Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 134 OF 2012

The Executive Engineer,
Works Division – VII,
Public Works Department,
Government of Goa,
Patto, Panaji, Goa - 403 001. ..... Appellant.

Versus.

Shri Saunsthan Devkikrishna Ravalnath,
Pandavada, Marcel, Ponda, Goa. .... Respondent.

Mr. Priyanka Kamat, Additional Govt. Advocate *for the Appellant.*

Mr. V.R. Tamba, Advocate *for the Respondent.*

CORAM : M. S. SONAK, J.

DATE : 11th February 2022

ORAL JUDGMENT: -

1. Heard Ms. Priyanka Kamat, Addl. Govt. Advocate for the Appellant and Mr. V.R. Tamba for the Respondent.

2. This Appeal challenges the Judgment and Award dated 4/5/2012, made by the Reference Court in Land Acquisition Case No.5/2009, enhancing the market rate in respect of the acquired land from ₹ 200/- per sq. metre to Rs.450/- per sq. metre.

3. In this case, vide notification dated 5/9/2003 issued under Section 4 of the Land Acquisition Act, 1894 (said Act), the State proposed to acquired the Respondent's property admeasuring 23120 sq. metres surveyed under No.16/0 (part) at Chimbel, Tiswadi, Goa for the public purpose of "Ribandar by-pass".

4. The Land Acquisition Officer, by her Award dated 16/2/2008, determined the market rate at ₹ 200/- per sq. metre. The Reference Court, by the impugned Judgment and Award dated 4/5/2012 has now enhanced this rate to ₹450/- per sq. metre, as against the claim of the Respondent of ₹ 1200/- per sq. metre.

5. Ms. P. Kamat submits that there is no evidence to sustain the enhancement. She submits that the Respondent is a Devasthan and there are several restrictions when it comes to the Devasthan dealing with its properties. She relies on ***The***

Executive Engineer, Works Division XV (NH), PWD & Anr. vs. Shri Mahals Sausthan[1], where this Court, after considering the provisions of the Devasthan Regulation has made a deduction of 10%.

6. Ms. Kamat further submitted that the sale instances relied upon by the Respondents were not comparable. Firstly because the sale instances concerned developed plots, and, secondly because they were small plots, admeasuring 1193 sq. metres and 1091 sq. metres, respectively as against the acquired land which was quite a large and admeasured 23120 sq.metres. She submits that in any case, appropriate deductions have not been made by the Reference Court, having regard to these distinguishing features. She submits that there is no evidence about the building potentialities. She submits that the evidence establishes that the acquired property was only an agricultural property, but there is no evidence about any yield or income from such property. She submits that for all these reasons, the Reference Court ought to have maintained the rate of ₹ 200/- per sq. metre and dismissed the reference. She relies on ***Kausalya Devi Bogra and ors. vs. Land Acquisition Officer,***

1. FA No.313/203 decided on 30/9/2011

Aurangabad and ors.[2]***, P. Ram Reddy & ors. vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and ors.***[3]***, Shri Froiliano C.R. Machado vs. The Executive Engineer and another***[4]***, Land Acquisition Officer and Sub-Collector, Gadwal vs. Sreelatha Bhoopal and ors.***[5] and ***Subh Ram and ors. vs. Haryana State and ors.***[6] in support of her contentions.

7. Mr. V.R. Tamba, learned Counsel for the Respondent submits that there is ample evidence on record to sustain the Award made by the learned Reference Court. He submits that Satish Keni (AW.1), who deposed in this matter has, at paragraph 11 of his affidavit-in-lieu of examination-in-chief, deposed to the location and building potentialities of the acquired land in great detail. He pointed out that there was no cross-examination on this aspect and, therefore, the Appellants cannot today raise the issue of building potentialities.

8. Mr. Tamba submits that the decision in ***Mahalsa Sausthan*** (supra) must be restricted to the peculiar facts obtained

2. (1984) 2 SCC 324
3. (1995) 2 SCC 305
4. 1996 (2) Goa L.T. 126
5. (1997) 9 SCC 628
6. (2010) 1 SCC 444

therein. He points out that even in the Devasthan Regulation there is no prohibition whatsoever for the sale of Devasthan lands after obtaining permissions. He, therefore, submits that there is no prohibition for the Devasthan making constructions and leasing out the commercial spaces even without obtaining permissions. Without prejudice, he submits that in this case, the deductions to the extent of 60% have already been made and the same are in fact quite excessive. He, therefore, submits that the impugned award warrants no interference whatsoever.

9. The rival contentions now fall for my determination.

10. The Reference Court, in this case, has relied upon two sale instances and after holding that the sale deed plots were comparable to the acquired plot, proceeded to evaluate the positive and negative factors, affecting the acquired land. Several deductions have been made based on such evaluation. This means that the approach of the Reference Court is quite consistent with the law laid down by the Hon'ble Supreme Court in ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona, and ors.***[7].

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7. (1988) 3 SCC 751

11. The sale instance at Exhibit-19 is dated 16/7/2002 *i.e.* about a year before the issuance of Section 4 notification in this case. This sale instance concerns a plot admeasuring 1193 sq metres, which Ms. Kamat admitted, was in the locality or vicinity of the acquired land. The evidence on record also bears out this position. The rate reflected in this sale deed is ₹900/- per sq. metre. The sale deed plot was, however, a converted and developed plot, unlike the acquired plot was unconverted and undeveloped land.

12. The second sale instance is dated 20/12/2002 *i.e.* almost about 9 to 10 months before the issuance of Section 4 notification in this case. The area of the sale deed plot is 1091 sq. metres and the rate at which it was sold, was ₹900/- per sq. metre. Again, there is no dispute that the sale deed plot is in the vicinity of the acquired land and further, the sale deed plot was a converted and developed plot.

13. The Respondent examined two witnesses, out of which, AW.1 Satish Keni is the most important and relevant witness on the aspect of determination of the market rate of the acquired land.

14. AW.1 has deposed about the ownership of the Respondent to the acquired plot and has also pointed out that this plot was gifted to the Devasthan, so that the income therefrom could be used for celebrating certain activities of the temple. AW.1 has also produced two sale instances Exhibits-19 and 20 and has deposed about the comparability of the sale deed plots with the acquired land.

15. On the aspect of building potentialities and the location of the acquired plot, AW.1 has very categorically deposed as follows in paragraph 11 of his affidavit.

> *" I say that from our acquired plot, one can have uninterrupted scenic, superb and Panoramic view of the sea. Utility Services like water lines, electricity lines are available in the acquired plot. The Acquired Plot is very ideal and suitable for building/construction activities after conversion, In fact, the plots of similar nature in the close proximity of the acquired plot on either side, have been converted and several buildings have come up. For Example, on one side of the acquired Plot, there is Saibaba Temple and other buildings and on the other side, big Milroc Township has Come up. There is also Military Township. All these building activities have come up in the proximate vicinity of the acquired plot on both sides. There is bus stop and Playground near the acquired plot. In fact, the Plots mentioned in the Sale Deeds dated 16-7-2002 and dated 20-12-2002 of Navelcars, are about three Kilometres, away from the*

acquired Plot towards Old Goa side and away from Panaji City; whereas the acquired Plot is just about half Kelometer from Chimbel Road and is towards Panaji and its sale value is much more than the said Plots covered by abovementioned sale deeds of Navelcars. In other words, the acquired Plot has huge financial potentialities and would have fetched our Devasthan huge amounts, which could have been used for developmental activities/projects of our Devasthan."

16. Though AW.1 has deposed about the severance compensation, the same has not been awarded by the Reference Court. Mr. Tamba, learned Counsel for the Respondent also stated before this Court that the Respondent does not press for any severance compensation and, therefore, issue No.2, as framed by the Reference Court, need not be decided.

17. The cross-examination of AW.1 has not made any serious dent to the case deposed to by him. In particular, there is no cross-examination or, in any case, hardly any cross-examination on the aspects deposed to by AW.1 in paragraph 11 of his affidavit referred to above.

18. Therefore, the evidence on record establishes that the acquired plot had several positive factors. The acquired plot had an uninterrupted scenic and panoramic view of the sea. Utility services like water lines, electricity lines were available in the acquired plot. Sai Baba temple and several other buildings and building complexes like Milroc Township, Military Township have come up in the proximate vicinity of the acquired plot. There is a playground near the acquired plot. The acquired plot is just about half a kilometer from Chimbel road and is towards Panaji city in contrast to the sale deed plots, which are away from the acquired plot towards the Old Goa side. This means that the acquired plot is much closer to Panaji city as compared to the sale deed plots.

19. On the evaluation of this evidence, the Reference Court has quite correctly concluded that the sale deed plots and the acquired plots are comparable, though, some deductions will have to be made after evaluating the positive and negative features as provided in ***Chimanlal Hargovinddas*** (supra).

20. Now, the two sale instances reflect the rate almost a year before the issuance of Section 4 notification in this case. Therefore, the Reference Court should have made an addition of at least 10%, having regard to the location of the acquired plot, location of the sale deed plot, and the all-around development taking place in the vicinity as reflected from the evidence of AW.1. This means that the rate should have been taken at ₹990/-

per sq. metre and, only thereafter the Reference Court should have evaluated the positive and negative features.

21. The Reference Court, in this case, has taken the market rate at only ₹900/- per sq. metre as the basis, after relying on Exhibits 19 and 20. Instead, the Reference Court was required to take the rate of ₹990/- as on the date of issuance of Section 4 notification.

22. The Reference Court has made a deduction of 40% because the sale deed plots were admittedly converted and developed plots; whereas the acquired plot was not converted nor a developed plot. The Reference Court has relied upon the decision in *State of Goa vs. Olga Seco Gomes da Costa* – 1998 (1) Goa L.T. 324 and *State of Goa and anr. vs. Bhaskar Ramchandra Porobo Sinari & ors.* - First Appeal No.249/2003, decided on 12/1/2012. Even the decision in ***Kausalya Devi Bogra*** (supra), ***Subh Ram, and ors.*** (supra), and ***P. Ram Reddy*** (supra), *inter alia,* provide that deductions can be made ranging between 20% to 70% when a developed plot is to be compared with an undeveloped plot. Therefore, the deductions on this count to the extent of 40% warrants no interference. This means that the market rate, after this deduction, can be taken at ₹ 594/- per square metre.

23. The Reference Court has then addressed the contention that the sale deed plots admeasured only 1193 and 1091 sq. metres and the acquired plot admeasured 23,120 sq. metres. In terms of ***P. Ram Reddy*** (supra) and other decisions relied upon by Ms. Kamat, deductions are due on this count as well. The Reference Court has made deductions to the extent of 20% which, in this case, appears to be slightly on the higher side, particularly after deductions to the extent of 40% is already made on account of conversion and development. Be that as it may, even if this deduction is sustained, the market rate, after this deduction, will have to be taken as ₹475.20.

24. The Reference Court has quite correctly appreciated the fact that the acquired land is much closer to Panaji City than the sale deed plots. This is certainly a positive factor *qua* the acquired land and therefore, the Reference Court has made an addition of 10% on the market rate reflected in the two sale instances at Exhibits-19 and 20 *i.e.* addition of ₹90/- per sq. metre. Accepting the principle of the Reference Court, this addition would be of ₹99/- per sq. metre, when evaluating the marketing rate on the date of Section 4 notification, which was issued almost a year after the two sale instances. This means that the market rate would come to almost ₹574.10.

25. Ms. Kamat is, however, justified in contending that the Reference Court erred in not appreciating the fact that there are several restrictions when it comes to alienating of Devasthan land, and deduction to the extent of 10% was warranted on this count. Ms. Kamat has quite correctly relied upon the decision in ***Mahalsa Sausthan*** (supra) and urged deductions of at least 10%. This deduction to the extent of ₹ 99/- per sq. metre will consequently set off the addition on account of the positive factors benefiting the acquired land. This means that the market rate still will have to be determined at ₹475.20.

26. In this case, the Reference Court has determined the market rate at ₹450/- per sq. metre. This rate will, therefore, have to be sustained having regard to the evidence on record. This rate is discernible even after evaluation of the various decisions referred to by Ms. Kamat, learned Additional Govt. Advocate. Even if some additional deductions are warranted as suggested by her, there can be no fault found with the Reference Court in determining the market rate at ₹450/- per sq. metre.

27. For all the aforesaid reasons, the determination made by the Reference Court in the impugned Judgment and Award is sustained. This Appeal is accordingly dismissed. There shall be no order for costs.

M. S. SONAK, J.