

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.60 OF 2013

1. Deputy Collector & S.D.O. & L.A.O.
Sub-Division, Panaji Goa.
2. Executive Engineer,
PWD III (PHE)
PTS 102, Chalta No.1
Panaji City of Tiswadi Taluka. ... Appellants

Versus

Shri Edgar F. Dias,
Valles through Power of Attorney holder
Smt. Augusta Iria Valles,
r/o St. Inez, Panaji Goa. ...Respondent

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

Mr. M. B. Da Costa, Senior Advocate with Ms. Karishma Betquecar, Advocate for the respondents.

CORAM: M. S. SONAK, J

DATE : 18th January 2022

ORAL JUDGMENT :

1. Heard Ms. P. Kamat, learned Additional Government Advocate for the appellants, and Mr. M. B. Da Costa, learned

Senior Advocate appearing along with Ms. K. Betquecar for the respondents.

2. This appeal is directed against the judgment and award dated 07.11.2007 made by the District Judge-2 at Panaji (reference Court) in Land Acquisition Case No.56/2003 determining the compensation in respect of the acquired land at Rs.735/- per square meter.

3. In this case, vide Notification dated 21.02.1991 the respondent's land admeasuring 744 square meters from out of total acquired land of 2000 square meters was acquired under Notification dated 21.02.1991 issued under Section 4 of the Land Acquisition Act, 1894 (the said Act). The land acquired was from P.T. Sheet No.102, Chalta No. 1 at St. Inez, Panaji. The acquisition was for providing a sewerage system to Government Polytechnic Campus in Panaji Goa.

4. By award dated 01.04.1993 the Land Acquisition Officer determined the compensation at the rate of Rs.30/- per square meter. Being dissatisfied with the same, the respondent sought a reference which came to be disposed of by the impugned judgment and award dated 07.11.2007 in which the reference

Court has enhanced the compensation to Rs.735/- per square meter. Hence, the present appeal.

5. Ms. P. Kamat submits that sale instances relied upon by the respondent were not comparable instances. She submits that the acquisition was of a strip of land which had no building potential. She submits that there was no cogent evidence to justify such a steep enhancement. For all these reasons, Ms. Kamat submits that the impugned award warrants interference.

6. Mr. M. B. Da Costa, learned Senior Counsel for the respondent defends the impugned award based on the reasoning reflected therein. He pointed out that the acquired land is admittedly adjacent to the existing crematorium at St. Inez, Panaji. He pointed out that certain lands were acquired for extension of the crematorium in the year 1991 itself and compensation was determined at Rs.735/- per square meter. He submits that based on this award, the impugned award warrants no interference whatsoever. He submits that this appeal, therefore, be dismissed.

7. The rival contentions now fall for my determination.

8. In this case, the State has acquired an area of 2000 square meters for providing sewerage systems to the Government Polytechnic Campus in Panaji Goa. Out of this area of 2000 square meters, an area of 744 square meters belonged to the respondent. In such circumstances, it is not correct to say that the acquired portion was only a strip of land having no building potential. The material on record makes it clear that the property of the respondent indeed had a building potential and merely because some portion of such land was acquired, there is no case made out to award the respondent some reduced compensation based on the contention that only a strip of land was acquired. Even in respect of the strip of land, the compensation at the market rate is indeed payable.

9. From the evidence on record, there is no dispute whatsoever that the acquired land is next to the land which was acquired for extension of the Hindu crematorium at St. Inez, Panaji Goa. The appellants had themselves suggested to the witnesses of the respondent that the acquired land is next to a Hindu crematorium and therefore, will not fetch a very good price in the open market. Even otherwise there is ample evidence on record that establishes that the acquired land is next to the land which has been acquired for extension of the Hindu crematorium.

10. Now there is no dispute that in the year 1991 itself the land was acquired for the extension of the Hindu crematorium. The reference Court in respect of such land had determined the compensation at Rs.735/- per square meter. This is evident from the judgment and award dated 20.06.2007 in Land Acquisition Case No.22/2006. There was no contention advanced about any challenge to this award or rate determined in this award. This means that the State accepted the rate of Rs.735/- per square meter in respect of the land acquired for the extension of the Hindu crematorium in the year 1991 itself.

11. The reference Court, in this case, has not placed any great reliance on sale instances produced by the respondent but has rather gone by the award dated 20.06.2007 in which the market value was determined at Rs.735/- per square meter. There is evidence that the land which was the subject matter of the present acquisition was slightly better than the land which was the subject matter of award dated 20.06.2007. Despite this, the reference Court has determined the market rate at Rs.735/- per square meter.

12. Besides, in this case, there is evidence in the form of comparable sale instances as well. After making suitable deductions as are required to be made in such matters in terms of

the law laid down in *Chimanlal Vs Special Land Acquisition Officer, Poona*¹, The market rate will possibly exceed Rs.735/- per square meter. Be that as it may, the impugned judgment and award will have to be sustained based on the award dated 20.06.2007 in respect of virtually adjacent land which was acquired in the same year.

13. For all the aforesaid reasons, this appeal is required to be dismissed and is hereby dismissed.

14. There shall be no order for costs.

M. S. SONAK, J

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