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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO.6 OF 2018 & 58 OF 2019

FIRST APPEAL NO.6 OF 2018

Augusta Iria Valles (now deceased)
Through her legal representative
Edgar Francisco Dias Valles
Residing at Odivelas, Portugal. ...Appellant

Versus

Executive Engineer WD III PHE,
Public Works Department, St.Inez,
Panaji, Goa. Respondent

Mr. M.B. Da Costa, Senior Advocate with Ms. K. Betquecar, Advocate for the Appellant.
Ms. Susan Linhares, Additional Government Advocate for the Respondent.

AND

FIRST APPEAL NO.58 OF 2019

The Executive Engineer
Works Division III (PHE),
PWD, St. Inez, Panaji, Goa. Appellant

Versus

Augusta Iria Valles,
R/o. St. Inez, Panaji, Goa.
(Now deceased)
Through her legal heir Edgar
Francisco Dias Valles. Respondent

Ms. Susan Linhares, Additional Government Advocate for the Appellant.

Mr. M.B. Da Costa, Senior Advocate with Ms. K. Betquecar, *Advocate for the Respondent.*

CORAM : M. S. SONAK, J.

DATE : 11th March 2022

ORAL JUDGMENT :

1. Heard Mr. M.B. Da Costa, learned Senior Counsel for the claimant, and Ms. Susan Linhares learned Additional Government Advocate for the State.
2. Both these appeals challenge the judgment and award dated 19.08.2017 made by the Reference Court in Land Acquisition Case No.67/2003 enhancing the compensation for the acquired land from ₹15/- per sq.mtr. to ₹55/- per sq.mtr.
3. First Appeal No.58/2019 has been instituted by the State questioning the enhancement and First Appeal No.6/2018 has been instituted by the claimant/ landowner seeking further enhancement up to ₹735/- per sq.mtr. Therefore, it is only appropriate that both these appeals are taken up for consideration and disposed of by a common judgment and order.
4. By notification dated 21.02.1991 under Section 4 of the Land Acquisition Act, 1894, property admeasuring 1156 sq.mtrs.

surveyed under Chalta No.5 of PT Sheet No.93, Panaji-Goa was proposed to be acquired for the public purpose of providing a sewerage system to the Government Polytechnic Complex at Panaji-Goa.

5. The Land Acquisition Officer by his award dated 01.04.1993 determined the rate of the acquired land at ₹15/- per sq.mtr. The landowner (appellant in First Appeal No.6/2018) applied for reference under Section 18 of the said Act. Mr. Costa, learned Senior Counsel, pointed out that for almost ten years no reference was made. Finally, the reference was made and numbered as Land Acquisition Case No.67/2003.

6. Mr. Costa submitted that without any valid service on the landowner the reference was dismissed. The landowner then instituted a Writ Petition and the order of the Reference Court dismissing the reference was set aside and the matter was remanded for a decision on merits. In pursuance of such remand, the Reference Court, vide the impugned judgment and award, has enhanced the compensation to ₹552/- per sq.mtr. as against the claim of ₹735/- per sq.mtr. Hence, the two appeals.

7. Ms. Linhares, the learned Additional Government Advocate for the State, submitted that the enhancement cannot be

supported by the evidence on record. She submitted that the acquired land was sloppy land adjoining the crematorium. She submitted that in respect of such land compensation had been determined at ₹452/- per sq.mtr. by the Reference Court and the appeal against the same was also dismissed by this Court on 24.01.2013. She submits that the Reference Court without considering these aspects has unduly enhanced the rates to ₹552/- per sq.mtr.

8. Ms. Linhares submits that only the lands that were close to the Panaji-Taligao road were granted compensation at the rate of ₹735/- per sq.mtr. She submitted that the evidence on record bears out that the acquired lands were away from the Panaji-Taligao road and, therefore, the Reference Court erred in taking the base at ₹735/- per sq.mtr.

9. Based on the aforesaid, Ms. Linhares submits that the First appeal No.58/2019 may be allowed and the rate suitably reduced.

10. On the other hand, Mr. M.B. Da Costa, learned Senior Counsel for the landowner submits that there was no justification for the Reference Court to deny the rate of ₹735/- per sq.mtr. He relied on judgment and order of this Court dated 18.01.2022 in First Appeal No.60/2013 where, under the same notification

and in respect of virtually the adjacent land, compensation was determined at ₹735/- per sq.mtr. He submits that such compensation was determined in respect of the land belonging to this very land owner's family. He points out that even in First Appeal No.312/2007 and First Appeal No.108/2008, the Division Bench of this Court in its judgment and order dated 24.01.2013 had approved the rate of ₹735/- per sq.mtr. in respect of adjacent lands by relying on Sale Deed dated 22.01.1992 which in turn was based on the Agreement to Sale dated 21.01.1990. For all these reasons, Mr. Costa submitted that First Appeal No.6/2018 ought to be allowed and the market rate further enhanced to ₹735/- per sq.mtr.

11. The rival contentions now fall for my determination.

12. Learned Counsel for the parties have invited my attention to the plan on page 69 of the paper book that indicates not only the acquired property bearing Chalta No.5 of PT sheet No.93 but also the adjacent lands bearing Chalta No.1, 1A, and 2 of PT Sheet No.102. The plan makes it clear that the lands under PT Sheet No.102 are closer to the Panaji-Taligao road as compared to the acquired land under PT Sheet No.93 and Chalta No.5. However, the lands under PT Sheet No.102 and PT Sheet No.93 are adjacent to each other, and even otherwise the distance of the

acquired property under PT Sheet No.93 is not too much but about 200 to 300 metres from the Panaji-Taligao road.

13. The record also bears out that two portions of the lands bearing PT Sheet No.102 and 93 were acquired by the State in 1991. One portion admeasuring 6315 sq. mtrs. belonging to the family members of the present landowner bearing PT Sheet No.102, Chalta No.1 was acquired for the extension of an existing crematorium at Panaji. By award dated 20.06.2007 in Land Acquisition Case No.22/2006, the Reference Court determined the market value of this portion at ₹735/- per sq.mtr. This acquisition was in pursuance of a notification dated 13.05.1991.

14. Under the same notification dated 13.05.1991, other portions of lands bearing PT Sheet No.102 and Chalta no.1, 1A, 1B admeasuring 4480 and 950 sq.mtrs. belonging to the family members of the present landowners were also acquired. Now, in respect of these lands, the Reference Court in Land Acquisition Case No.10/2007 determined the rate at ₹452/- per sq.mtr.

15. The City Corporation of Panaji (CCP), for whom the above lands under PT Sheet No.102 were acquired, instituted First Appeal No.312/2007 to challenge the Reference Court's

award dated 20.06.2007 in Land Acquisition Case No.22/2006 determining the rate of ₹735/- per sq.mtr. The landowners filed cross-objections claiming an even higher rate.

16. The CCP also instituted First Appeal No.108/2008 questioning the award dated 02.02.2008 in Land Acquisition Case no.10/2007 determining the rate of ₹452/- per sq.mtr. The landowners also filed cross-objections claiming further enhancement up to ₹2500/- per sq.mtr.

17. By common judgment and order dated 24.01.2013, the Division Bench of this Court dismissed both the First Appeals and the cross-objections therein. This means that for the land admeasuring 6315 sq.mtr. bearing PT Sheet No.102 Chalta No.1, rate of ₹735/- per sq.mtr. was upheld and for the lands bearing PT Sheet no.102 Chalta nos.1A and 1B rate of ₹452/- per sq.mtr. was upheld by the Division Bench of this Court.

18. The reasoning applied by the Reference Court in Land Acquisition Case No.01/2007 was that the lands bearing PT Sheet No.102 Chalta Nos.1A and 1B were touching the existing crematorium and, therefore, would command a lesser rate of ₹452/- per sq.mtr. as compared to the lands bearing PT Sheet No.102 Chalta no.1. However, the Reference Court as also this

Court relied on the Sale Deed dated 22.01.1992 which in turn was based on Agreement for Sale dated 20.01.1990 for arriving at the market rate of ₹735/- per sq.mtr. This rate of ₹735/- was however not awarded for the lands immediately touching the Hindu crematorium. Therefore, it was not as if the rate of Rs.735/- was determined based on the proximity to the road.

19. Now, relying upon the aforesaid awards and the judgments of this Court in the two First Appeals, Single Judge of this Court by judgment and order dated 18.01.2022 in First Appeal No.60/2013 dismissed the State's appeal questioning the rate of ₹735/- per sq.mtr. in respect of 744 sq.mtrs. of land from PT Sheet No.102 Chalta No.1 acquired for providing sewerage system to Government Polytechnic Campus under the very same notification dated 21.02.1991. This Court reasoned that if in the year 1991, for another portion of the same property bearing PT Sheet No.102, Chalta No.1, if the rate of ₹735/- per sq.mtr. had been granted, there was no reason to deny the same rate to the lands acquired under the notification dated 21.02.1991.

20. Even the plan on page 69 indicates that the land which is the subject matter of the present appeal is not touching the crematorium. Therefore, there was no justification for the Reference Court to award only ₹552/- per sq.mtr. The Reference

Court, in this case, has referred to the award of the Land Acquisition Officer and some observations therein about the acquired land being bharad type of land, a part of which is sloppy and the other plain.

21. Now, it is well settled that the Reference Court is not expected to sit in appeal over the award made by the Land Acquisition Officer which is only an offer. Even the material relied upon by the Land Acquisition Officer in his award cannot be relied upon by the Reference Court unless the same is actually tendered in evidence before the Reference Court. Therefore, the Reference Court was not justified in relying upon certain observations in the Land Acquisition Officer's award for distinguishing the acquired land from the land for which the market rate has already been determined at ₹735/- per sq.mtr.

22. In *Chimanlal Hargovinddas V/s. Special Land Acquisition Officer & Anr.*¹, the Hon'ble Supreme Court has held that reference under Section 18 of the said Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court. So also the award of the Land Acquisition Officer is not

¹ (1988) 3 SCC 751

to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by Court unless produced and proved before it. It is not the function of the Court to sit in an appeal against the award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer as if it were an appellate Court. The Reference Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

23. The material on record does establish the similarity between the lands acquired for the very same purpose and under the very same notification for which the rate has been determined at ₹735/- per sq.mtr. There is no evidence that the acquired land was immediately touching the crematorium as in the case of the award made in the Land Acquisition Case No.10/2007 which was the subject matter of First Appeal No.108/2008. The issue involved in the two land acquisition cases or the two appeals was not determined based on proximity from the Panaji-Taligao road. Even otherwise, the acquired land in the present case is not at some great distance from the Panaji-Taligao road. All these

acquisitions appear to relate to a large property belonging to a family of landowners in the present appeal. Mr. Costa pointed out that the lands came to be allotted to different members of the family and that is the reason why awards had to be made in respect of different family members' shares. He, however, submitted that this is one large property surveyed *inter alia* under PT Sheet No.102 and 93, Panaji-Goa.

24. In this case, though the evidence was led on behalf of the landowners (AW1), no evidence was led on behalf of the State. There is evidence that in the radius of 1.5 kms of the acquired land there are several amenities like municipal market, schools, church, hospital, beach. There is evidence that a prestigious residential cum commercial complex like Kamat Plaza, etc. had come up in the locality where the acquired property is situated at or around the time of issuance of Section 4 notification. Besides, the Government Polytechnic Complex was already in existence and the acquisition was to provide the sewerage system for this complex. The Sale Deed of 22.01.1992 though post notification was based on Agreement for Sale dated 20.01.1990 which was held as the base for determination of the rate of ₹735/- per sq.mtr.

25. Based on all these materials, the market rate in respect of the acquired land will have to be determined at ₹735/- per sq.mtr.

26. As a consequence, First Appeal No.58 of 2019 instituted by the State will have to be dismissed and First Appeal No.6/2018 instituted by the landowners will have to be allowed and the market rate enhanced to ₹735/- per sq.mtr.

27. Both the appeals are disposed of by making the following order :

- (a)** First Appeal No.58/2019 is hereby dismissed;
- (b)** First Appeal No.6/2018 is partly allowed and the market rate is determined at ₹735/- per sq.mtr.;
- (c)** The impugned award is modified to the aforesaid extent only, that is, the market rate is enhanced to ₹735/- per sq.mtr. in place of ₹552/- per sq.mtr. The other directions concerning statutory benefits are maintained;
- (d)** The landowners are permitted to withdraw the deposited amount. They will have to furnish proper

identification and bank details so that the amounts can be transferred directly into their bank accounts;

- (e) The State is directed to now deposit the compensation at the enhanced rate within three months from today in this Court. The State will be entitled to adjust the payment already made or deposited in this Court and only the difference will have to be deposited.
- (f) Upon deposit, the landowners will be entitled to withdraw the same in the manner indicated above.
- (g) There shall be no order for costs, in both the appeals.

M. S. SONAK, J.

NITI K
HALDANKAR

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