

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.80/2017

DIRECTORATE OF SPORTS & YOUTH
AFFAIRS, Campal, Panaji-Goa.

...APPELLANT

Versus

ANAND SALGAOCAR,
Director, El Martino Winery Pvt.Ltd.,
H.No.93, Sirsaim,
Bardez-Goa 403 502.

...RESPONDENT

WITH

MISC. CIVIL APPLICATION NO.2571/2021 (F)

ANAND SALGAOCAR
Director, El Martino Winery Pvt.Ltd.,
H.No.93, Sirsaim,
Bardez-Goa 403 502.

...APPLICANT

Versus

DIRECTORATE OF SPORTS &
YOUTH AFFAIRS,
Campal, Panaji-Goa.

...RESPONDENT

WITH

CROSS-OBJECTIONS NO.7/2017

EL MARTINO WINERY LLP
with identification No.AAI-7417
(earlier known as EL Martino Winery
Pvt.Ltd. Represented by its then
director and now designated
Partner Anand Salgaokar having

registered office at
H.No.93, Sirsaim,
Bardez-Goa 403 502.

...CROSS-OBJECTOR

Versus

DIRECTORATE OF SPORTS &
YOUTH AFFAIRS,
Campal, Panaji-Goa.

...RESPONDENT

Ms. S. Mordekar, Additional Government Advocate for the Appellant.

Mr. R. G. Ramani, Senior Advocate with Mr. Pranav Kakodkar, Advocate for the Respondent/Cross-Objector.

CORAM: M. S. SONAK, J.

DATED: 4th March 2022

ORAL JUDGMENT:

1. Heard Ms. Sapna Mordekar, Additional Government Advocate for the applicant, and Mr. R. G. Ramani learned Senior Advocate who appears along with Mr. Pranav Kakodkar, for the Respondent.

2. This appeal is directed against the Judgment and Award dated 30.03.2016 in Land Acquisition Case No.49/2014 made by the Reference Court enhancing the compensation for the acquired land by determining its rate at ₹1,024/- per sq. mtr.

3. By notification dated 12.03.2010 issued under Section 4 of the Land Acquisition Act, 1894 (said Act), respondent's property

admeasuring 3383 sq. mtrs. surveyed under No.48/32 at Sirsaim, Bardez, Goa was proposed to be acquired.

4. The Land Acquisition Officer (LAO) by his award dated 10.05.2013 determined the market rate at ₹250/- per sq. mtr. The respondent applied for reference under Section 18 of the said Act which was registered before the Reference Court as Land Acquisition Case No.49/2014.

5. By the impugned award dated 30.03.2016 made in the aforesaid Land Acquisition Case No.49/2014, the Reference Court has enhanced the market rate to ₹1,024/- per sq. mtr. The State has instituted the appeal questioning the enhancement and the respondent has instituted cross-objections claiming that the market rate is actually ₹1,500/- per sq. mtr.

6. Ms. Mordekar, with some justification, referred to the first ground in the memo of appeal in which the appellant has pointed out that the Reference Court, in this case, acted as a Court of Appeal against the award made by the LAO instead of acting as a Reference Court. She pointed out that the evidence before the LAO cannot be directly looked into by the Reference Court unless the same is produced before the Reference Court and the parties are granted an opportunity to deal with the same. She

pointed out that even besides this there are several other grounds based on which the impugned award warrants interference.

7. Mr. Ramani submits that though it is true that the sale deeds which the Reference Court has relied upon were not produced before the Reference Court, still, based on the sale statistics before the LAO, compensation based on the rate of ₹1,500/- per sq. mtr. should have been awarded.

8. On perusal of the impugned award, it does appear that the Reference Court was under the impression that it was sitting in appeal over the award made by the LAO. Now, this is not proper. The reference under Section 18 is an independent proceeding in which both the parties are required to adduce evidence if they so choose in support of their respective versions about the market rate of the acquired properties.

9. In *Chimanlal Hargovinddas v. Special LAO, Poona & Ors. – 1988 (3) SCC 751*, the Hon'ble Supreme Court has explained that a reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the LAO in his award unless the same material is produced and proved before the Court. So also the Award of the LAO is not to be treated as a

judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the LAO 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 LAO as if it were an appellate court.

10. The Hon'ble Supreme Court has pointed out that 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. For this purpose, the claimant has to be regarded as being in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate based on the materials produced in the Court. Of course, the materials placed and proved by the other side can also be taken into account for this purpose. The approach of the Reference Court in the present case is contrary to the aforesaid principles laid down by the Hon'ble Supreme Court in the case of *Chimanlal Hargovinddas (supra)*.

11. Therefore, there is merit in the contention of Ms. Mordekar that the award warrants interference on account of the incorrect approach adopted by the Reference Court in this matter.

12. The contention about the market rate being ₹1,500/- per sq. mtr. cannot be accepted based on the material placed before the LAO or considered by the LAO. If the respondent wishes to establish that the market rate is indeed ₹1,500/- per sq.mtr., then it is for the respondent to produce the relevant material for the consideration of the Reference Court.

13. For the aforesaid reasons the interest of justice will be met if the impugned award is set aside and the matter is remanded to the Reference Court for fresh determination keeping in mind the principles laid down by the Hon'ble Supreme Court in *Chimanlal Hargovinddas (supra)*. Such a remand will allow both the appellant as well as the respondent to lead fresh evidence before the Reference Court and place material in support of their respective positions. Since the land, in this case, was acquired in the year 2011 some directions can always be issued for expeditious disposal of the reference.

14. Accordingly, both the appeal as well as the cross-objections are disposed of by making the following order:

- a) The impugned Award dated 30.03.2016 in Land Acquisition Case No.49/2014 is hereby set aside;
- b) The matter is remanded to the Reference Court in the file of Land Acquisition Case No.49/2014;
- c) The Reference Court will have to decide the reference afresh after allowing the parties to lead their evidence in the matter;
- d) The Reference Court, this time, will have to follow the principles laid down by the Hon'ble Supreme Court in *Chimanlal Hargovinddas (supra)*;
- e) The Reference Court is directed to dispose of this reference as expeditiously as possible but in any case, within one year from the date the parties first appear before the Reference Court in pursuance of this remand;
- f) The parties to appear before the Reference Court on 07.04.2022 at 10.00 a.m. and file an authenticated copy of this order;

g) The Registry to ensure that the records, in this case, are sent to the Reference Court as expeditiously as possible and in any case by 01.04.2022;

h) There shall be no order for costs;

i) The amounts deposited by the appellant in this Court shall also be transmitted by the Registry to the Reference Court in the account of the Land Acquisition Case No.49/2014. However, both the Registry and the Reference Court to ensure that this amount is invested in a nationalized bank;

j) The miscellaneous civil application filed in this appeal does not survive and the same is disposed of.

M. S. SONAK, J.