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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.155 OF 2018

Shri Rauji Naik
r/o. H.No.35, Corogem,
Cuncolim, Salcete, Goa.
(since deceased, represented
by his legal heirs)

1(a) Smt. Sushila Rauji Naik,
73 years of age,
widow of Rauji Govind Naik,

1(b) Smt. Ratan Naik,
42 years of age,
and her husband

1(c) Shri Ranjit Naik,
46 years of age,

All r/o. H.No.35,
Carojem, Cuncolim,
Salcete, Goa.
(The Appellant No.1(a) and (b)
Represented by Power of Attorney
The Appellant No.1(c)

... Appellants

Versus

1. Deputy Collector (L.A.),
Collectorate South, Margao.

2. The Chief Officer,
Cuncolim Municipal Council,
Cuncolim-Goa.

... Respondents

Mr. R.G. Ramani with Ms. P. Kakodkar, Advocate for the

Appellants.

Ms. Susan Linhares, Additional Government Advocate for Respondent No.1.

Mr. S.D. Padiyar and Mr. P. Shirodkar, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.

DATE : 29th JULY 2022

ORAL JUDGMENT :

1. Heard Mr. R.G. Ramani, learned Senior Advocate, who appears along with Mr. P. Kakodkar for the appellants, Ms. Susan Linhares, learned Additional Government Advocate for respondent no.1, and Mr. S.D. Padiyar with Mr. P. Shirodkar for respondent no.2 – Cuncolim Municipal Council (CMC).

2. The challenge in this appeal is to the judgment and award dated 04.08.2018 in Land Acquisition Case No.29/2011, by which the learned Reference Court rejected the appellants' reference under Section 18 of the Land Acquisition Act, 1894 (said Act).

3. By notification under Section 4 of the said Act published on 19.02.2009, the respondents proposed to acquire certain lands for a parking area near the Cuncolim Market Community Hall.

The acquired lands were surveyed under nos.666/5, 666/6, and 666/8 at Cuncolim Bazar, Cuncolim Salcete Goa.

4. The appellants' lands bear Survey No.666/8 and admeasure 2700 sq. mtrs. Therefore, in this appeal, we are concerned with the appellants' land admeasuring 2700 sq. mtrs. surveyed under no.666/8 at Cuncolim bazar, Cuncolim Salcete, Goa.

5. The Land Acquisition Officer made his award on 09.08.2010 and determined the market rate for the appellants' land bearing Survey No.666/8 at ₹43/- per sq. mtr. However, regarding the other lands surveyed under no.666/5 and 666/6, the Land Acquisition Officer determined the market rate at ₹92/- per sq. mtr.

6. The appellants, as also the owner of the land surveyed under no.666/5 (admeasuring 575 sq. mtrs.), applied for a reference under Section 18 of the Act. By the impugned award, the Reference Court dismissed the appellants' reference bearing Land Acquisition Case No.29/2011. However, by a separate award dated 04.08.2018 in Land Acquisition Case No.36/2011, the Reference Court determined the market rate for the land surveyed under no.666/5 admeasuring 575 sq. mtrs. at ₹1200/- per square meter.

7. The appellants have taken out Misc. Civil Application No.612/2022 (Filing No.) for admitting the award dated 04.08.2018 in Land Acquisition Case No.36/2011 in evidence by resort to the provisions of Order XLI Rule 27 of the CPC. This application is also being considered along with this appeal now that this appeal is taken up for a final hearing.

8. In *Wadi V/s. Amilal & Ors.*¹ the Hon'ble Supreme Court of India, while dealing with the scope of Order XLI and Rule 27 of CPC, made the following observations relevant to the case at hand:

"5. Now it is clear that Rule 27 deals with production of additional evidence in the appellate Court. The general principle incorporated in Sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate Court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in Clauses (a), (a) and (b). We are concerned here with Clause (b) which is an enabling provision. It says that if the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is

¹ (2015) 1 SCC 677

paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, Clause (b) enables it to adopt that course. Invocation of Clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case."

9. Since the lands which form the subject matter of the impugned award and the award in Land Acquisition Case No.36/2011 are neighboring lands that were acquired under the very same notification, the interest of justice requires the admission of the award made in Land Acquisition Case No.36/2011 in evidence. Such admission is necessary for fully and effectively adjudicating the issue in this appeal and consequently for deciding this appeal. Accordingly, Misc. Civil Application No.612/2022 (Filing No.) is allowed, and the award in Land Acquisition Case No.36/2011 will now be read in evidence in First Appeal No.155/2018.

10. The Reference Court, by the impugned award, rejected the reference mainly on the ground that the acquired land was tenanted land to which the provision of the Goa Land Use

(Regulation) Act, 1991 applied. The Reference Court reasoned that since the acquired land was agricultural tenancy land, there were several restrictions on its sale. Such land could not be used for purposes other than agriculture.

11. In *Goa Housing Board V/s. Rameshchandra Govind Pawaskar & Anr.*² the Hon'ble Supreme Court of India has considered the issue of determining the market rate of agricultural tenancy lands affected by the Goa Land Use (Regulation) Act, 1991.

12. The relevant observations in paragraphs 19 to 22 read as follows:

"19. Where an acquired land is subject to a statutory covenant that it can be used only for agriculture and cannot be used for any other purpose necessarily it will have to be sold as agricultural land as the land owner cannot sell it for any purpose other than agriculture and the purchaser cannot sell it for any purpose other than agriculture. As a consequence, the price fetched for such land will be low even if it is situated near any urban area. But if the same land is not subject to any prohibition or restrictive covenant regarding use and has the potential of being developed either as a residential layout or put to commercial or industrial use, the land will fetch a much higher price; and the market value of such

² (2011) 10 SCC 371

other land with development potential can be determined with reference to the sale price of nearby residential plots by making appropriate deduction for development. On the other hand if the land is to be used only for agricultural purposes, it may not be possible to arrive at the market value thereof with reference to the market value of nearby residential plots.

20. Therefore, we are of the considered view that in regard to the land in question, in view of the permanent restriction regarding user, that is it should only be used for agricultural purposes, and the bar in regard to any non-agricultural use, it will have to be valued only as an agricultural land and cannot be valued with reference to sales statistics of other nearby lands which have the potential of being used for urban development.

21. We may also look at the matter from a slightly different perspective. A vacant land has a particular value. If such land is in the occupation of a long term lessee, and the owner wants to sell it without possession, he will only get a far lesser price than what he would get as price for the same land if vacant possession can be given to the purchaser. If such land in the occupation of a long term lessee is acquired, as the lessee's rights are also taken over, the compensation awarded for the land will be the full value as awarded for any neighbouring property which is not subject to any tenancy. But the entire compensation will not be received by the land owner/landlord. The landlord will have to share the compensation with the long term lessee. In other words, the landlord will not get the entire value as

compensation but will only get a part of the market value and the tenant will get the balance. In that sense even if the market value of the land without any restrictive covenants is considered to be Rs.110 per sq.m., having regard to the fact that the land is incapable of being used for purposes other than agriculture and the price of Rs.110 is arrived at with reference to a land which can be used for all purposes, an appropriate percentage will have to be deducted from the value of Rs.110 per sq.m. to arrive at the land subject to the statutory restriction regarding use.

22. On the facts and circumstances, having regard to the prohibition regarding use of land for any purpose other than agriculture, the land will have to be treated and valued as agriculture land without any development potential for being used as residential/commercial/industrial plots. We are of the view that at least 50% will have to be deducted from the market value of freehold land with development potential to arrive at the market value of such land which can be used only for agricultural purposes. As we have already determined the market value of neighbouring land (which is not subject to the prohibition under Land Use Act) as Rs.110/- per sq.m. We are of the view that an appropriate compensation for the acquired land should be 50% thereof, that is Rs.55 per sq.m."

13. Thus, the Hon'ble Supreme Court of India, upon considering the provisions of the Goa, Daman, and Diu Agricultural Tenancy Act, 1964 and the Goa Land Use

(Regulation) Act, 1991, has held that there has to be at least a 50% deduction from the market value of freehold land with development potentials to arrive at the market value of such land which can be used only for agricultural purposes.

14. In *Pawaskar's* case (supra), the Hon'ble Supreme Court of India had determined the market value of the neighboring land, which was not subject to the prohibition under the Land Use Act at ₹110/- per sq. mtr. Therefore, concerning the acquired land affected by the Goa Land Use Regulation Act, 1991, the compensation was determined at ₹55/- per sq. mtr.

15. In the present case, the Reference Court has determined the compensation for the neighboring land bearing Survey No.666/5 at ₹1200/- per sq. mtr. Therefore, Mr. Ramani urged that in respect of the acquired land, the minimum rate that should be determined is 600/- per sq. mtr.

16. However, Mr. Padiyar, learned Counsel for CMC, submitted that land under Survey No.666/5 admeasures only 575 sq. mtrs. On the other hand, the appellants acquired land admeasuring 2700 sq. mtrs. He, therefore, submitted that there could be no comparison or, in any case, appropriate deductions are necessary regarding the largeness of the acquired land.

17. Mr. Padiyar also pointed out that the land surveyed under no.666/5 was admittedly a bharad land. The appellants' land is admittedly a rice field. He submitted that there is evidence about the rice fields being at a lower level and, consequently, requiring expenses towards filling up. He, therefore, offered that the appellants' land cannot be compared to the land surveyed under no.666/5; in any case, further deductions are necessary to account for this factor.

18. Ms. Linhares learned Additional Government Advocate supported the contentions advanced by Mr. Padiyar. She submitted that unless it is established that the lands surveyed under no.666/5 and the appellants' acquired land is similar in all aspects, the principle of 50% deduction in *Pawaskar's* case (supra) cannot be mechanically applied.

19. In my opinion, the two factors highlighted by Mr. Padiyar and Ms. Linhares will have to be taken into account before the ruling in *Pawaskar* (supra) is applied and a 50% deduction is made. Significantly, paragraph 22 of *Pawaskar* (supra) refers to the deduction of '*at least 50%*'. This means that in a given case, the deductions can also exceed 50% depending upon the fact situation borne from the evidence on record.

20. Mr. Padiyar also relied on judgment and order dated 16.03.2020 in *First Appeal No.6/2015 (Cuncolim Municipal Council V/s. Shri Wilson Fernandes & Anr.)*. The Division Bench in the said matter was concerned with the acquisition of property bearing Survey No.340/1 (part) admeasuring 17435 sq. mtrs. at Cuncolim, Salcete, Goa, for the public purpose of sewerage waste treatment plant. The award in Land Acquisition Case No.36/2011 concerning the property surveyed under no.666/5 admeasuring 575 sq. mtrs. was admitted in evidence by resort to Order XLI Rule 27 of CPC. Based on the same, the market rate was determined at ₹700/- per sq. mtr. in respect of the land not affected by the Goa Land Use (Regulation) Act, 1991.

21. There is evidence about the appellants' acquired land being rice fields. There is also evidence that such land is lower than the road level. However, such negative factors do not apply to the land surveyed under no.666/5. Similarly, the acquired land admeasures 2700 sq. mtrs. In contrast, the land surveyed under no.666/5 admeasured only 575 sq. mtrs. Typically, a smaller plot will fetch a higher rate.

22. At the same time, there is evidence on record that the appellants' acquired land is in the Cuncolim marketplace. This

land has the benefit of several infrastructural facilities. In addition, there is evidence that this land falls within the commercial zone. These are all positive factors that attach to the acquired land.

23. Considering the decision in *Pawaskar's* case (supra), the base rate can be effectively considered at ₹600/- per sq. mtr. However, on account of the two negative factors referred to above, the deduction of ₹150/- from out of this rate will be appropriate in the facts and circumstances of the present case. Therefore, this will correspond to adjudication of about 25%.

24. Accordingly, this appeal is allowed, and the market rate of the appellants' acquired land is determined at ₹450/- per sq. mtr. Accordingly, this appeal is allowed, and the respondents are jointly and severally directed to pay the appellants' compensation at the rate of ₹450/- per sq. mtr. together with interest and other statutory benefits as admissible.

25. The respondents must deposit the enhanced compensation amount together with interest and other statutory benefits in this Court within eight weeks after giving due intimation to the learned Counsel for the appellants.

26. Once this amount is deposited, the appellants will be free to withdraw the same by furnishing proper identification documents and bank details. The Registry to ensure that the amounts are transferred directly into the appellants' bank accounts.

27. The appeal is disposed of in the terms above. In the facts of the present case, there would be no order for costs.

28. Misc. Civil Application is disposed of.

M. S. SONAK, J.

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