Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.78 OF 2016

Mr. Mathew Dias
r/o Mugali, Sao Jose de Areal,
Salcete Goa. … Appellant

Versus

The Deputy Collector (LA)
Collectorate, South Goa,
Margao Goa. … Respondent

Ms. Prithvi Bandekar, Advocate for the Appellant.

Mr. Arun Talaulikar, Additional Government Advocate for the Respondent-State.

CORAM: M. S. SONAK, J.

DATED : 19th August 2022

ORAL JUDGMENT

1. Heard Ms. P. Bandekar, learned counsel for the Appellant, and Mr. Arun Talaulikar learned Additional Government Advocate for the Respondent-State.

2. This appeal challenges the judgment and award dated 22.03.2016 by the District Court, South Goa, at Margao (Reference Court), dismissing the Land Acquisition Case No. 7/2013. This case was a reference under Section 18 of the Land Acquisition Act, 1894 (the said Act).

3. By Notification dated 17.04.2006, the Appellant's lands admeasuring 4429 square meters, surveyed under Nos. 65/26-2, 65/26-3, 65/26-5, 65/26-7, 65/26-9, 65/26-11, 65/26-13, 65/26-15, 65/26-17 and 65/26-19 of City Survey of Margao Goa, was proposed to be acquired for construction of District Head Quarters Office building complex in South Goa District at Salcete Goa.

4. The Land Acquisition Officer, by his award dated 10.10.2006, determined the compensation at the rate of ₹8/- per square meter. However, since the Appellant was not satisfied with this rate, he sought a reference to the Reference Court claiming compensation of ₹2000/- per square meter.

5. By the impugned judgment and award dated 22.03.2016, the Reference Court has dismissed the reference by observing that the Appellant failed to prove that the market value of the acquired land was ₹2000/- per square meter or, for that matter, any rate over and above the rate of ₹8/- per square meter determined by the L.A.O. Hence, this appeal.

6. Ms. Bandekar, learned counsel for the Appellant, referred to the evidence of the Appellant and pointed out that the acquired land is situated in a commercial area at a distance of 200 meters from the Kadamba Bus Stand. She submitted that Margao city is about two kilometers away from the acquired land. She submitted that within a three-kilometers radius of the acquired land, there are a hospital, school, railway station, and several other amenities.

7. Ms. Bandekar, based upon this evidence, submitted that the acquired land has building potentiality, and therefore, the market rate should be determined at ₹2000/- per square meter.

8. Ms. Bandekar acknowledged that most of the sale deeds produced by the Appellant were post Section 4 Notification sale deeds. However, she submitted that these sale deeds should be considered at least for the limited purpose of noting an overall increase in land prices in the area in question.

9. Ms. Bandekar, referring to Misc. Civil Application No.1421 of 2022 (Filing No.) submitted that additional evidence may be admitted in this appeal. In particular, she pointed out that adjacent land acquired under the same Notification was awarded compensation at the rate of ₹142/- per square meter by the Reference Court in Land Acquisition Case No.20/2007. Therefore, she submitted that this evidence is most relevant, and based upon the same, the compensation at the rate of at least ₹142/- per square meter should be awarded to the Appellant. She relied on the judgment of ***Sanjay Kumar Singh Vs The State of Jharkhand, Civil Appeal No.1760 of 2022,*** decided on 10.03.2022 to submit the additional evidence by resorting to provisions of Order XLI Rule 27 of the C.P.C., which should generally be admitted in such matters.

10. Mr. Talaulikar defends the impugned judgment and award based on the reasoning reflected therein. He pointed out that the acquired land was tenanted land. He submitted that the Appellant, in his affidavit in evidence, has admitted that he was the tenant of the acquired land. Therefore, he proposes that the Tenanted Land provisions of the Goa Land Use (Regulation) Act, 1991, will apply and such land could not have been used for any purpose other than agriculture. He, therefore, submits that the evidence about any alleged building potentiality will have to be rejected.

11. Mr. Talaulikar further submitted that the sale deeds produced by the Appellant are in respect of developed plots that were not tenanted. Moreover, he offered most of the sale deeds pertaining to the period after the publication of Section 4 notification. He, therefore, submits that all such sale deeds are quite irrelevant and were rightly rejected by the Reference Court.

12. Mr. Talaulikar submits that no proper evidence has been produced about agriculture yield. He submits that Ms. Minguelina Hilario, who the Appellant examined, has deposed that the acquired land used to be inundated during monsoon, implying that the same was not even suitable for cultivation.

13. Mr. Talaulikar submits that in the absence of any cogent and legal evidence, the Reference Court was justified in dismissing the reference. Mr. Talaulikar submits that the additional evidence may not be admitted in this appeal because the legality of the impugned award has to be determined based on the material produced before the Reference Court by the parties. Without prejudice, he submits that the award in Land Acquisition Case No. 20/2007, which the Appellant seeks to rely upon, was not in respect of a tenanted land. He submits that even such evidence, if admitted, will be quite irrelevant, and based upon the same, no enhancement can be awarded.

14. Ms. Bandekar, by placing reliance on ***Goa Housing Board Vs Rameshchandra Govind Pawaskar and another***[1] submitted that the Hon'ble Supreme Court, after taking into consideration the position of tenanted lands and the provisions of the Goa Land Use (Regulation) Act, 1991, ordered a 50% deduction from the market value of adjoining freehold land whose rate was determined in the said case at ₹110/- per square meter. The Hon'ble Supreme Court of India then proceeded to award compensation at the rate of ₹55/- per square meter with all statutory benefits. Therefore, she submits that the said course of action deserves to be followed in this case.

15. The rival contentions now fall for determination.

16. In this case, the Appellant has examined himself and two laborers to support the plea for enhancement. In his affidavit in lieu of examination in chief, the Appellant stated that he is deemed tenant of the acquired property, admeasuring 3754 square meters. He has also referred to an order by which he was declared a tenant. This order is dated 16.07.1990.

17. The Appellant's two witnesses have also deposed about cultivation activities on the acquired land. One of the witnesses,

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1 (2011) 10 SCC 371

Ms. Minguelina Hilario, admitted that the acquired property was inundated during the monsoon. But she added that the acquired lands used to be cultivated despite this.

18. Neither the Appellant nor his employees could estimate agricultural yield from the acquired land. Instead, the Appellant and his witnesses spoke about the proximity of the acquired land to the K.T.C. bus stand, Margao city and hospital, school, railway station, and other amenities. Based upon all this, the Appellant tried to establish a case that the acquired land had development potential.

19. The sale deeds produced by the Appellant are primarily in respect of small developed plots not affected by any tenancy. Besides, most of the sale deeds were executed beyond the date of publication of Section 4 Notification in the present matter. Therefore, no case was made for enhancement based upon such sale deeds.

20. By filing an application under Order XLI Rule 27 of the C.P.C., the Appellant has sought leave to produce additional evidence in appeal. Though leave was sought to produce certain sale deeds, in my judgment, no such leave can be granted at this stage for the production of sale deeds. There is no explanation why such sale deeds were not produced earlier. Acceptance of such sale deeds would involve a remand to determine the issue of comparability. Even otherwise, such sale deeds do not appear to be very relevant.

21. However, the Appellant's application for production of judgment and award dated 22.12.2007 in Land Acquisition Case No. 20/2007 made by the Reference Court can be or rather deserves to be granted. This is an award concerning adjacent land acquired under the same Notification for constructing the District Head Quarters office in South Goa. There was no dispute raised on this aspect.

22. In the award dated 22.12.2007, the Reference Court, regarding untenanted lands acquired under the same Notification, determined the market rate at ₹142/- per square meter. This Reference Court relied upon the earlier award of lands acquired in the same vicinity. The Respondent did not contend that this award was challenged or that the same has been set aside by this Court.

23. Therefore, the award dated 22.12.2007 is relevant for deciding the issue raised in this appeal. Undoubtedly, the land which is the subject matter of the award dated 22.12.2007 is not tenanted land. But the said award can be relied upon, no doubt, by making appropriate deductions considering the law laid down in *Rameshchandra Govind Pawaskar* (supra).

24. In *Sanjay Kumar Singh* (supra), the Hon'ble Supreme Court, in the context of provisions of Order XLI Rule 27 of C.P.C., made the following observations in paragraphs 3.1, 4, and 5:

> *"3.1 At the outset, it is required to be noted that before the Reference Court as well as before the High Court, the only evidence produced on record was the sale deed dated*

29.12.1987 which was rejected from being considered. Hence, as such, there was no other evidence/material on record to arrive at a fair market value for the acquired land. Therefore, before the High Court, the Appellant filed an application under Order 41 Rule 27 C.P.C. for additional evidence to bring on record the sale deeds and certified copy of the judgment and award passed by the Reference Court which, according to the Appellant, would have a direct bearing on the determination of the fair market value of the acquired land. The High Court has rejected the said application by observing that the application does not satisfy the requirement of Order 41 Rule 27 read with Section 96 of the C.P.C. The High Court has also observed that the Appellant has failed to establish that notwithstanding the exercise of due diligence, such additional evidence was not within his knowledge and could not after exercise of due diligence be produced before the courts below. However, the High Court while considering the application for additional evidence has not appreciated the fact that the documents which were sought to be produced as additional evidence might have a bearing on the determination of the fair market value of the acquired land. It is to be noted that except the sale deed dated 29.12.1987, which was rejected by the courts below, no further evidence was on record to determine the fair market value of the acquired land. It was a case of awarding of fair compensation to the land owner whose land has been acquired for public purpose. It cannot be disputed that the claimant whose land is acquired is entitled to the fair market value of his land.

4. It is true that the general principle is that the appellate Court should not travel outside the record of the lower Court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 C.P.C. enables the appellate Court to take additional evidence in exceptional circumstances. It may also be true that the appellate Court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the *same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 C.P.C. by the appellate Court is to be considered is, whether or not the appellate Court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature. As observed and held by this Court in the case of A. Andisamy Chettiar v. A. Subburaj Chettiar, reported in (2015) 17 SCC 713, the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.*

5. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that while considering the application for additional evidence, the High Court has not at all adverted to the aforesaid relevant consideration, i.e., whether the additional evidence sought to be adduced would have a direct bearing on pronouncing the judgment or for any other substantial cause. As observed hereinabove, except sale deed 29.12.1987, which as such was rejected, there was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence. However, at the same time, even after permitting to adduce the additional evidence, the applicant has to prove the

> *existence, authenticity and genuineness of the documents including contents thereof, in accordance with law and for the aforesaid purpose, the matter is to be remanded to the Reference Court."*

25. In *Sanjay Kumar Singh* (supra), the Hon'ble Supreme Court, after referring to ***Uttaradi Mutt Vs. Raghavendra Swamy Mutt***[2] held that allowing the application under Order 41 Rule 27 C.P.C., does not lead to the result that the additional documents/additional evidence can be straightway exhibited rather, the applicant would have to not only prove the existence, authenticity, and genuineness of the said documents but also the contents thereof, in accordance with the law. It was observed that thus the documents which are permitted to be brought on record as additional evidence have to be proved by the Appellant before the Reference Court, in accordance with the law. Only after that and after proving the existence, authenticity, and genuineness of the said documents, including contents thereof, can the same be taken into consideration by the Reference Court. Accordingly, the Hon'ble Supreme Court remanded the matter to the Reference Court after allowing the application under Order XLI Rule 27 of the C.P.C.

26. In this case, however, the documents like sale deeds, etc., are not permitted to be brought on record by resort to provisions of Order XLI Rule 27 of the C.P.C., leave is granted only to bring on record the judgment and award dated 22.12.2007. The certified copy of this

2 (2018) 10 SCC 484

award has been tendered, and there can be no doubt about its existence, authenticity, and genuineness. No such doubt was, in fact, even raised by the Respondent. Accordingly, there is no necessity to remand the matter to the Reference Court.

27. Now that the additional evidence in the form of judgment and award dated 22.12.2007 is admitted, the position that emerges is that the market rate of virtually adjacent land acquired under the same Notification is to be taken at ₹142/- per square meter in respect of lands not affected by the tenancy.

28. In *Rameshchandra Govind Pawaskar* (supra), the Hon'ble Supreme Court of India has discussed the principle to be applied in determining the market value of tenanted lands affected by the provisions of the Goa Land Use (Regulation) Act, 1991. Such discussion is to be found in paragraphs 12, 13, 14, 19, 20, 21, and 22 of the said judgment.

29. In the context of the present case, a particular reference is necessary to the observations in paragraphs 19, 20, and 22, which are reproduced below for the convenience of reference.

> *"19, Where an acquired land is subject to a statutory covenant that it can be used only for agriculture and cannot be used for any other purpose necessarily it will have to be sold as agricultural land as the landowner cannot sell it for any purpose other than agriculture and the purchaser cannot sell it for any purpose other than agriculture. As a consequence, the price fetched for such*

land will be low even if it is situated near any urban area. But if the same land is not subject to any prohibition or restrictive covenant regarding use and has the potential of being developed either as a residential layout or put to commercial or industrial use, the land will fetch a much higher price; and the market value of such other land with development potential can be determined with reference to the sale price of nearby residential plots by making appropriate deduction for development. On the other hand if the land is to be used only for agricultural purposes, it may not be possible to arrive at the market value thereof with reference to the market value of nearby residential plots.

20. Therefore, we are of the considered view that in regard to the land in question, in view of the permanent restriction regarding user, that is, it should only be used for agricultural purposes, and the bar in regard to any non-agricultural use, it will have to be valued only as an agricultural land and cannot be valued with reference to sales statistics of other nearby lands which have the potential of being used for urban development.

22. On the facts and circumstances, having regard to the prohibition regarding use of land for any purpose other than agricultural, the land will have to be treated and valued as agricultural land without any development potential for being used as residential/commercial/industrial plots. We are of the view that at least 50% will have to be deducted from the market value of freehold land with development potential to arrive at the market value of such land which can be used only for agricultural purposes. As we have already determined the market value of the neighbouring land (which is not subject to the prohibition under Land Use Act) as Rs.110/- per square metre, we are of the view that an appropriate compensation for the acquired land should be 50% thereof, that is, Rs.55 per square metre."

30. Applying the above principle, a deduction of 50% is due from the market value of adjoining freehold land determined by the Reference Court in judgment and award dated 22.12.2007. This means that the market rate of the acquired land will have to be determined at ₹71/- per square meter.

31. This appeal is therefore partly allowed, and the market value of the acquired land is ordered to be determined at the rate of ₹71/- per square meter in place of ₹8/- per square meter determined by the L.A.O. The Appellant will be entitled to all the statutory benefits proportionately on this enhanced compensation amount.

32. The Respondent is now directed to deposit in this Court an enhanced compensation amount together with proportionate statutory benefits within eight weeks from today after giving due intimation to the learned counsel for the Appellant. Upon deposit, the Appellant can withdraw the said amount by furnishing proper identity documents and bank details. Registry to ensure that the compensation amount is transferred directly into the Appellant's bank account.

33. The appeal is partly allowed without any order for costs.

34. The appeal and the Misc. Civil Application No.1421 of 2022 (F) are disposed of in the above terms.

M. S. SONAK, J.

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH Date: 2022.08.23 14:32:56 +05'30'