lands which form the subject matter of the present appeals.

24. In ***Arvind Shuka Acharya*** (supra), the learned Single Judge of this Court (S.A. Bobde, J. as His Lordship then was) has held that the value adopted for compensation for acquired plots of land will hold good for several plots of land if acquisition is made pursuant to same preliminary notification. The Court held that there was no reason to award different amounts in respect of other lands acquired under the same notification unless, of course, it was established that there were reasons to distinguish.

25. In ***Delhi Development Authority*** (supra), the Hon'ble Supreme Court also reiterated the above principle. By reference to an award in *Karan Singh vs. Union of India,* (1997) 8 SCC 186, the Hon'ble Supreme Court held that it would not be proper to take a different view as regards market value of the land covered by the same notification issued under Section 4(1) of the Land Acquisition Act, 1894.

26. Therefore, applying the aforesaid principles to the facts of the present cases, the Award in Land Acquisition Case No.65/2003, will have to be held as the base. There is evidence, as noted earlier, that the land which formed the subject matter of Land Acquisition Case No.65/2003 was not only in the vicinity of the lands which form the subject matter of the present Appeals, but also, enjoyed the same amenities or disadvantages. Despite opportunity, there was neither any serious cross examination on this aspect, nor was any evidence let in to distinguish the said land from other restricted lands involved in these Appeals.

27. Besides, as noted earlier, the award in Land Acquisition Case No.65/2003 was never appealed by the Union of India, through the Ministry of Defence. There is no justification therefore on the part of the Union of India, through the Ministry of Defence to urge that some lesser rate should now be awarded to the restricted lands, which form the subject matter of these Appeals, though, as pointed out by Mr. Lawande, in fact, lesser rate *i.e.* ₹ 70/- per sq. metre, instead of ₹ 71/- per sq. metre has been awarded in most of these cases.

28. There is ample evidence on record in all these matters that Dabolim Airport, Vasco Railway Station, KTC Bus Stand, and several development projects both, residential as well as otherwise are within a radius of 5 km. from such restricted lands. Mr. Lawande pointed out that the land *i.e.* the subject matter of First Appeal No.42/2016, or First Appeal No.28/2014 commands an excellent view of the Zuari river. Having regard to all these factors, there is no error whatsoever in the Reference Court determining the market rate quite conservatively at ₹ 200/- per sq. meter.

29. In terms of the restrictions imposed, the restricted landholders have been restrained from developing or putting up any constructions on the restricted lands, unless they obtain permissions from the competent authorities. The evidence on record suggests that such permissions are not quite easy to come by. Almost all around the restricted lands, several constructions and developments have already come up. Considering all these aspects, it is reasonable to hold that on account of the restrictions, the value of the restricted lands has been reduced by about 30-35%. Based thereon, the value of the restrictions can be determined at ₹ 70/- per sq. meter.

30. Mr. Lawande's contention about the arithmetical error in Land Acquisition Case No.65/2003 appears to be correct. However, it is possible that the Reference Court, in the said case, intended to award ₹ 71/- per sq. meter as the value of the restrictions. In all other awards that are now appealed by the Union of India, except, perhaps, First Appeal No.67/2015 and First Appeal No.42/2016, the Reference Court, on evaluation of the evidence on record, has valued the restrictions at ₹ 70/- per sq. meter. This, according to me, is a fair assessment, having regard to the evidence on record.

31. As a result, First Appeal No.28/2014, 30/2014, 31/2014, and 67/2015, where the Reference Court has determined the value of the restrictions at ₹ 70/- per sq. meter, will have to be dismissed and, are hereby, dismissed.

32. Cross Objection No.6/2015 in First Appeal No.67/2015, will have to be allowed and the value of the restrictions will have to be enhanced to ₹ 70/- per sq meter. Accordingly, this cross objection is allowed in the said terms.

33. First Appeal No.42/2016 also deserves to be allowed and the value of the restrictions will have to be determined at ₹ 70/- per sq. meter. The first appeal is, accordingly, allowed and the value of the restrictions is determined accordingly.

34. In all these matters, including in First Appeal No.42/2016, it is made clear that the restricted landholders will be entitled to the statutory benefits in terms of Section 23(2) of the said Act.

35. Further, the Union of India, through the Flag Officer Commanding, will have to now deposit the enhanced compensation in First Appeal No.67/2015/Cross Objection No.6/2015 and in First Appeal No.42/2016, together with the proportionate statutory benefits, within 15 days from today. If this is not done, then, this amount will carry interest at the rate of 6% per annum, as provided in Section 34 of the said Act. Accordingly, the Union of India, through the Flag Officer Commanding is directed to deposit the aforesaid amounts in this Court.

36. If any amounts have been deposited in this Court, then, the restricted landholders are permitted to withdraw the same, together with proportionate interest, if any that might have accrued thereon. For this purpose, the restricted landholders will have to offer proper identification and furnish bank details, so that the amounts can be directly transferred into their bank accounts. If payments have already been received, necessary adjustments will have to be made towards such amounts.

37. All these Appeals and Cross Objection No.6/2015 in First Appeal No.67/2015 are disposed of in the aforesaid terms.

38. There shall be no order for costs.

39. In view of the disposal of the Appeals, Misc. Civil Application also stands disposed of.

M. S. SONAK, J.