

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.122/2013

1. State of Goa, Through
The Chief Secretary, Secretariat,
Porvorim, Bardez-Goa.

2. The Executive Engineer,
Works Division II, (Roads),
Public Works Divisions,
Patto, Panaji-Goa.

... APPELLANTS

Versus

1. Shri Atchut Gopal Poy Raiturkar
(since deceased) through his Legal
Representatives

a) Mrs. Binita Sanjay P. Raiturkar,
r/o Villa No. 508, Naru Retreat,
Betabtim, Salcete, Goa.

b) Mr. Sanjay A. P. Raiturkar,
r/o Villa No. 508, Naru Retreat,
Betabtim, Salcete, Goa.

c) Mrs. Gopika S. P. Raiturkar,
r/o Virginkar Heritage Bldg,
Near Maruti Temple, Davorlim,
Navelim, Salcete-Goa.

d) Mr. Shekhar A. P. Raiturkar,
r/o Virginkar Heritage Bldg,
Near Maruti Temple, Davorlim,
Navelim, Salcete-Goa.

e) Mrs. Pratima M. Keny,
r/o H. No. 88, Abudaya Apts,
Vidhya Nagar, Margao-Goa.

f) Mr. Motilal S. Keny,
r/o H. No. 88, Abudaya Apts,
Vidhya Nagar, Margao-Goa.

...RESPONDENTS

**Ms. Susan Linhares, Additional Government Advocate for the
Appellant-State.**

Mr. Raunak Kantak, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATE: 17th February 2022

JUDGMENT:

1. Heard Ms. Susan Linhares, learned Additional Government Advocate for the appellant-State and Mr. Raunak Kantak for the respondents.

2. This appeal is directed against the Judgment and Award dated 03.05.2012 made by the Reference Court in Land Acquisition Case No.61/2008 enhancing the compensation for the acquired land from ₹50/- to ₹140/- per sq. mtr.

3. By notification under Section 4 of the Land Acquisition Act, 1894 (said Act), the State acquired the respondents' property admeasuring 925 sq. mtrs. surveyed under

No.235/1 (P) situated in the village Jua, Tiswadi Taluka for the construction of a single lane bridge including approaches at Akhada, St. Estevam.

4. The Land Acquisition Officer (LAO) by his Award dated 19.09.2006 determined the market rate of the acquired land at ₹50/- per sq.mtr. The LAO also awarded compensation of ₹61,925/- for the sluice gate in the acquired land.

5. The respondents, aggrieved by the determination, applied for reference under Section 18 of the said Act. The Reference Court vide the impugned Award dated 03.05.2012 has determined the market rate at ₹140/- per sq. mtr. and further, awarded compensation of ₹77,521/- for the sluice gate. Hence this appeal.

6. Ms. Linhares learned Additional Government Advocate submits that the Reference Court has incorrectly relied upon Sale Deed dated 18.07.2001 (Exh.16) and the Judgment of the Mamlatdar (Exh.17) determining the market rate in respect of a mundkarial plot made in the year 1996. She submits that none of these were comparable instances.

7. Ms. Linhares submits that the Sale Deed at Exh.16 was in respect of an area of only 71.93 sq. mtrs. Further, this property already had a structure. Therefore this sale instance was not comparable.

8. Ms. Linhares submits that Exh.17 was based on consent terms filed by the landlord and the mundkar and therefore the same was also not a comparable instance.

9. Ms. Linhares submits that there is evidence that the acquired land had a pond and in that sense, the same was not suitable for either construction or agricultural purposes. She submits that there was no legal evidence to enhance the compensation for the sluice gate.

10. For all the aforesaid reasons Ms. Linhares submits that the impugned award warrants interference.

11. Mr. Raunak Kantak learned Advocate for the respondent nos.1(a) to 1(f) defended the impugned award based on the reasoning reflected therein. He pointed out that Exh.16 was indeed a comparable instance because it concerned the property in the immediate neighborhood of the acquired land. He pointed out that the Reference Court had made ample

deductions both on account of the size of the sale deed plot and the existence of a small structure therein. He pointed out that the deduction is to the extent of almost 67% and therefore there is no warrant for interfering with the impugned award. He submits that even Exh.17 can be considered and with an escalation of prices, the rate would be even higher than what has been awarded by the impugned award.

12. Mr. Kantak submits that there is clear evidence that the acquired land had a sluice gate and therefore, the property along with the sluice gate was required to be considered as an integrated property. He submits that such properties are very valuable because Goa is a State where there is never any lack of demand for fish. He points out that now few such places are remaining in the State of Goa. He, therefore, submits that there is no case for interfering with the impugned award.

13. The rival contentions now fall for my determination.

14. The Reference Court in this case has mainly relied upon the sale instance dated 18.07.2001 (Exh.16) in which a property admeasuring about 71.93 sq.mtrs. was sold at ₹358/- per sq.mtr. This was in the year 2001 and therefore, on granting escalation at 10% per annum the Reference Court has arrived at

the market rate of ₹475/- per sq.mtr. in the year 2004 when the Section 4 notification was issued.

15. Thereafter, the Reference Court has made deductions on account of the small area of the sale deed plot as compared to the acquired plot which admeasures around 975 sq.mtrs. The Reference Court has also taken into account that the purchaser had put up a small illegal construction on the sale deed plot. The deductions are to the extent of almost 67%. After all these deductions the Reference Court has arrived at the rate of ₹140/- per sq.mtr. There is no error in the approach of the reference Court.

16. Exh.17 in this case is a Judgment of the Mamlatdar determining market rate in respect of a mundkarial plot. The Mamlatdar, no doubt, based on the consent terms has determined the rate at ₹65/- per sq.mtr. in the year 1996. The circumstance that this rate was determined based on the consent terms filed by the landlord and the mundkar is not a very good ground to reject this evidence. Ultimately, even in a sale deed, the market rate is arrived at with the consent of the vendor and vendee. Exh.17 also represents an instance where a willing purchaser has purchased a plot from a willing buyer at ₹65/- per sq.mtr. in the year 1996.

17. No doubt, in this case Section 4 notification was issued in the year 2004 almost eight years after this instance and in that sense, this instance is not very proximate in time. However, there is evidence about the comparability of the mundkarial plot and the acquired land. Some deductions are no doubt necessary because the mundkarial plot would have a dwelling house therein. If all such factors are taken into consideration as well, it cannot be said that the determination of the market rate of ₹140/- per sq.mtr. made by the Reference Court is off the mark.

18. There is also merit in the submission of Mr. Kantak that a property with a sluice gate therein has to be regarded as an integrated property and the value has to be determined on an integrated basis. In this case, no doubt, the Reference Court, has determined the compensation separately in respect of the sluice gate itself and the balance property. This was the precise mode adopted by the LAO as well. However, it is necessary to keep in mind that the sluice gate was itself a positive factor that enhanced the value of the property that was acquired. So also, the area of 975 sq. mtrs. complemented the sluice gate that is normally used for fishing. From this perspective as well there is no case made out to interfere with the determination of compensation by the Reference Court.

19. The LAO had determined the compensation for the sluice gate at ₹61,925/-. The Reference Court has marginally enhanced this to ₹77,521/-. This increase is backed by the evidence of the expert (AW2) Mr. Ernesto Moniz. The criticism that this expert visited the site a little after the issuance of Section 4 notification is not much relevant to the facts of the present case. This is because the valuer has mainly deposed about the valuation of the sluice gate by reference to the GSR rates at the relevant time.

20. For all the aforesaid reasons, there is no case made out to interfere with the impugned Judgment and Award. As a consequence, this appeal is required to be dismissed and is hereby dismissed.

21. The record indicates that the awarded amount has been deposited by the State in this Court. Accordingly, respondents no.1(a) to 1(f) are permitted to withdraw the same along with interest if any that may have accrued on this deposited amount. The Registry to facilitate such withdrawal. Mr. Kantak did urge that the compensation be paid only to respondents no. 1(a) to 1(d) on account of a family settlement. Once the compensation amount is withdrawn by all the legal heirs equally, the same will abide by the family settlement, if any. But at least in

these proceedings, it will not be proper for this court to go into such issues. The rights *inter se* between the legal heirs are kept open. Mr. Kantak states that he will furnish bank details of the respondents so that the amount can be directly transferred to their accounts.

22. The appeal is disposed of in the aforesaid terms without there being any order for cost.

M. S. SONAK, J.