

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 125 OF 2000

MF. JOSE CIRILO O FERNANDES (dec)
represented by his Legal representatives

- 1 MR. PAUL DE OLIVEIRA
FERNANDES
- 2 RAMONA DE OLIVEIRA
FERNANDES
- 3 REUBEN DE OLIVEIRA
FERNANDES, NDrS ,
- 4 MARIA DE LOURDES DE MARIA DE
LOURDES DE OLIVEIRA
FERNANDES
- 5 MARIA MARGARIDA ALVARES
PRABHU ,
- 6 ANAND PRABHU
- 7 RENATO DE OLIVEIRA FERNANDES
- 8 CELIA DE OLIVEIRA FERNANDES,
Nos. 1 t 6 and 8 represented by their
constituted Attorney RENATO DE
OLIVEIRA FERNANDES,
r/o Mercedes, Ilhas, Goa.

.... Appellants.

V/s

1. DY. COLLECTOR, GOA NORTH, SUB-
DIVISION, PANAJI GOA.
2. THE ECONOMIC DEVELOPMENT
CORPN. OF GOA, DAMAN AND DIU,
PANAJI GOA.

...Respondents.

Mr. A. R. Kantak, Advocate for the appellants.

Ms. S. Linhares, Addl. Govt. Advocate for respondent no.1.

Mr. P. Sawant, Advocate for respondent no.2.

CORAM: M. S. KARNIK, J

DATED: 15th June 2023

ORAL JUDGMENT

1. The challenge in this appeal is to the judgment and award dated 7.12.1999 made by the District Judge, Panaji, in Land Acquisition Case No.28/1987. The area of Chalta No. 32 of P. T. Sheet No. 58 has been the subject of three acquisitions. The first acquisition took place by virtue of Notification No.RD/LQN/314/76 dated 22.1.1977 for the purpose of construction of Tourist Dormitory at Panaji. The acquisition was the subject matter of Land Acquisition Case No.2/1979 for which Rs.80/- per sq. mt. was awarded by the Reference Court. The second acquisition took place by virtue of Notification No.22/33/80/RD dated 10.7.1980 published in the Gazette dated 24.7.1980 for the purpose of the area development project of Respondent no.2 which became the subject matter of LAC No. 28/1982 and LAC No. 37/1982. The Reference Court awarded the claim in the sum of Rs.125/- per sq.mt.

2. The remaining area of 1146 sq. mts of plot no.33 of Chalta No.32 of P. T. Sheet No.58 is the subject matter of the present Appeal. This land was acquired by respondent no.1 for respondent no.2 by virtue of the Notification published under section 4 of the Land Acquisition Act ("LA Act" for short) vide Gazette No.31, Series II dated 19.2.1981. The appellant- original claimant, now represented by his legal heirs claim to be tenants. The Land Acquisition Officer

(LAO) awarded a sum of Rs.24/- per sq. mt. on account of the said acquisition and ordered the same to be paid to the Comunidade as the owner and the appellants as tenants on a 40:60 basis respectively.

3. As against the rate of Rs.24/- per sq. mt. awarded by the LAO, the appellants prayed before the Reference Court enhancement of Rs. 200/- per sq. mt. The Reference Court framed the following issues:-

1 Whether the applicant proves that the compensation should be based at the rate of Rs.200/- of the acquired land?

2 What order?

4. The Reference Court partly allowed the reference and determined the market value of the acquired suit portion admeasuring 1146 sq. mts. and enhanced the compensation from Rs. 24/- to Rs.30/- per sq. mt.

5. The respondent no.2 has filed a cross-objection. According to the respondents, the land should be considered as having agriculture potentiality and compensation cannot be decided on the basis that it had commercial potentiality. It is therefore prayed that the compensation which was enhanced by the Reference Court from

Rs.24/- to Rs.30/- per sq. mt. should be reduced to Rs.24/- per sq. mt.

6. Mr. Kantak, learned counsel for the appellants, assailing the order of the Reference Court submitted that the third acquisition which is the subject matter of the present proceedings formed part of the very same land which was subject matter of the first and second acquisitions. The second acquisition took place by virtue of the Notification issued in 1980 in respect of which the Reference Court awarded Rs.125/- per sq. mt. My attention is invited by the learned counsel to the evidence on record to submit that the subject land had commercial potential which was situated in a prime area therefore, acquisition which was almost a year after the second acquisition, should at least be awarded the same rate as in the second acquisition. Relying on the evidence of the witnesses of respondent no.2 themselves, it is submitted by the learned counsel that the compensation be determined at the commercial rate. It is further submitted that the decision of the Supreme Court in SLP(C) No. 756/1997 (Civil Appeal No. 4431 of 1997) dated 7.7.1997 relied upon by the Reference Court was in respect of a different chalta number whereas the land (second acquisition) which was the subject matter of acquisition forming part of the same chalta No. 32 in occupation of the appellants was awarded compensation at the rate of Rs.125/- per sq. mt.

7. Ms. S. Linhares, learned Addl. Govt. Advocate appearing for respondent no.1 and Mr. P. Sawant, learned counsel appearing for respondent no.2 supported the impugned order. My attention is invited to the findings recorded by the Reference Court. It is vehemently urged by Mr. Sawant that pursuant to the first two acquisitions, the land in question which is the subject matter of present reference hardly had any potential or market value as what remained was a narrow strip of land in a low-lying area. It is further submitted by him that the LAO had correctly awarded compensation at the rate of Rs.24/- per sq. mt. It is further submitted that the Reference Court committed an error in finding that the land had commercial potential which findings are contrary to the evidence on record. It is submitted that the land in question being agricultural land could not have been used for any other purpose other than agriculture purpose, and hence the finding of the Reference Court that the land had commercial potentiality is erroneous. Learned counsel took me through the findings recorded by the Reference Court and submitted that except for the finding regarding the commercial potentiality of the land, rest of the findings are well supported by the evidence on record. It is further submitted that it is after appreciation of the evidence on record that the Reference Court determined the compensation. Learned counsel submitted that in any case one of the factor referred to by the Reference Court, being

the judgment of the Supreme Court dated 7.7.1997 in SLP(C) No.756/1997, was absolutely relevant as the potentiality of the land which was the subject matter before the Apex Court was much better than the land which is subject matter of the present acquisition, which aspect has been considered in detail and in the correct perspective by the Reference Court.

8. I have heard learned counsel for the parties. I have gone through the records and the paper book.

9. There is no dispute that the subject land is a part of the Chalta No. 32 of P. T. Sheet No. 58. The entire land which was subject of the first two acquisitions was in possession of the appellants as tenants. The said Chalta No. 32 has been the subject matter of three acquisitions. The first acquisition was in 1977 when the compensation of Rs.80/- per sq. mt. was awarded by the Reference Court. In the second acquisition, when another portion of the land from Chalta No. 32 of P. T. Sheet No.58 was acquired in 1980, the compensation was awarded at the rate of Rs.125/- per sq. mt. It is pertinent to mention here that so far as the compensation awarded in the second acquisition is concerned, the same was subject matter of challenge in appeal before this Court. This Court reduced the compensation to Rs.40/- per sq. mt. One of the consideration was the decision of the Supreme Court dated 7.7.1997 by which the claimant of

neighbouring land was granted compensation of Rs.40/- per sq. mt. In challenge before the Supreme Court to the decision of this Court so far as second acquisition is concerned, the Supreme Court allowed the Appeal by an order dated 11.7.2017, the following order came to be passed:-

Heard learned Counsel for the parties.

We are of the view that the award of the Reference Court did not call for any interference by the High Court. The award will, therefore, stand restored.

The appeals are accordingly disposed of.

10. Thus so far as the second acquisition is concerned, the order of the Reference Court awarding compensation at the rate of Rs.125/- per sq. mt. is restored.

11. So far as the present acquisition is concerned, the Reference Court observed that the acquired land was falling in commercial zone and that it had also come on record that buildings had been constructed in the close vicinity of the acquired land and there was nothing to show that there was legal bar for conversion of the land from agricultural land to non-agricultural land use and therefore, it would not be correct to hold that the market value of the acquired land had to be assessed as agricultural land. Further the acquired

land was close to Panaji Bus Stand, Government Patto Colony, Tourist Dormitory, Rego Hotel, etc and the acquired land certainly had a good potential or that it was fit for construction and in such a situation the contention of the respondents that the acquired portion had to be assessed as agricultural land alone without any building potentiality could not be accepted. The Reference Court found that the acquired land had building potentiality and its market value has to be assessed as such. I see no error in this reasoning of the Reference Court and am persuaded to take the same view.

12. The reason why the Reference Court did not find any justification in granting compensation at the rate of Rs.125/- per sq. mt as awarded in respect of the second acquisition is that, the suit property was some sort of a tail end of Chalta No. 32 of P. T. Sheet No. 58 whose building potentiality had gone down after the first and second acquisitions. According to the Reference Court, the appellants ought to have claimed severance charges for this remaining portion of the land in Land Acquisition case no.26/1982 (second acquisition). The Reference Court further found that the remaining suit portion was almost 200 mts. away from 8 to 10 mts wide bund/road, which was the only access available in front of the Tourist Dormitory. It also found that the land of Chalta No.30 of P. T. Sheet No. 58 which was the subject matter of the order dated 7.7.1997 of the Supreme Court was very close to the acquired suit

plot, being separated only by a distance of about 3 mts of Chalta no. 31/58. The Reference Court was of the opinion that the award in LAC 81/1987, which was finalised by the Supreme Court vide order dated 7.7.197 could be used as a good guide in preference to the Award in LAC No. 26/1982 and 37/1982(Second acquisition). The Reference Court granted a further deduction of Rs.10/- per sq. mt. because the land of Chalta no.30 of P. T. Sheet No. 58 was situated much closer to the said 8 to 10 mts wide bund/road than the acquired suit plot and moreover, the acquired plot was of a very irregular shape.

13. In my opinion, the award passed by the Reference Court calls for interference. Having gone through the findings recorded by the Reference Court, as observed earlier, I do agree with the findings of the Reference Court that the acquired land had building potentiality and its market value had got to be assessed as such. Having come to this conclusion I then do not find any substance in the cross objections of the learned counsel for respondent no.2 and therefore, the cross objections stand rejected. It further needs to be considered that in the vicinity of the acquired land, and as rightly observed by the Reference Court, there are buildings which have come up in and around the acquired land. The said acquired land is close to the Panaji bus stand, Government Patto Colony, Tourist Dormitory, Rego Hotel etc. considered to be a prime locality and therefore, in my opinion, the land had good commercial potentiality.

14. No doubt, the acquired land which forms a part of the third acquisition is a narrow strip of land. The Reference Court observed that the appellants should have sought severance charges in the second land acquisition proceedings. The fact remains that the appellants are not in receipt of any severance charges. Factually the appellants were in possession of the entire portion of Chalta No. 32 of P. T. Sheet No. 58 which has been subject of three back to back acquisitions. By virtue of the first acquisition, substantial portion of Chalta No. 32 of P. T. Sheet No.58 which was in possession of the appellants was acquired. The compensation determined was Rs.80/- per sq. mts. Then came the second acquisition of 1980 for another portion of land forming part of Chalta No.32 of P. T. Sheet No. 58 in possession of the appellants, the compensation was fixed at Rs.125/- per sq. mt.. Pursuant to the second acquisition, and after possession was taken, what remained with the appellants was a narrow strip of land admeasuring 1146 sq. mts of plot no. 33 which strip of land was a part of the very same Chalta No. 32 of P. T. Sheet No. 58 which was the subject matter of the first and second acquisition. The land was severed because of such back to back acquisitions.

15. No doubt, the appellants could have claimed for severance charges while making a claim, for enhanced compensation in respect of the second acquisition, however, fact remains that such severance charges were not claimed.

16. The decision of the Supreme Court in SLP(C) No. 756 of 1997 decided by order dated 7.7.1997 (in respect of adjacent land) weighed with the Reference Court while determining compensation as regards the present acquisition. In respect of the second acquisition, this Court in challenge to compensation of Rs.125 per sq. mt. awarded by the Reference Court, while allowing the appeal and reducing the compensation, had relied upon the decision of the Supreme Court dated 7.7.1997. In challenge to this Court's order, so far as the second acquisition is concerned, the Supreme Court in Civil Appeal No. 7869 of 2009 referred to earlier, was of the opinion that the award of the Reference Court did not call for any interference, thereby restoring the award of Reference Court. Thus in respect of the second acquisition, the compensation determined was Rs.125/- per sq. mt. Further, learned counsel for the appellants/claimants submitted that the order dated 7.7.1997 of the Supreme Court which had reduced the compensation in respect of an adjacent land not forming part of the Chalta No.32 of P. T. Sheet No. 58 was an ex-parte order and therefore, the Reference Court should not have given weightage to the order passed by the Supreme Court. Without entering into the merit of this submission, according to me, though, the land in question which was the subject matter of the order dated 7.7.1997 of the Supreme Court was adjacent to the acquired land, however, the compensation which was determined and attained finality in respect

of the second acquisition was Rs. 125/- per sq. mt. which was very much a part of the subject land prior to the acquisition, was reduced to a narrow strip as the Chalta No. 32 of P. T. Sheet 58 was acquired in parts. The appellants though may not be entitled to claim Rs.125/- per sq. mt., but surely, in the peculiar facts, should be granted compensation at the rate of Rs.100/- per sq. mt which could be said to be a fair rate to be awarded in respect of the third acquisition.

17. The appeal is partly allowed. The market value of the acquired suit property is enhanced from Rs.24/- to Rs.100/- per sq. mt. Rest of the operative part of the order of the Reference Court dated 7.12.1999 shall remain intact. Award be drawn in terms of the enhanced compensation.

M. S. KARNIK J.