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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.126/2016

MR. SANTOS M. LOURENCO,
H.no.641/1, Cujira, Calapur Village, Tiswadi, Goa. ... APPELLANT

Versus

THE EXECUTIVE ENGINEER,
Work Division-II, PWD, Panaji Goa. ... RESPONDENT

Mr. Vivek Rodrigues, Advocate *for the Appellant*.

Ms. Amira Razaq, Government Advocate *for the Respondent*.

WITH
FIRST APPEAL NO.116/2018

THE EXECUTIVE ENGINEER,
Work Division-II, PWD,
Panaji Goa. ... APPELLANT

Versus

MR. SANTOS M. LOURENCO,
H.no.641/1, Cujira, Calapur Village,
Tiswadi, Goa. ... RESPONDENT

Ms. Amira Razaq, Government Advocate *for the Appellant*.

Mr. Vivek Rodrigues, Advocate *for the Respondent*.

CORAM: M. S. SONAK, J.

DATED: 16th June 2022

ORAL JUDGMENT:

1. Heard Mr. Vivek Rodrigues for the appellant in First Appeal No.126/2016 and the respondent in First Appeal No.116/2018. Heard Ms. Amira Razaq, learned Government Advocate for the appellant in First Appeal No.116/2018 and the respondent in First Appeal No. 126/2016.

2. These appeals question the Judgment and Award dated 28.06.2016 in Land Acquisition Case No.56/2014 made by the Ad-hoc District Judge-2 (FTC), North Goa at Panaji (Reference Court).

3. By Notification under Section 4 of the Land Acquisition Act, 1894 (said Act) dated 14.12.2005, the land of the appellant in First Appeal No. 126/2016 (claimant) was proposed to be acquired for construction and B/T (black topping) of left out road in Village Panchayat of St. Cruz (Phase II) in Tiswadi Taluka, (Balance area). The Land Acquisition Officer (LAO) by his award dated 13.02.2009, determined compensation at the rate of ₹100/- per sq.mtr. By the impugned award, the Reference

Court has enhanced this amount to ₹500/- per sq.mtr. Hence these appeals by the claimant and the State.

4. Mr. Rodrigues, learned counsel for the claimant, submits that the Reference Court has failed to consider the three sale deeds of plots located hardly 300 mtrs. away from the acquired land. He submits that these were comparable instances and could not have been ignored. He points out that the acquired land was already converted and classified in the Settlement (S-2) Zone. He submits that if all this evidence were to be considered then the market rate would come to at least ₹1,500/- per sq.mtr.

5. Ms. Razaq learned Government Advocate submitted that no legal evidence exists to justify any enhancement. Without prejudice, she refers to the circle rates under the Stamp Act, and the decision of the Hon'ble Supreme Court in ***Reddy Veeranna vs State Of Uttar Pradesh, Civil Appeal No. 3636 of 2022 decided on 05.05.2022*** to submit that the rate as reflected in the circle rates could have been awarded. She points out that this rate would come to ₹500/- per sq.mtr.

6. Ms. Razaq submits that First Appeal No.116/2018 may be allowed, and the First Appeal No.126/2016 may be dismissed.

7. Rival contentions now fall for my determination.

8. In this case, the Reference Court has determined the acquired land's market rate at ₹500/- per sq.mtr. by simply observing in paragraph 14 of the impugned award, she is relying on the sale deeds and the Official Gazette containing the circle rates. In the entire award, there is no discussion about the sale deeds or the other evidence the parties produced, particularly the claimant.

9. The claimant, in his evidence, has produced three sale deeds, two of which are dated 22.12.1999 and the third dated 17.12.2002. The rate reflected in each of these sale deeds is ₹720/- or thereabouts. These sale deeds are in respect of developed plots which are a part of the same layout. This layout is at a distance of approximately 300 mtrs. from the acquired land. Therefore, there is no justification for not accepting or appreciating this evidence.

10. Besides, the claimant has deposed that the acquired land is close to the Goa Medical College (hardly 1 km.); a high school, St. Cruz Church complex, and a market (hardly 1 km. away). The claimant has also deposed that the acquired land is most suitable for house construction. About ten to twelve houses are already constructed in and around the area.

11. The claimant has also deposed that the acquired land is in the settlement area, classified as S-2 in the ODP. The claimant has also produced a Zoning Certificate from the Town & Country Planning Department by way of proof. Finally, the claimant submitted that compensation of at least ₹1,500/- should be paid to him because the acquired land has better features, is centrally located, and the acquisition has caused a severance. The claimant has also deposed about how his dream to have a swimming pool and garden was frustrated because of the acquisition.

12. Shri S. A. Dhuri is the expert. He also supports the claimant's version about the two 1999 sale deeds. Moreover, he has produced his valuation report corroborating to a great extent the evidence led by the claimant. In his report, he valued the market rate at ₹2,100/- but in his deposition, he stated that the market rate in the locality in the year 2005-2006 would not be less than ₹1,500/- per sq.mtr.

13. The sale deed of 2002 reflects the rate of ₹720/- per sq.mtr. was required to be considered for determining the market rate of the acquired land. This sale deed concerns a plot hardly about

300 mtrs. away from the acquired land. Besides, the evidence about development in and around the acquired land and the fact that the acquired land was already converted and fell within the Settlement Zone (S-2) could not have been ignored.

14. Considering these aspects, the acquired plot's market price in 2002 can be taken at ₹720/- per sq.mtr. because this is the rate reflected in the sale deed of 2002. Further, considering the development in the locality, an appreciation at 10% p.a. can safely be considered for determining the market rate in the year 2005. However, Ms. Razaq pointed out that comparing the sale deeds of 1999 and 2002 would indicate that the appreciation has not been considerable.

15. In this case, we are dealing with the small and developed plots. Moreover, the claimant has deposed to the various amenities that benefit the acquired land. Considering all these aspects and the locality in which the acquired land is situated, case is made out to consider appreciation at 10% p.a. Upon such consideration, the rate as on the date of the Section 4 Notification would come to ₹958/- per sq.mtr, which can safely be rounded up to ₹960/- per sq.mtr. This rate of ₹960/- per sq.mtr. would represent the proper market rate as on the date of Section 4 Notification.

16. For the above reasons, First Appeal No.116/2018 is hereby dismissed and First Appeal No.126/2016 is partly allowed and the market rate is enhanced to ₹960/- per sq.mtr. The claimant will be entitled to the proportionate statutory benefits and interest.

17. The State had deposited the awarded amount. Now that First Appeal No.116/2018 is dismissed, the claimant is at liberty to withdraw this amount together with the interest that may have accrued to this amount. The claimant to furnish details of his bank account so that the Registry can transfer this amount directly into his bank account.

18. The State is now directed to deposit the enhanced compensation together with statutory benefits and interest in this Court within a period of two months from today after giving due intimation to the learned counsel for the claimant. Once this amount is deposited, the claimant will have the liberty to withdraw this amount as well on the above terms and conditions.

19. Both these appeals are disposed of in the above terms.

20. There shall be no order for costs.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL