Suchitra

# IN THE HIGH COURT OF BOMBAY AT GOA

## FIRST APPEAL NO.126 OF 2013

Shri Jose Velho Virgilio Joaquim
Coelho e Velho, major in age,
Indian National, son of late
Aleixo Pitrogores Velho,
r/o H.No.102, General Bernard
Gudes Road, Panaji Market,
Panaji Goa. ...APPELLANT

***Versus***

1. State of Goa through
Land Acquisition Officer,
Collectorate Building, Panaji Goa.

2. North Goa Planning & Development
Authority, Through its Member Secretary,
Archdiocese Building, Mala Link Road,
Mala, Panaji, Goa.

3. Greater Panaji Planning Development
Authority, Through the Member
Secretary, Office at Archdiocese Building
Mala link Road, Panaji-Goa 403001. ...RESPONDENTS

**Mr. Shivan Desai with Ms. M. Viegas and Mr. Varun Bhandankar, Advocates** *for the Appellant.*
**Mr. Geetesh Shetye, Additional Government Advocate** *for the Respondent No.1.*
**Mr. H. D. Naik, Advocate** *for Respondent No.2.*
**Mr. S. Karpe with Mr. Anand Shirodkar and Ms. Gabe Mendes, Advocates** *for Respondent No.3.*

**WITH**
**FIRST APPEAL NO.135 OF 2013**

Greater Panaji Planning
Development Authority, through
the Member Secretary,
Office at Archdiocese Building
Mala link Road, Panaji-Goa 403001. ...APPELLANT

***Versus***

1. Shri Jose Velho Virgilio Joaquim
Coelho e Velho, r/o H.No.102,
General Bernard Gudes Road,
Panaji Market, Panaji Goa,
major in age.

2. State of Goa through
Land Acquisition Officer,
Collectorate Building, Panaji
Goa – 403 001.

3. North Goa Planning and Development
Authority, Through its
Member Secretary, Archdiocese
Building, Mala Link Road,
Mala, Panaji, Goa 403001. ...RESPONDENTS

**Mr. H. D. Naik, Advocate** *for the Appellant.*
**Mr. Shivan Desai with Ms. M. Viegas and Mr. Varun Bhandankar, Advocates** *for Respondent No.1.*
**Mr. Vishwadh Sardessai, Additional Government Advocate** *for the Respondent No.2.*
**Mr. S. Karpe with Mr. Anand Shirodkar and Ms. Gabe Mendes, Advocates** *for Respondent No.3.*

**CORAM: M. S. SONAK, J.**

**DATED: 21st APRIL 2022**

**ORAL JUDGMENT:**

**1.** Heard learned counsel for the parties.

**2.** Learned counsel for the parties agree that both these appeals will have to be disposed of by a common judgment and order because the challenge in both these appeals is to the judgment and award dated 29.06.2013 in Land Acquisition Case No.29/2010 made by the Reference Court enhancing the compensation in respect of the acquired property from ₹300/- per sq. mtr. to ₹1,625/- per sq. mtr. In addition, the Reference Court has also awarded some compensation for severance and loss of trees.

**3.** First Appeal No.126/2013 has been instituted by the landowner, and First Appeal No.135/2013 has been instituted by the acquiring authority. The landowner claims that the rate should have been determined at ₹3,700/- per sq. mtr. and the acquiring authority claims that there was no case made out for any enhancement above what was offered by the Land Acquisition Officer (LAO). Accordingly, it is only appropriate that both appeals are taken up for consideration and disposed of by a common judgment and order.

**4.** The land owner's property admeasuring 1995 sq. mtrs. bearing survey no.102/1 in the village of Taliegao was proposed for acquisition vide Section 4 notification dated 14.11.2005 for the public purpose of construction of a road. The LAO determined the rate at ₹300/- per sq. mtr. By the impugned judgment and award, the Reference Court has now enhanced to ₹1,625/- per sq. mtr. and has also awarded 20% towards severance charges and ₹45,000/- for loss of trees.

**5.** Mr. Shivan Desai, learned counsel for the landowner, submits that the Reference Court erred in rejecting the sale instance at Exh.16 regarding a portion of Survey No.102/1, i.e., the acquired property. He submits that this sale instance was 28.04.2003, with an area of 2022 sq. mtrs. was sold by the very landowner at the rate of ₹1,484/- per sq. mtr. Mr. Desai referred to the evidence on record to point out that the acquired land was in an urban and well-developed area, and the escalation was at least 30% to 40% each year. Based on this, Mr. Desai submitted the compensation of ₹3,700/- per sq. mtr. as claimed, or at least compensation beyond ₹3,000/- per sq. mtr. should have been awarded. He relied on ***General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and another – (2008) 14 SCC 745 and Dollar Company, Madras***

*vs. Collector of Madras – AIR 1975 SC 1670* in support of his submissions.

**6.** On the other hand, Mr. Karpe, learned counsel for the acquiring authority, submitted that the Reference Court has relied upon another sale instance from the same survey number of a portion of the property admeasuring 1753 sq. mtrs. sold by the very landowner at ₹1,625.22 per sq. mtr. He pointed out that this sale instance was dated 30.05.2005 when Section 4 notification was 14.11.2005. Accordingly, he submitted that this was a proximate sale instance.

**7.** Mr. Karpe further submitted that even the sale instance at Exh.21 dated 30.05.2005 was in respect of the developed property. In this case, the Reference Court has failed to consider and make appropriate deductions. He submits that the evidence on record also bears out that the severance had taken place even before the acquisition. Therefore there was no warrant for any 20% increase as awarded. Mr. Karpe also submits that there is no evidence of trees, and no compensation should have been awarded towards trees.

**8.** The rival contentions now fall for my determination.

**9.** Admittedly, the sale instances at Exh.16 and Exh.21 relate to portions of the property surveyed under no.102/1, which is the same property from which 1995 sq. mtrs. has been acquired. The area of Exh.16 was 2022 sq. mtrs. and the rate was ₹1,484/- per sq. mtr. This sale instance is dated 28.04.2003. Similarly, the area of Exh.21 is 1753 sq. mtrs. and the rate is ₹1,625.22 per sq. mtr. The date of sale instance at Exh.21 is 30.05.2005.

**10.** There is evidence of comparability of the two sale instances with the acquired portion. The landowner has deposed about how even acquired piece was quite developed or, in any case, had all amenities that a developed property usually has. The land owner and his expert lead detailed evidence, and this evidence has not been shaken in the cross. Mr. Karpe is, however, justified in his submission that the sale instance at Exh.21 should be considered in preference to the sale instance at Exh.16. Since the best evidence, in this case, is the sale instance at Exh.21, the Reference Court was quite justified in relying upon this sale instance in preference to the sale instance at Exh.16 and, after that addressing the issue on enhancements.

**11.** The General Manager, Oil and Natural Gas Corporation Limited (supra) decision is not relevant to the present case because the best evidence in the form of the sale instance at

Exh.21 is very much available on record. Accordingly, there is no error on the part of the Reference Court in considering this sale instance which is hardly six months before the date of Section 4 notification in preference to the earlier sale instance at Exh.16, which is almost two years before the date of Section 4 notification. In *Dollar Company, Madras (supra)*, the Hon'ble Supreme Court held that the best evidence of the property's value is the sale of the very property to which the claimant is a party.

**12.** Based upon the sale instance at Exh.21, the Reference Court has determined the rate at ₹1,625/- per sq. mtr. The sale instance at Exh.21 was almost six months before the date of Section 4 notification in this case. There is evidence that the acquired land has benefited from several urban amenities. Therefore, there was bound to be some escalation even between 30.05.2005 and 14.11.2005. The Reference Court has not accounted for this escalation. Thus, the principles in *General Manager, Oil and Natural Gas Corporation Limited (supra)* must be made applicable insofar as this sale instance is concerned though such principles may not apply to the earlier sale instance at Exh.16.

**13.** Accordingly, it would be appropriate if the rate of the acquired land, which is almost similar to the sale instance at

Exh.21, is determined at ₹1,800/- per sq. mtr. This rate is determined even after considering the position that there may not have been some formal permission in respect of the acquired land. If such proper permission were to be there, the rate could have been determined at above ₹2,000/- per sq. mtr. Therefore, on an overall consideration of the facts on record, the case is made out for enhancing the rate to ₹1,800/- per sq. mtr.

**14.** On the aspect of severance, there is no error. The admission referred to by Mr. Karpe was in the context of a private road. Now that the land owner's land has been acquired, the severance is complete, and some compensation is naturally due. Even about the trees, the compensation awarded is quite reasonable.

**15.** For the reasons above, First Appeal No.126/2013 is partly allowed, and the compensation amount is enhanced from ₹1,625/- per sq. mtr. to ₹1,800/- per sq. mtr. First Appeal No.135/2013 is, however, dismissed.

**16.** The appellant in First Appeal No.126/2013 will be entitled to withdraw the deposited amount and the interest that may have accrued thereon forthwith by furnishing proper identification and bank details. The amounts should be directly deposited in the bank account of the appellant.

**17.** Mr. Karpe states that the enhanced amount will be deposited in this Court within six weeks from today. Once the same is deposited, an intimation should be given to the learned counsel for the landowner. The landowner will then be entitled to withdraw the enhanced component on the above terms.

**18.** Both the appeals are disposed of in the terms above. Accordingly, there shall be no costs.

**M. S. SONAK, J.**

SUCHITRA NANDAN SINGBAL Digitally signed by SUCHITRA NANDAN SINGBAL Date: 2022.04.23 12:15:36 +05'30'