

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.40/2018

SHRI BABU alias BABURAO
BHASKAR LAVANNIS (since
deceased), through his L.R.s:

a. MRS. PREMA BABURAO
LAVANNIS, aged 83 years, wife of
late Baburao B. Lavannis

b. MR. BHASKAR BABURAO
LAVANNIS, aged 56 years, son of
late Baburao B. Lavannis, bachelor,
Both residing at C-14, Mandvi, 4th
floor, Devidas Lane, S.V.P. Road,
Borivli (West), Mumbai – 400103.

c. MR. VINAY BABURAO
LAVANNIS, aged 54 years, son of
late Baburao B. Lavannis, married

d. MRS. MANASI VINAY
LAVANNIS, aged 47 years, wife of
Vinay B. Lavanis, Both residing at
B 404, Park Land 1, Raheja Estate,
Kulupwadi Road, Borivali (East),
Mumbai – 400066.

... APPELLANTS

Versus

THE EXECUTIVE ENGINEER,
Work Division-VI, G.T.I.D.C.
Sarvan, Bicholim.

... RESPONDENT

Mr. R. G. Ramani, Senior Advocate with Mr. P. Kakodkar and Mr. S. Chopdekar, Advocates *for the Appellants*.

Mr. Arun Talaulikar, Additional Government Advocate *for the Respondent*.

CORAM.: M. S. SONAK, J.

DATED: 24th June 2022

ORAL JUDGMENT:

1. Heard Mr. R. G. Ramani, learned Senior Advocate who appears along with Mr. P. Kakodkar and Mr. S. Chopdekar for the Appellants, and Mr. Arun Talaulikar learned Additional Government Advocate for the Respondent.
2. This appeal challenges the Judgment and Award dated 20.02.2017 in Land Acquisition Case No.16/2012 made by the Ad-hoc District Judge-1 (F.T.C.) at Mapusa (Reference Court), dismissing the appellants' Reference for enhanced compensation.
3. By Notification under Section 4 of the Land Acquisition Act, 1894 (said Act) published on 05.11.2009, the Respondent proposed to acquire some properties admeasuring 1,20,017 sq.mtrs. for the construction of the Piligao-Narve distributary of Sanquelim Branch Canal of L.B.M.C. of T.I.P. from Ch.0.00 k.m. to 4.850 km. in Sarvan Bicholim and Piligao Village of

Bicholim Taluka. Out of the acquired properties, the appellants are interested in the property admeasuring 2066 sq.mtrs. from out of their total property admeasuring 18,400 sq.mtrs. in Survey No.73/1, Bicholim.

4. The Land Acquisition Officer (L.A.O.), by his Award dated 30.06.2011, offered the appellants compensation by determining the market rate of the acquired property at ₹175/- per sq.mtr. Dissatisfied with the offer, the appellants applied for Reference under Section 18 of the said Act. By the impugned Judgment and Award, however, the Reference Court has rejected the Reference by holding that the determination made by the L.A.O. was proper.

5. Mr. Ramani, learned Senior Advocate for the appellants, submits that the Reference Court has virtually proceeded on the basis that she was sitting in appeal over the Award of the L.A.O. He submits that such an approach is contrary to the law laid down by the Hon'ble Supreme Court in *Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona, And Anr. - A.I.R. 1988 SC 1652*.

6. Mr. Ramani submits that the evidence on record, including, in particular, the statements in paragraphs 7, 8, 10,

and 11 of the affidavit in evidence of PW1, were not even denied in the cross-examination. He submits that the Reference Court did not even consider the sale deed relied upon by the appellants as a comparable instance. He submits that the Reference Court did not consider the provisions of the Goa (Regulation of Land Development and Building Construction) Act, 2008 and the Regulations of 2010 that permitted certain activities in an orchard zone. He relied on *Goa Housing Board vs. Ramesh Pawaskar – 2011 (10) SCC 371* to submit that compensation was awarded even to the property subject to the restrictions under the Goa Land Use Act, 1991 by making a deduction of 50%. He pointed out that the acquired property suffered no such restrictions, yet the Reference was rejected. For these reasons, Mr. Ramani submitted that enhanced compensation is due to the appellants.

7. Mr. Talaulikar, learned Additional Government Advocate defended the impugned Judgment and Award. He submitted that the acquired property was situated in the villages of Sarvan or Pilgao but not in the Bicholim Municipal Council limits. He submitted that PW1 was only a power of attorney holder and therefore not a competent witness to depose in this matter. He submitted that there is no evidence about the acquired property being in a prime location or having access to a public tar road. He

submits that there is no evidence about the amenities enjoyed by the acquired property. Therefore he submits that this appeal ought to be dismissed.

8. Mr. Talaulikar insisted upon and also referred to the Award of the L.A.O. and attempted to point out that the sale statistics submitted by the Mamlatdar before the L.A.O. did not justify the claimed rate of ₹2,000/- per sq.mtr. Furthermore, he pointed out that the sale instance relied upon by the appellants was not at all a comparable sale instance because it pertained to land in the Village Kudnem, which was at some distance away from Bicholim. Finally, Mr. Talaulikar submitted that the L.A.O.'s Award was quite perfect, and the Reference Court was therefore justified in dismissing the Reference.

9. The rival contentions now fall for my determination.

10. On evaluating the material on record, including the impugned Judgment and Award made by the Reference Court, there is merit in Mr. Ramani's submissions that the Reference Court proceeded on the basis that she was sitting in an appeal over the L.A.O.'s Award. Even the submissions of Mr. Talaulikar seem to proceed on the same misconception. Otherwise, there was no occasion to refer to the sale statistics produced by the

Mamlatdar before the L.A.O. The sale statistics may not justify the claimed rate of ₹2,000/- per sq.mtr. but the sale statistics also do not justify the awarded rate of ₹175/- per sq.mtr. Be that as it may, the material produced before the L.A.O. is quite irrelevant to the proceedings for Reference under Section 18 of the said Act.

11. In *Chimanlal Hargovinddas (supra)*, the Hon'ble Supreme Court has made it clear that the Reference under Section 18 of the said Act is not an appeal against the Award, and the Court cannot take into account the material relied upon by the L.A.O. in his ward unless the same material is produced and proved before the Court. Similarly, the Land Acquisition officer Award is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hears the Reference. It is merely an offer made by the Land Acquisition Officer, and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in an appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer as if it were an appellate court. The Reference Court has to treat the Reference as an original proceeding before it and determine the market value afresh based on the material produced before it.

12. Accordingly, there is merit in the submissions of Mr. Ramani that the Reference Court, by adopting a wrong approach, has virtually declined to look into the evidence that was led on behalf of the appellants in this matter. The Respondent led no evidence; therefore, the only evidence to be considered is the deposition of Bhaskar Lavannis, the son and power of attorney holder of Babu Bhaskar Lavannis, who is indicated as the person interested in the acquired property. PW1, apart from his oral deposition, has also produced certain documents on record that the Reference Court has not adequately considered.

13. PW1, in para 7 of his affidavit in evidence, stated that the acquired property had access to the main road from several sides. First, he referred to the public tar road touching the property leading to Bicholim-Sarmanas road. He referred to the road adjoining the property of which his father Babu Bhaskar Lavannis was the owner/co-owner. He also stated that the acquired property is in a prime location and can be used for residential and commercial purposes.

14. In the cross-examination, a suggestion was put to this witness that his statement about the acquired property being in a prime location and that it could be used for residential and commercial purposes is false. However, not even a suggestion was

put to contest the statements about the acquired property having access to the main road from several sides or the existence of the roads which were specifically deposed to by PW1. The Reference Court ignored this aspect.

15. PW1, in para 8 of his affidavit in evidence, has deposed as follows:-

"8. I say that the acquired land is situated within the Bicholim Municipal area. The acquired land is close to various civil amenities. The acquired property is close to schools, colleges, Municipality, Judicial Court, Bicholim Bus Stand, hospitals, main market. The acquired land has electricity and water supply connectivity."

16. Again, in the cross-examination, there is neither any suggestion nor any challenge to this clear and definite statement. Despite all this, the Reference Court proceeded to dismiss the Reference by holding that there is no evidence that the acquired property benefits from several civic amenities. The Reference Court failed to consider the proximity of the acquired property to schools, colleges, municipality, Court, bus stand, hospitals, and the main market. The Reference Court also failed to consider that the acquired property had electricity and water supply connectivity.

17. In para 10 of the affidavit in evidence, PW1 has stated that the sale statistics furnished by the Mamlatdar of Bicholim indicate the property's price at ₹700/- per sq.mtr. There was no challenge to this statement. However, based on this statement alone, no enhancement may be possible considering Chimanlal Hargovinddas (supra) principles.

18. Mr. Talaulikar asserted that the acquired property was not within the Bicholim municipal area though he opened his arguments by contending that earlier, there was a Bicholim Village that eventually graduated into a municipal area. He submitted that the acquired property was in the Village of Sarvana or partly in Pilgao but not in Bicholim Village. For this, he relied upon the first statement in the L.A.O.'s Award dated 30.06.2011, which reads thus:-

*"This is a case in which land is proposed to be acquired for public purpose namely "Land Acquisition for Construction of Pilgao Narve distributory of Sanquelim Branch Canal of L.B.M.C. of T.I.P. from ch.0.00 km to 4.850 km in **Sarvan Bicholim & Pilgao village of Bicholim Taluka.**"*

(Emphasis supplied)

19. The above contention, with respect, is quite misconceived. Firstly, PW1, in para 8 of his affidavit in evidence, had asserted that the acquired property is situated within Bicholim municipal

area. This statement was not even challenged in the cross-examination. Secondly, Mr. Talaulikar, while emphasizing the opening lines of the L.A.O.'s Award, completely ignores the Award schedule that gives a detailed description of the acquired properties. The schedule, firstly refers to properties from Village Sarvan, Taluka Bicholim. The schedule, secondly, refers to the properties in Village Bicholim. Against entry no.6 is the acquired property and under Survey No.73/1 (P) belonging to Babu Bhaskar Lavannis. The schedule thirdly refers to properties in Pilgao Village.

20. From the above, it is quite clear that the acquired property was from the Village Bicholim. Moreover, Mr. Talaulikar himself contended that the Village of Bicholim, at a later stage, graduated into a municipal area. Thus, there is merit in the submission of Mr. Ramani that the acquired property was a part of the Bicholim municipal area as of its acquisition.

21. PW1 relied on a Sale Deed dated 17.12.2004. This sale deed was admitted in evidence as Exh.C-20. The sale deed concerns a plot admeasuring 500 sq.mtrs. situated at Kudnem, Taluka Bicholim and reflects the market rate of ₹800/- per sq.mtr. Mr. Talaulikar contended that the Village of Kudnem is at some

distance from Bicholim though it may be in the Bicholim Taluka.

22. There is no clear evidence about the distance of the sale deed plot from the acquired property. There is no clear evidence about other aspects of comparability. However, on perusing the sale deed, it appears that the same was in respect of a developed plot.

23. Even if Mr. Talaulikar's contention that the sale deed plot in the Village of Kudnem, Taluka Bicholim, was at some distance from the acquired property is accepted, such sale deed could not have been wholly ignored. Mr. Ramani submitted that a plot in Village Kudnem, at some distance from the acquired property in the Bicholim municipal area, could fetch a rate of ₹800/- per sq.mtr. In 2004, then surely, the acquired property ought to fetch a much higher rate.

24. PW1, in his cross-examination, has admitted that the acquired property was in the orchard zone. However, by reference to the provisions of the Goa (Regulation of Land Development and Building Construction) Act, 2008 and the Regulations of 2010 made thereunder, Mr. Ramani pointed out that even the properties zoned as Orchard-A1 could be used not only for

agriculture and horticulture but also for ancillary purposes like irrigation, land reclamation, pump and other electrical installations, bio-gas plants, farmhouses, poultry, dairy. He submitted that there were no restrictions on the sale of such lands or user for such purposes.

25. The sale deed plot appears to be developed, possibly in the settlement zone. Therefore, the rate reflected in the said sale deed cannot be mechanically accepted to determine the market value of the acquired property.

26. The sale deed plot reflects the rate of ₹800/- per sq.mtr. in the year 2004. Section 4 Notification in the present case was published on 05.11.2009. Considering the appreciation over five years, the rate of ₹1,200/- can be taken as the basis of the sale deed plot for making a comparison or, no doubt, after suitable deductions on account of the negative factors. The positive factors will also have to be considered.

27. I think deductions are due because the sale deed plot was small and developed. At the same time, the acquired property has some positive aspects, like its location in a municipal area and its proximity to several civic amenities. The market rate will have to be determined on counterbalancing all these aspects.

28. I think the market rate could be in the region of ₹400/- per sq.mtr. and not ₹2,000/- per sq.mtr. as claimed by the appellants.

29. Though the acquired property may be within the municipal limits; admittedly, the acquired property is in the Orchard Zone. Apart from the permissible uses like agriculture, horticulture, farmhouse, dairy, and poultry, no serious building or development potential has been established. Therefore, if any comparison is to be drawn with the sale deed, these negative factors will have to be considered and appropriate deductions made. The deductions, in this case, will have to be substantial considering the positive and negative factors discussed above.

30. The evidence on the aspect of severance compensation is also not quite convincing. Therefore, based on the claim for severance, there is no case for granting compensation to the alleged severed area. Since this is an Orchard Zone, there is no severance, and the canal will finally benefit the unacquired portion rather than destroy it. Furthermore, since the acquired property does not seem to have building or development potential, the fact that the canal bifurcates the property to some extent is not a factor that has to be compensated by the grant of severance compensation.

31. For all the above reasons, this appeal is partly allowed. However, the compensation will now have to be determined by taking the market rate at ₹400/- per sq.mtr. On this enhanced rate, the appellants will be entitled to all statutory benefits like solatium, interest, etc.

32. The Respondent is directed to deposit in this Court compensation at the enhanced rate within three months after giving notice to the appellants. Once this compensation is deposited, the appellants will be at liberty to withdraw the same after furnishing their bank details so that the Registry can directly transfer this amount to the appellants' bank accounts.

33. The appeal is disposed of in the terms above. Accordingly, there shall be no order for costs.

34. Mr. Ramani clarifies that the original appellant has expired, and his legal representatives pursued this appeal. Accordingly, these legal representatives will now be entitled to enhanced compensation.

35. At the request of Mr. Ramani, 50% of the compensation will have to be paid/deposited into the bank account of Mrs. Prema Baburao Lavannis, widow of the original appellant. After

that, the balance 50% can be distributed equally among other legal representatives.

M. S. S.O.N.A.K., J.

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