

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.120 OF 2015

Cuncolim Municipal Council,
A Municipal Council established
and incorporated under the
Goa Municipalities Act, 1968,
Cuncolim, Salcete, Goa
through its Chief Officer.

... APPELLANT

Versus

1. Shri Durga Bhiku Nadkarni,
major in age, married,
and his wife.
2. Smt. Milan Durga Nadkarni
major in age, housewife
both above residents of House no.4B,
Cotto Waddo, Sanguem Goa.
3. Shri Govind Bhiku Nadkarni
major in age, married,
and his wife.
4. Smt. Sushma Govind Nadkarni
both above permanent residents of
House No.69 A, Gundeabhat,
Sanguem, Goa and Temporary
resident of TFI, III floor, Paramount
Shopping Complex, Navelim,
Salcete, Goa.

5. Dy. Collector (LA) Collectorate,
South Goa.

... RESPONDENTS

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

Mr. S. S. Kakodkar, Advocate for respondent Nos. 1 to 4.

CORAM: M. S. SONAK, J.

Reserved on : 30th June 2022

Pronounced on: 1st July 2022

JUDGMENT:

1. Heard the learned counsel for the parties.
2. The challenge in this appeal is to the judgment and Award dated 29.07.2015 in Land Acquisition Case No.6/2013, by which the reference Court has enhanced the market rate concerning the acquired property from ₹357/- per square metre to ₹633/- per square metre.
3. By notification published on 02.06.2011, the State proposes to acquire the respondents' property admeasuring 2067 square metres from Survey No.677/1, to construct a road. The Land Acquisition Officer (LAO), by his Award dated 13.03.2013, determined the market rate at ₹357/- per square metre. However, the reference Court by the impugned Award has enhanced this rate to ₹633/- per square metre. Hence, this appeal.

4. Mr. Padiyar, learned counsel for the acquiring authority, submitted there is overwhelming evidence on record that at least since 1990, there was a developed road at the site. He offered that even before 1990, there was a Katcha road at the site. He submitted that this road was used by the members of the public and was even maintained with public funds. He submits that in 2008-2009, the respondents' petitioned the Hon'ble High Court claiming that the property beneath such road was theirs and the Government should either restore or acquire the same and pay the respondents' compensation at the market value. Accordingly, the acquisition proceedings were initiated and concluded with the above awards.

5. Mr. Padiyar, relying on the *State of Goa Vs Antonio Almeida and others*¹ submitted that what was acquired in this case was only the nominal or naked right of the ownership and, therefore, the compensation of 20% of the market value could have been awarded.

6. Mr. Padiyar submitted that in the earlier acquisition of 2005, the strips of respondents' land on either side of the existing road were also acquired. He submitted that the respondents did not object to such acquisition but claimed enhanced

¹ FA No.176/2000 & Cross Objections No.11/2000 decided on 23.06.2004

compensation, ultimately awarded to them by the reference Court and even to some extent by this Court. Mr. Padiyar submits that given this evidence; the respondents cannot now urge that the existing road at the site was only their private road.

7. Mr. Padiyar submits that even otherwise, the acquired land was only a strip of the width of not greater than six metres. He submits that the amalgamation was impossible because of the previous acquisition of strips on either side. Furthermore, he submits that the acquired land was zoned as a road in the zoning plan. He submits that the acquired land had no building potential, and the enhancement was not warranted.

8. For all the above reasons, Mr. Padiyar submits that the market rate, in this case, could not have exceeded ₹357/- per square metre as determined by the LAO.

9. Mr. Kakodkar, learned counsel for the respondents, defended the impugned Award based on the reasoning reflected therein. He submitted that for the previous acquisition of 2005, the reference Court had determined the market rate of immediate adjacent land belonging to the respondents at ₹357/- per square metre. He submits that the reference Court has only granted 10%

appreciation per annum and arrived at ₹633/- per square metre. Accordingly, he submits that this rate warrants no interference.

10. Mr. Kakodkar submits that the evidence shows that the existing road was a private one. He submits that because the State began to asphalt/tar this private road without the authority of law, the respondents had to rush to the Hon'ble High Court. He submits that if the existing road was a public road, then there was no question of acquisition. He proposes that total market value has to be awarded in such a situation.

11. Mr. Kakodkar submitted that multiple uses are permitted, even in transportation. He offered that the acquired land was in the settlement zone. He submitted that the decision in *Antonio Almeida* (supra) was distinguishable because the subject matter of the acquisition in the said case was roads in a development layout that the owners had to donate to the local authorities. He submits the reference Court has correctly distinguished that ruling.

12. For all the above reasons, Mr. Kakodkar submits that this appeal may be dismissed.

13. The rival contentions now fall for my determination.

14. There is evidence on record that the acquisition, in this case, was for acquiring ownership right in the existing road used by the public members, without any serious opposition from the respondents. This is evident from the evidence discussed hereafter.

15. Firstly, Govind Nadkarni (AW1) respondent No.3 admitted in his evidence that the acquired land is nothing but a strip shown in the survey plan having a width of not greater than six metres. He maintained that this entire property under Survey No.677/1 was private access but admitted that the public was using the said access with his permission.

16. AW1 admitted that the acquired land is tarred but maintained that this was done forcibly by the Government. To the suggestion as to the improvements on the said road were undertaken in 1991-1992, AW1 answered that he was not aware.

17. The most significant part of AW1's evidence, however, reads as follows:-

"It is not true to suggest that public were using the said access as a matter of right. It is not true to suggest that the said property under survey No.677/1 is shown as a narrow strip of land which can be used only for the purpose of access/road."

Shown to the witness plan at exhibit 22, the witness states that the portion marked in red at point A and at point B, at point C, at point D, at point E were acquired by the Government for the purpose of road under Award dated 30.1.08 at exhibit 22.

The portion marked at points A, B and E were acquired by the Government for widening the existing road."

18. There is evidence on record that in 2005, the strips on either side of this road were acquired by the Government for the purposes of its widening. The respondents claimed and were awarded enhanced compensation at the rate of ₹357/- per square metre. This was after the respondents accepted under protest the lower rate offered by the LAO and sought reference to the reference Court. In respect of a small portion, the rate of lesser than ₹357/- per square metre was awarded, and therefore, the respondents filed their cross-objections in the State's appeal and secured this rate.

19. The plan at Exhibit 22 referred to above establishes that the acquired land in the said matter was nothing but a strip on either side of this existing road. Therefore, the acquisition was also for the widening of the existing road.

20. If the respondents' case that the existing road was nothing but their private access is to be accepted, then they had to explain how they permitted and even benefited from the acquisition of a strip of their land on either side of this existing road. The Government would usually not acquire the property to widen private access. At least the Government would not acquire the respondents' property to widen the allegedly private access of the respondents. This is a very strong circumstance that the existing road was used by the public at least since 1990 without any serious objections from the respondents.

21. There is evidence that the public is using this access. There is evidence of religious processions routinely passing through this access. Evidence shows that this access is improved, tarred, and developed from public funds. Because all these activities took place without any formal acquisition, the respondents instituted a petition before this Court. Based on the order therein, the present acquisition proceedings were initiated.

22. In *Almeida* (*supra*), the Division Bench of this Court comprising *S.A. Bobde, (as His Lordship then was)* and *N. A. Britto, J* made the following observations:

"As stated before, what has been acquired in this case is the nominal or naked right of ownership of the respondents in the said road, which was subsequently asphalted by the Government. In our opinion, in such a case, the market value to be given to such a land ought to be 20 % of the value fetched by the owners to the surrounding or adjacent land and that being the position, once the price fetched for sale deed, Exh. AW.1/K dated 16/6/1986 is taken into consideration, the said market value works out to Rs.66/- per sq. metre which, in our opinion, will be the correct market value payable to the respondents on account of the acquisition of their right of ownership in and upon the said road."

23. The facts in *Antonio Almeida* (supra) were slightly different in that the Division Bench was concerned with roads in layout meant for the use of public members. Though there is no clear evidence, Mr. Kakodkar pointed out that there are usually conditions requiring the land owners to donate such lands to the local authorities. This contention appears to be probable. The land owners in the said case had made a commercial profit by developing their property into plots. Considering all such circumstances, the Division Bench held that the compensation corresponding to 20% of the market rate would be appropriate.

Since the facts here are not comparable, some enhancement is due.

24. The respondents had to file at least two writ petitions before this Court and obtain orders for either restoration of their property or acquisition and payment of compensation. Besides, there is evidence that the acquired land was a strip of a width not more than six metres. The amalgamation was not possible because of the earlier acquisition of strips on either side. The acquired land was zoned as a road in the zoning plan. The reference Court has not addressed all these aspects.

25. The reference Court merely regarded the rate in the previous acquisition as the base and then mechanically granted a 10% enhancement each year to arrive at the market rate of ₹633/- per square metre. However, at least in the peculiar facts of the present case, this approach may not be correct.

26. At the same time, Mr. Padiyar's contention that the rate should be frozen to ₹357/- per square metre, also cannot be accepted. Ultimately, the evidence bears out that the State, without proper acquisition proceedings, had improved and tarred the respondents' property for the benefit of the public. Therefore, the State or, for that matter, the appellant cannot take any undue

advantage of such a situation. Therefore, some enhancement is due considering that the rate of ₹357/- per square metre was determined for the immediate adjacent strip in 2005. However, the enhancement could not have been determined by the usual 10% appreciation per annum formula.

27. In my judgment, considering the peculiar circumstances as borne out from the evidence, the enhancement up to ₹500/- per square metre will be appropriate. As noted earlier, for the immediate adjacent and comparable land belonging to the respondents themselves, the LAO determined the rate at ₹357/- per square metre in 2005. This acquisition is of the year 2011. Therefore, appreciation from ₹357/- per square metre to ₹500/- per square metre will be appropriate.

28. For the above reasons, this appeal is partly allowed, and the rate is reduced from ₹633/- per square metre to ₹500/- per square metre. However, the statutory benefits and interest awarded by the reference Court are maintained. Accordingly, there shall be no order for costs.

29. If the appellant has deposited the awarded amount, then the appellant and the respondent Nos. 1 to 4 are permitted to withdraw the same in terms of this judgment and order. They will

be entitled to the proportionate interest accrued on the deposited amount.

30. The parties to exchange their calculations and furnish bank details to the registry. Based upon this, the registry to effect bank transfers into the appellant's accounts and the respondent Nos. 1 to 4' account at the earliest.

M. S. SONAK, J.

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