

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.63/2014

The Executive Engineer,
WD-II(R), P.W.D.,
Patto, Panaji-Goa.

...APPELLANT

Versus

1. Lourenco da Silva (since deceased),
Through his legal heirs

1.(a) Lona da Silva, Age 44 years,

1.(b) Avertano da Silva, Age 56 years,

1.(c) Ceila da Silva, Age 55 years,

1.(d) Edwin da Silva, Age 50 years

1.(e) Savio da Silva, Age 49 years,

1.(f) Cynthia da Silva, Age 47 years

All are Indian National,

All resident of Near St. Francis Chapel,

Taleigao - Goa.

...RESPONDENTS

**Mr. S. P. Munj, Additional Government Advocate for the
*Appellant-State.***

Mr. Dinesh Naik, Advocate for the Respondent.

CORAM: M. S. SONAK, J.

DATED: 10th February 2022

JUDGMENT:

1. Heard Mr. S. P. Munj, learned Additional Government Advocate for the appellant-State and Mr. Dinesh Naik for the respondents-claimants.

2. This appeal challenges the Judgment and Award dated 30.07.2011 made by the Reference Court in Land Acquisition Case No.27/2009 enhancing the rate determined by the Land Acquisition Officer (LAO) i.e. ₹600/- per sq. mtr. to ₹2250/- per sq. mtr.

3. In this case, by notification under Section 4 of the Land Acquisition Act (said Act) dated 15.11.2004, the State acquired amongst others, respondents' land admeasuring 110 sq. mtrs. situated at Caranzalem, Panaji, Goa for road widening purposes. The LAO by his Award dated 18.07.2007 determined the market rate at ₹600/- per sq.mtr. The Reference Court by the impugned Award dated 30.07.2011 has enhanced this rate to ₹2,250/- per sq. mtr. Hence the present appeal.

4. Mr. Munj submits that the enhancement is excessive and not borne out of the evidence on record. Firstly, he submits that what was acquired was only a strip admeasuring 110 sq.

mtrs. abutting the road which, in any case, the respondents could never have utilized because the same was within the road alignment area. Secondly, he submits that the sale instances relied upon by the Reference Court were not comparable because they related to the developed plots within the Panchayat limits of Taliegao. Further, the acquired land was low-lying undeveloped land. Thirdly, he submitted that the parties who owned the lands in the immediate neighborhood of the respondents and which were similarly acquired have, in Lok Adalat proceedings accepted the compensation at ₹800/- per sq. mtr. Based on all these factors Mr. Munj submits that the impugned award warrants interference to the extent it determines the market rate above ₹800/- per sq. mtr.

5. Mr. Dinesh Naik defends the impugned award based on the reasoning therein. He points out that even the acquired land was a part of a developed plot admeasuring 544 sq. mtrs. on which there existed a residential building. He, therefore, submitted that the acquired land was not some low-lying undeveloped land as was contended. Mr. Naik submitted that the respondents have produced on record at least seven sale instances of comparable lands which includes four sale instances executed before the issuance of Section 4 notification. He submits that the average rate in terms of these sale deeds comes to ₹2,500/- per sq.

mtr. He submits that the compensation should have been awarded at this rate but that the Reference Court made a further 10% deduction and has determined the rate at ₹2,250/-. He submitted that the acquired land is within the limits of the Corporation of the City of Panaji and the sale deed plots though in the immediate neighborhood or within a radius of about 2 km. are in the Village Panchayat jurisdiction. He, therefore, submits that this appeal may be dismissed.

6. The rival contentions now fall for my determination.

7. In this case, only the respondent led evidence by examining himself and producing no less than seven sale deeds that were admitted in evidence. On behalf of the appellant, no evidence was led.

8. There is no evidence to suggest that the acquired land was either low-lying or undeveloped. Rather, the evidence on record establishes that the acquired land was a part of a developed plot held by the claimants admeasuring 544 sq. mtrs. In the cross-examination, no dent has been made to this aspect. The respondents have also produced Form D that came to be admitted in evidence without any challenge.

9. The evidence on record also bears out that the acquired land is within the Municipal Corporation limits. The sale instances relied upon by the respondents relate mostly to the Panchayat limits. The Panchayat and the Corporation share a boundary and both these areas are substantially developed. Be that as it may, the acquired plot is in a Municipal Corporation area and this is a positive factor *qua* the acquired land.

10. Though seven sale instances were relied upon, only the sale instances at Exh.13, 14, 15, and 16 can be taken into consideration because these are the sale instances before the issuance of Section 4 notification. These sale instances are dated 04.09.2004, 13.09.2004, 15.09.2004, and 01.10.2004. The Section 4 notification, in this case, was issued on 15.11.2004. There is evidence that these sale instances are within a radius of hardly 2 km. from the acquired plot. The sale instances are also in respect of developed plots and the average rate worked out by the Reference Court is ₹2,500/- per sq. mtr.

11. The contention about the acquisition being of only a strip and therefore not deserving of any or sufficient compensation has been considered and rejected by the Reference Court relying upon the decision of the Hon'ble Supreme Court in

State of Goa v/s. Gopal Baburao Gaudo – 2009 (10) SCC

686, wherein it is observed as under:-

“5. The contention that a land adjoining the highway should be treated as having no development potential (and therefore as land without much value except as ordinary agricultural land), while considering the lands to its rear which are farther away from the road, or other adjoining lands of the same extent, but having more depth (so as to extend beyond the 40 m margin) as having potential for development is illogical and cannot be accepted.

6. We may demonstrate the absurdity of such a contention with reference to an illustration. Let us take the example of a residential plot of land measuring 60' X 100'. Let us assume that the municipal bye-laws require a front (roadside) set back of 20' for construction of houses in a plot of that size. Therefore, the owner would leave a twenty feet wide front strip in the said plot free of any construction while putting up the construction in the plot. Obviously, he cannot thereafter construct in that front strip. Let us further assume that the front strip is acquired for road widening. Can the acquiring authority deny compensation to that strip on the ground that the said 20' strip acquired for road widening could not in any event be used for any construction purpose and therefore was not of any value? Obviously not.”

12. The Reference Court has also relied on ***State of Goa & Anr. v/s. Smt. Marianinha Vaz & Ors. – 2004 (3) ALL MR 507*** in which a similar contention was rejected by this Court.

13. Despite the aforesaid rulings the Reference Court in this case has made a deduction to the extent of 10% from the rate of ₹2,500/- and determined the market rate at ₹2,250/-.

14. The fact that some parties agreed to accept lesser compensation in the Lok Adalat cannot be a ground to scale down the compensation that is otherwise just and even supported by the evidence on record.

15. Having regard to the evidence on record and the reasoning in the impugned Judgment and Award there is no good reason to interfere with the impugned Judgment and Award.

16. Accordingly, this appeal is liable to be dismissed and is hereby dismissed. There shall be no order for cost.

M. S. SONAK, J.