

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.1 OF 2016**

1. The Deputy Collector &
Land Acquisition Officer,
Sub Division, Margao Goa (L.A.)
2. The Executive Engineer,
W.D.VI, Public Work Department,
Fatorda. ... Appellants

Versus

1. Milagres da Costa,
2. Inacio Domingo da Costa,
(Since deceased) represented by legal heirs
Milagres da Costa,
Resident of Nuvem, Salcete Goa. ...Respondents

Ms. Priyanka Kamat, Additional Government Advocate for the appellants.

Mr. S. D. Padiyar and P. Shirodkar, Advocates for the respondents.

**WITH
CROSS OBJECTIONS NO.11 OF 2016
IN
FIRST APPEAL NO.1 OF 2016**

1. Milagres da Costa,
2. Inacio Domingo da Costa,
(Since deceased) represented by legal heirs:
Milagres da Costa,
Resident of Nuvem, Salcete Goa. ...Cross Objectors

Versus

1. Deputy Collector &
Land Acquisition Officer,
Sub Division, Margao Goa (L.A.)
2. The Executive Engineer,
W.D.VI, Public Works Department,
Fatorda. ...Respondents

Mr. S. D. Padiyar and P. Shirodkar, Advocates for cross objectors.

Ms. Priyanka Kamat, Additional Government Advocate for the respondents.

CORAM: M. S. SONAK, J

DATE : 3rd March 2022

ORAL JUDGMENT

1. Heard Ms. P. Kamat, learned Additional Government Advocate for the appellants/State, and Mr. S. D. Padiyar, learned counsel for respondents/cross objectors.

2. This appeal and cross-objections are directed against the judgment and award dated 12.08.2014 made by the reference Court in Land Acquisition Case No.67/2006 enhancing the rate as determined by the Land Acquisition Officer to some extent.

3. By notification issued under Section 4 of the Land Acquisition Act, 1894 (the said Act) dated 11.12.2001, the following contiguous lands of the respondents were acquired for construction of Margao western by-pass to NH-17 between km.29/460 to 36/060 km.:

(i) Survey No. 86/4 of village Nuvem admeasuring 450 sq. mtrs. from out of a total sub-division area of 500 sq. mtrs.;

(ii) Survey No.86/7 of village Nuvem admeasuring 2375 sq. mtrs. from out of a total sub-division area of 2600 sq. mtrs.;

(iii) Survey No.86/9 of village Nuvem admeasuring 150 sq. mtrs., (entire sub-division area).

4. The Land Acquisition Officer by his award dated 30.12.2005 determined the market rate in respect of land surveyed under Nos.86/4 at ₹70/- per sq. mtrs, 86/7 at ₹15/- per sq. mtrs, and 86/9 at ₹5/- per sq. mtrs.

5. The respondents being dissatisfied with the aforesaid determination applied for a reference under Section 18 of the said Act and the matter came to be registered as Land Acquisition Case No.67/2006 by the reference Court. Initially, by judgment and award dated 30.11.2007 the reference Court enhanced the compensation amount to some extent. However, both the present appellants as well as the respondents instituted First Appeal Nos. 186 of 2009 and 63 of 2008 before this Court questioning the award dated 30.11.2007.

6. This Court, by its common judgment and order dated 27.01.2014 disposed of First Appeal Nos. 186 of 2009 and 63 of 2008 by setting aside the award dated 30.11.2007 and remanding the matter to the Reference Court for fresh adjudication. The parties were

also granted liberty to lead additional evidence before the reference Court.

7. Upon remand, the respondents examined Jose Rodrigues (AW3), Planning Draughtsman attached to the office of the Town and Country Planning Department, Margao.

8. The Reference Court on evaluation of evidence earlier led as well as the evidence led after remand has made the impugned award by enhancing the market rate to some extent. The Reference Court has determined the market rate of the lands surveyed under Nos. 86/4 and 86/9 at ₹360/- per sq. mtrs., and 86/7 at ₹310/- per sq. mtrs.

9. The State through its Land Acquisition Officer has appealed the impugned award contending that the enhancement was not due in this matter. The respondents have filed cross-objections to urge that even the greater enhancement ought to have been awarded. The respondents have also urged for severance compensation ought to have been paid.

10. Ms. Kamat learned Additional Government Advocate at the outset submitted that the land surveyed under No. 86/7 was admittedly low-lying land. She submits that such lands would not only require huge expenditure for filling but also permissions under Section 17-A of the Goa Town and Country Planning Act, 1974. She, therefore, submits that the land surveyed under No.86/7 was not at all

comparable with the two sale instances at Exhibit C-15 and Exhibit C-16 relied upon by the reference Court to determine the rate of ₹310/- per sq. mtrs.

11. Ms. Kamat further pointed out that the Reference Court has itself at several places in the impugned award accepted that the sale instances relied upon by the respondents were not comparable sale instances. Despite all this, the Reference Court has proceeded to rely upon these very sale instances to determine the compensation. She submits that this constitutes an error almost apparent on the face of the record.

12. Ms. Kamat also pointed out that there is no evidence that the lands surveyed under Nos. 86/4 and 86/9 were in the settlement zone. The expert (AW2) examined by the respondents has admitted that he had not verified the zoning plans. She submits that even AW3 has deposed that the land surveyed under No.86/7 was no longer in the settlement zone. She, therefore, submits that the Reference Court erred in treating all the acquired lands as falling within the settlement zone.

13. Ms. Kamat submits that the evidence on record establishes that the acquired lands were only agricultural lands. She submits that no agricultural expert was examined and no evidence was led about agricultural yield. She, therefore, submits that no enhancement was due.

14. Ms. Kamat also submits that the lands surveyed under Nos. 86/4 and 86/9 would require amalgamation and this was a negative factor that was not sufficiently considered by the Reference Court.

15. Ms. Kamat submits that though the Reference Court has listed several negative factors applying to the acquired lands no sufficient weightage has been given to them and based thereon additional deductions that were warranted have not been made.

16. For all the aforesaid reasons, Ms. Kamat submits that the impugned award warrants interference.

17. On the other hand, Mr. Padiyar, learned counsel for the respondents submits that the rate determined by the Reference Court is too less and substantial enhancement is due.

18. Mr. Padiyar submits that the sale instances at Exhibit C-15 and Exhibit C-19 relate to the years 1999 and 2000. He pointed out that Section 4 notification, in this case, was issued on 11.12.2001 i.e. after almost two years. Based thereon, he submits that the enhancement at the rate of 10% per annum was necessary for the determination of the base rate. He submits that the base rate had to be taken at ₹720/- per sq. mtrs., in the least and only thereafter some deductions could be made.

19. Mr. Padiyar submits that there was no serious challenge to the lands under survey Nos. 86/4 and 86/9 falling within the settlement zone. He submits that there is ample evidence that these lands were at the road level and adjacent to the land surveyed under No.86/7 which is proved to be in the settlement zone. He submits that excessive deductions have been made and if the deductions are curtailed the compensation will have to be enhanced.

20. Mr. Padiyar submits that severance compensation was due in this matter because the unacquired portions of land surveyed under No.86/4 i.e. 50 sq. mtrs., and surveyed under No.86/7 i.e. 225 sq. mtrs., have been rendered useless. He submits that either full compensation should be paid for these severed portions or at least the compensation to the extent of 50% of the market rate should be paid.

21. For all the aforesaid reasons, Mr. Padiyar submits that the State's appeal be dismissed and the Cross Objections be allowed by enhancing the compensation awarded by the reference Court.

22. The rival contentions now fall for my determination.

23. In this case, the bulk of the acquisition is the land surveyed under No.86/7 admeasuring 2375 sq. mtrs. There is evidence that the entire survey No.86/7 admeasured 2600 sq. mtrs. Thus, except for an area of around 225 sq. mtrs., the entire sub-division of survey No. 86/7 has been acquired. Survey No.86/4 in its entirety admeasuring

500 sq. mtrs out of 450 sq. mtrs., has been acquired. Survey No.86/9 is a small sub-division admeasuring 150 sq. mtrs and this entire sub-division has been acquired.

24. From the evidence on record including in particular the evidence of Mr. Milagres Da Costa and the expert/land valuer (AW2) it does appear that there is no substantial difference between the lands surveyed under Nos. 86/4 and 86/9 on one hand and 86/7 on the other. This will have to be qualified by stating that the land surveyed under No.86/7 is a low-lying paddy field that will require filling work if the same has to be brought to the road level and developed. In that sense, the lands surveyed under Nos. 86/4 and 86/9 are in a better position than the land surveyed under No.86/7.

25. Therefore, though there is no direct evidence about the lands surveyed under Nos.86/4 and 86/9 falling in the settlement zone, based on clear evidence that the land surveyed under No. 86/7 fell within the settlement zone at the time of the acquisition, there is no good reason to treat these lands separately. However, some further deductions will have to be made in respect of lands surveyed under No. 86/7 even though they are without doubt in the settlement zone. This is for the reason that these lands are low-lying paddy fields that will require additional expenditure towards filling and even permissions under the provisions of the Goa Town and Country Planning Act.

26. There is evidence about amenities that are available near the acquired lands. There is evidence about building potential which has been discussed by the reference Court in the impugned award. Both AW1 and AW2 have deposed in some details about amenities and locations of the acquired lands. There is evidence that the acquired lands are served by an eight-meter internal road. Based thereon certainly a case is made out for enhancement over and above the compensation awarded by the LAO.

27. After remand, AW3 was examined and he has deposed that the land surveyed under No.86/7 did fall in the settlement zone at the time of the acquisition. He has also referred to certain subsequent changes in the zoning plans. However, the reference Court has quite correctly held that these changes much after issuance of Section 4 notification would not be relevant.

28. The respondents have produced on record three sale instances out of which sale instance at Exhibit C-17 is almost three years after Section 4 notification was issued on 11.12.2001. Besides as was rightly pointed out by Ms. Kamat that this sale instance was nothing but the resale of the property which was the subject matter of the sale instance at Exhibit C-15 dated 18.06.1999. The sale instance at Exhibit C-17 cannot be taken into consideration as it is obvious that increased rates reflected therein are on account of acquisition for the western by-pass. At the highest, some reference can be made to Exhibit C-17 for determining the trend of escalation. However, in this matter, I think

that the sale instance at Exhibit C-17 need not be relied upon at all even for considering the issue of escalation.

29. The sale instance at Exhibit C-16 dated 20.03.2000 can however be regarded as a comparable instance though several deductions will be necessary for the determination of the market price of the acquired lands. This sale instance is in respect of developed plot admeasuring 421 sq. mtrs. In contrast, the acquired properties that have a building potential were not developed plots.

30. The lands under Survey Nos. 86/4 and 86/9 as noted earlier are at road level. They are no doubt, undeveloped but, considering their locations, developments all around and the fact that the adjacent acquired land surveyed under No.86/7 admeasuring 2375 sq. mtrs., was in the settlement zone, the market rate can be determined by reference to sale instance at Exhibit C-16. Similarly, Exhibit C-16 can also be a marker for determining the market rate of land surveyed under No.86/7 because there is evidence that this land was already in the settlement zone. No doubt, as noted earlier, appropriate deductions are called for.

31. Before going to the issue of deductions, the contention of Mr. Padiyar about annual escalation will also have to be accepted at least partially. Exhibit C-16 is dated 20.03.2000. Section 4 notification was issued on 11.12.2001 i.e. after almost 21 months. The rate reflected in Exhibit C-16 is ₹600/- per sq. mtrs. Having

regard to the escalation of approximately 10% per annum then the rate will now have to be taken as ₹700/- per sq. mtrs.

32. The Reference Court, in this case, has made a deduction to the extent of almost 40% for the lands surveyed under Nos. 86/4 and 86/9. This deduction is after balancing positive and negative factors that are attached to the acquired lands. The Reference Court has made a detailed analysis of such factors. The evidence on record has also been considered in some detail. According to me, the deduction to the extent of 40% is warranted when it comes to lands surveyed under Nos. 86/4 and 86/7. This means that as of the date of issuance of Section 4 notification, the market rate in respect of lands surveyed under Nos. 86/4 and 86/9 will have to be determined at ₹420/- per sq. mtrs instead of ₹360/- per sq. mtrs as determined by the reference Court.

33. The lands surveyed under No.86/7 though falling within the settlement zone are low-lying paddy fields. Therefore, additional expenditure would be necessary for filling up these lands. There is also an issue of permissions under Section 17-A of the Goa Town and Country Planning Act, 1974.

34. Having regard to these negative features, the deductions will have to be made to the extent of 50% and not 40%. This means that the rate in respect of land surveyed under No.86/7 will have to be

determined at ₹350/- per sq. mtrs in place of ₹310/- per sq. mtrs as determined by the reference Court.

35. The reference Court was not justified in dismissing the respondents' claim for severance compensation by observing that there was no evidence on record. According to me, there is evidence on record that is brought forth by AW1 and AW2. Even otherwise, the record bears out that land surveyed under No.86/4 admeasured 500 sq. mtrs out of which 450 sq. mtrs have been acquired. Similarly, the land surveyed under No.86/7 admeasured 2600 sq. mtrs out of which 2375 sq. mtrs have been acquired. Since the compensation is determined based on building potential, it is obvious that the respondents will have no much use of an excluded portion of 50 sq. mtrs and 225 sq. mtrs in the two sub-divisions. Therefore, some compensation is due towards severance.

36. The compensation at the rate of 50% of the market value would come to ₹39,375/- in respect of 225 sq. mtrs left out from survey No.86/7 and ₹10,500/- in respect of 50 sq. mtrs left out from survey No.86/4. Thus, total compensation of ₹50,000/- can be awarded towards severance. No case is made out to award compensation at the full market rate because to date the respondents continue to be the owners of the severed portion.

37. The appeal is accordingly dismissed without any order for costs. The Cross Objections are partly allowed and the compensation is

enhanced as indicated above. The impugned award is modified to the aforesaid extent.

38. The respondents will be entitled to now withdraw the deposited amount together with the interest that has accrued thereon. The registry to facilitate such withdrawals by making a direct deposit into the bank accounts of the respondents. Mr. Padiyar states that necessary details will be provided to the registry within two weeks.

39. The appellants are directed to deposit further compensation in terms of enhancement now granted within two months from today. Needless to add that the interest and proportionate statutory benefits will also have to be paid on the enhanced amount. Once such a deposit is made, the respondents will be at liberty to withdraw the same in the manner indicated above.

40. The Appeal and the Cross Objections are disposed of in the aforesaid terms. There shall be no order as to costs.

M. S. SONAK, J