

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.11 OF 2015

1. The Deputy Collector (L.A.)
Margao Goa.
2. The Director of Transport,
Panaji Goa. ... Appellants

Versus

1. Mr. Isidore Gracias (deceased)
Through Lr's (copy as mentioned in the
Certified copy of the order)
 - 1.a) Shri Isito Minguel Jhon Gracias,
Son of Mr. Isidorio H. Gracias
Major,
 - 1.b) Mrs. Herma Josefa Gracias,
Daughter of Mr. Isidorio H. Gracias
Major,
 - 1.c) Mr. Godfrey Correia,
Husband of Mrs. Herma Josefa Gracias
Major,
 - 1.d) Ms. Serafina Alba Gracias
Daughter of Mr. Isidorio H. Gracias
Major.
 - 1.e) Ms. Benisha Gracias,
Daughter of Mr. Isidorio H. Gracias,
Major.
All residing at Chaudi, Canacona Goa. ... Respondents

Ms. P. Kamat, Additional Government Advocate for the appellants.
Mr. Shukra Usgaonkar, Advocate for the respondents.

CORAM: M. S. SONAK, J

DATE : 19th January 2022

ORAL JUDGMENT :

1. Heard Ms. P. Kamat, learned Additional Government Advocate for the appellants – State and Mr. Shukra Usgaonkar, learned counsel for the respondent – claimant.
2. The challenge in this appeal is to the judgment and award dated 28.05.2012 made by the reference Court in Land Acquisition Case No.107 of 1999 enhancing compensation in respect of the acquired land from Rs.7/- per square meter to Rs.200/- per square meter.
3. Vide Notification under Section 4 of the Land Acquisition Act, 1894 (the said Act) issued on 06.09.1996, the respondent's land admeasuring 594 square meters at Chaudi, Canacona Goa was acquired for construction of a bus stand. The Land Acquisition Officer vide award dated 30.10.1998 determined the market value of the acquired land at Rs.7/- per square meter. The reference Court vide award dated 05.03.2004 dismissed the reference.
4. Aggrieved by such dismissal, the respondent–claimant instituted First Appeal No.141/2004 questioning the award dated 05.03.2004.

5. This Court vide judgment and order dated 16.09.2010 set aside the award dated 05.03.2004 and remanded the matter to the Reference Court for granting the opportunity to the parties to lead additional evidence. In pursuance of the remand, the reference Court did permit the parties to lead additional evidence and thereafter vide impugned judgment and award dated 28.05.2012, has determined the market rate at Rs.200/- per square meter. It is this impugned judgment and award that is questioned in this appeal by the appellants – State.

6. Ms. Kamat learned Additional Government Advocate submitted that there was no legal evidence on record to establish that the acquired land was in the settlement zone. She submits that the evidence on record bears out that the acquired land was a portion of the low-lying paddy field. She submits that there is evidence on record that the acquired land was at a level much lower than the surrounding area/road. She pointed out that there is evidence that the acquired land was a narrow strip of irregular shape and dimension. She submits that these aspects have not been considered by the reference Court which incorrectly relied upon the sale deed dated 30.06.1994 at Exhibit 24- C.

7. Ms. Kamat submitted that the sale instance dated 30.06.1994 was not at all comparable sale instance. She pointed

out that the land forming the subject matter of the sale deed was barren land, admittedly in the settlement zone. She submitted that none of the negative factors attached to the acquired land were even remotely applicable to the sale deed land. She, therefore, submits that the reference Court erred in relying on the sale instance dated 30.06.1994.

8. For the aforesaid reasons, Ms. Kamat submits that the impugned award warrants interference.

9. Mr. Usgaonkar, learned counsel for the respondent – claimant at the very outset relied upon the decision of the Hon'ble Supreme Court in the *Dollar Company, Madras vs Collector of Madras*¹ to submit that a court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong. He submits that in the present case, the impugned judgment and award is clearly right and warrants no interference whatsoever.

10. Mr. Usgaonkar submitted that the sale instance dated 30.06.1994 was indeed comparable. Based on the same market value of the acquired land would come to at least Rs.330/- per square meter. However, the reference Court has made deductions

¹ (1975) 2 SCC 730

based on the so-called negative factors pointed out by Ms. Kamat and thereafter arrived at the rate of Rs.200/- per square meter.

11. Mr. Usgaonkar submitted that Chaudi is a central place in Canacona where all Government offices, markets, etc., are located. He submits that it is for this reason the land was acquired for the construction of a new bus stand here. He submits that there can perhaps be no greater prime location in Canacona than Chaudi. He, therefore, submits that the rate determined by the reference Court is quite conservative, and in any case, the impugned judgment and award warrants no interference at the behest of the appellants – State. He, therefore, urges dismissal of this appeal.

12. The rival contentions now fall for my determination.

13. In this case, there is no dispute that the acquired land admeasures hardly 594 square meters and is located at Chaudi, Canacona Goa. There is evidence on record that Chaudi is a central place and most of the Government offices, the marketplace, etc. are located there. Therefore, there is merit in the submission of Mr. Usgaonkar that this place was chosen for the construction of a bus stand being a centrally located place.

14. The evidence on record bears out that several amenities are available at this location. There is further evidence on record that acquired land was earlier in the cultivable zone as per the Regional Plan of Goa but Town and Country Planning Board has agreed for a change of use of zone from cultivable zone to settlement zone in its 68th meeting held on 02.06.1994 itself. This is clear from Exhibit 22-C produced on record of the reference Court. Notification under Section 4, in this case, was issued on 06.09.1996 perhaps only after the Town and Country Planning Board agreed to change the zone from cultivable zone to settlement zone, so that, a bus stand could be constructed on the acquired land. This is certainly a positive factor attached to the acquired land.

15. The reference Court, in this case, has quite correctly relied upon the sale instance dated 30.06.1994. The sale instance refers to substantially comparable land hardly 300 meters away that was sold at the rate of Rs.250/- per square meter in the year 1994. Having regard to the principle of 10% escalation which was rightly applied in this case, the rate in the year 1996 would come to Rs.300/- per square meter. Besides, there is evidence in this case that the acquired land was abutting the highway and therefore had tremendous commercial potential. In contrast, the sale deed land was accessible only by an internal road. Having

regard to this positive factor, the reference Court was entirely justified in making an addition of 10% and working out the rate to Rs.330/- per square meter in respect of the acquired land.

16. The reference Court, in this case, has given due consideration to the negative factors attached to the acquired land. The acquired land, the evidence bears out, was about one meter below the highway level, and further, the acquired land was irregular in shape and dimension. On considering these negative factors, the reference Court has made substantial deductions thereby reducing the rate from Rs.330/- to only Rs.200/- per square meter. In my judgment, there is no error whatsoever in the reasoning adopted by the reference Court and the rate determined by the reference Court in this matter.

17. In *Dollar Company, Madras* (supra) the Hon'ble Supreme Court at para 4 has made the following observations.

“4. At the outset, we must warn ourselves of the broad guideline that in an appeal from an award granting compensation this Court will not interfere unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied.

Moreover, there is a prudent condition to which the appellate power, generally speaking, is subject. A court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong. These twin principles serve as backdrop to our approach to the rival contentions in the case.”

18. Ms. Kamat pointed out that the aforesaid principle will mainly apply to appeals entertained by the Hon'ble Supreme Court. Mr. Usgaonkar however submitted that the observations will equally apply to an appeal before this Court because the Hon'ble Supreme Court has held that the Court of appeal which will include this Court as well. The appeal Court can interfere not merely when the judgment under attack is not right but only when it is shown to be wrong.

19. In the facts of the present case, it is not necessary to go into the above issue because the appellants have failed to demonstrate that the impugned judgment and award is not right. In my judgment, the impugned judgment and award is quite right and there is no case made out to interfere with the same. Therefore, even without adverting to the principle referred to by Mr. Usgaonkar, there is no case made out to interfere with the impugned judgment and award.

20. This appeal is therefore liable to be dismissed and is hereby dismissed. There shall however be no order for costs.

M. S. SONAK, J