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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.45 OF 2012

1. Special Land Acquisition Officer
(N), Mapusa Goa

2. The Executive Engineer,
Works Division VIII,
Irrigation Department,
Mulgao (P.O.), Assonora- Goa
[old address]
The Executive Engineer,
WD. VI, GTIDC, Bicholim, Goa
[new address] ..... Appellants.

Versus

Shri. Gurudev Ganba Sinai Gaitonde,
Major of age,
Landlord,
Residing at Tonka,
Caranzalem, Ilhas – Goa
(Since deceased through legal heirs)

1(a) Smt. Shalini Gurudeva Sinai Gaitonde,
Widow of late Gurudeva Ganaba Sinai
Gaitonde,
86 years, housewife,

1(b) Shri. Ananta Gurudeva Sinai Gaitonde,
Son of late Gurudeva Ganaba Sinai Gaitonde,
59 years, married, retired,

1(c) Smt. Suchita Ananta Sinai Gaitonde,
Wife of Shri. Ananta G. S. Gaitonde,
52 years, Business,

1(d) Shri. Prashant Gurudeva Sinai Gaitonde,
Son of late Gurudeva Ganaba Sinai Gaitonde,
48 years, married, Advocate,

1(e) Smt. Shital Prashant Sinai Gaitonde,
Wife of Shri. Prashant G.S. Gaitonde,
41 years, Business,

All residents of H. No. 680, 'Sitangan',
Opp. Priya Bldg, Tonca,
Caranzalem, Goa - 403002 .... Respondent.

Mr Manish Salkar, Government Advocate for the Appellants.
Mr R.G. Ramani, Senior Advocate with Mr Pranav Kakodkar, Advocate for the Respondent.

CORAM: VALMIKI SA MENEZES, J.
DATED: 8th November 2023

ORAL JUDGMENT :

1. This First Appeal under the Land Acquisition Act, 1894 (the Act) lays challenge to the Judgment and Award dated 29.06.2011 passed by the District Judge, North Goa allowing the reference LAC 63/1994 of the Respondent/Applicant for enhancement of the market value of the acquired lands from a rate of Rs.10/- per square metre granted by the Land Acquisition Officer to compensation @ Rs.34/- per square metre, as against the claim of Rs.60/- per square metre.

2. The Appellant, Special Land Acquisition Officer (North Goa) and the Executive Engineer, Works Division VIII, Irrigation Department, the acquiring department has challenged the impugned award mainly on the ground that the Reference Court has granted an appreciation of 15% on the rate of land considered closest in proximity to the date of the acquisition when such rate of appreciation could not have been calculated at more than 10% per annum.

In the present case, two parcels of land were acquired by the Appellants for the construction of the left bank main canal of the Tillari Irrigation Project pursuant to a notification published in the Official Gazette on 04.07.1991. The acquired lands are located in Village Latambarcem and comprise of an area of 2,400 square metres forming part of the land under Survey No.6/2 and an area of 3,225 square metres forming part of the land under Survey No.7(part). For proving the claim of enhanced rate of compensation @ Rs.60/- per square metre, the Applicants, in their evidence have produced three deeds of sale, whose features and market rate are specified in the chart depicted below, as compared to the land under acquisition along with the comparative areas:

Sale deed dated 03.03.1989	506 sq. mts.	Market rate Rs.49.50 per sq. metre (situated at Assnora about 40 metres in the interior from Assnora mian road, comprising rocky land with no access, 2 kms. from the acquired plot.)
Sale deed dated 15.06.1987	400 sq. mts.	Market rate Rs.40/- per sq. metre (situated at Assnora about 0.5 kms. in the interior from Assnora main road, comprising hilly and slopey land, 1 km. from the acquired plot.)
Sale deed dated 14.12.1987	425 sq. mts.	Market rate Rs.67.20 per sq. metre (situated at Assnora about 60 metres in the interior from Assnora main road, comprising bharad land, 2 kms. from the acquired plot.)
Acquired land	2400 sq. mts. (survey 6/2) 3225 sq mts. (survey 7(part) Total 5625 sq. mts.	LAO granted Rs.10/- per square metre. Applicants claim Rs.60/- per sq. mtr. District Court/Reference Court granted Rs.34/- per square metre.

3. The point for determination that arises in this Appeal is whether the compensation granted by the Reference Court of Rs.34/- per square metre as the market value of the acquired lands was fair and proper.

4. I have heard the learned Counsel for the rival parties and considered the entire record of LAC 63/94; I have perused the evidence before the Reference Court.

5. It is the primary submission of Shri Manish Salkar, learned Government Advocate for the Appellants/Acquiring Department that the Reference Court has committed an error in arriving at a compensation @ Rs.34/- per square metre, which is arrived at on the basis of excessively high rate of appreciation of 15% per annum calculated on the rate of land @ Rs.49.50 per square metre set down for comparative land under sale deed dated 03.03.1989. The learned Government Advocate submits that the appreciation could at most be taken at 10% per annum. He further submits that the compensation has been fixed by the Reference Court without considering the various negative factors with respect to the acquired land and then making deductions on the basis of these negative factors.

6. In counter to these arguments, Shri R.G. Ramani, learned Senior Advocate appearing for the Respondent has not only supported the reasoning in the award and the market value arrived at, but has contended that in view of the law laid down by the Supreme Court in ***Ashok Kumar vs. State of Haryana reported in*** *(2016) 4 SCC 544*, post the 1984 amendment to the Act, neither the Reference Court nor this Court is precluded from awarding a just and fair compensation after considering the true market value and all relevant factors, irrespective of the Respondent's claim to market compensation @ Rs.60/- per square metre. He further submits that notwithstanding the fact that the Respondents have not filed an appeal against the award of the Reference Court or filed any cross objections herein, on the basis of the principle laid down by the Supreme Court in *Ashok Kumar* (supra), this Court was free to arrive at what may be considered to be a just and fair compensation being a rate higher than the one granted by the District Court and could even grant a rate higher than the one claimed by the Respondents. Based upon the submission, the learned Counsel further contends that considering that the sale deed dated 03.03.1989 was the most proximate in time to the date of acquisition which is 05.03.1991, after capitalising the rate of this land at 15% till the date of acquisition (i.e. 2 years) the deduction of 40% on the price as on the date of acquisition, towards development of this property, as undertaken by the Reference Court is grossly excessive and needs to be reduced, so as to arrive at a just compensation.

7. Countering these submissions, in rejoinder, the learned Advocate for the Appellants has submitted that the principle laid down in *Ashok Kumar* (supra) would only vest the Reference Court with the power to grant a just compensation which would, in any event not be higher than the rate of compensation claimed (Rs.60/-) by the Respondents. He further contends that it would not be open to the Appellate Court, in the absence of raising of a cross objection, to enhance compensation in the acquiring department's appeal.

8. To decide the rival submissions, it would be apposite to first consider the powers and jurisdiction of the Reference Court, as stated by the Supreme Court in *Ashok Kumar* (supra) which has dealt with this issue, post amendment in 1984, of the Act in the following terms:

> "*5. Learned counsel appearing for the appellants however points out that in the matter of fixation of just and fair compensation, the Court is not bound by claim made by the owner. It is for the Court, in the facts and circumstances of each case, to award just and fair compensation.*
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> *6. Prior to amendment Act 68 of 1984, the amount of compensation that could be awarded by the Court was limited to the amount claimed by the applicant. Section 25 read as under -*
>
> > *"Section 25. Rules as to amount of compensation –(1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.*
> >
> > *(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector.*
> >
> > *(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the court shall not be less than, and may exceed, the amount awarded by the Collector."*
>
> *The amended Section 25 reads as under:*
>
> > *"Section 25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11."*
>
> *The amendment has come into effect on 24.09.1984.*

7. The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less that what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner.

8. Although in the context of the Motor Vehicles Act, 1988, this Court in Sanjay Batham v. Munna Lal Parihar1 held that -

> *"18. It is true that in the petition filed by him under Section 166 of the Act, the Appellant had claimed compensation of Rs. 4,20,000/- only, but as held in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."*

9. Thus, clearly as held by the Supreme Court in *Ashok Kumar* (supra), there are no fetters placed upon the jurisdiction of the Reference Court to the amount claimed by the Applicant, and in fact it is the duty of the Court to award a just and fair compensation, after considering the market value and all other relevant factors, irrespective of the claim of the owner. This would mean that the Reference Court, after considering the evidence in the present case could even conclude that the compensation could be at a rate higher than Rs.60/-.

The question then will be whether a Court of Appeal would lack the power to correct an error committed by the Reference Court in failing to exercise jurisdiction vested in it under the Act, as held by the Supreme Court, by not considering all factors and granting just and fair compensation; in my opinion, an Appellate Court under the Act would have the very same power as the Reference Court to do complete justice in the matter by reconsidering the entire evidence and coming to a just compensation to be awarded without being restricted by the compensation claimed by the Respondent, as in this case to Rs.60/- per square metre or being restricted by the fact that no cross objection or appeal was filed by the claimant against the impugned award. With this principle in mind, I proceed to consider the evidence on record and what would be the just and fair compensation to be awarded to the claimant.

10. From the three sale instances brought on record in their evidence, the District Court has rightly considered the sale deed dated 03.03.1989 as the sale instance closest in proximity to the time to the date of acquisition and in terms of the similarity in the nature of the land. The land under that sale deed was a much smaller plot of only 506 square metres but situated at a distance of about 40 to 50 metres away from the Mapusa - Assnora road. The land had no direct access to the road and was an undeveloped plot.

The Reference Court took the rate of Rs.49.50 taken for the year 1989 with respect to the above-referred sale instance, on which enhancement @ 15% was granted till the year of the acquisition i.e. 1991. Though one may feel the rate of appreciation at 15% may appear excessive and perhaps 10% would be the correct rate of appreciation, considering that the land under the sale instance itself was of a lower potential value due to its location 50 metres away from the road, whilst the acquired land had direct access from the main road, it would be improper for me to interfere with the rate of appreciation which is maintained.

11. At para 31 of the impugned award, on setting down the rate after considering the appreciation, at Rs.64/- per square metre, the Reference Court has proceeded to make deductions of 40% towards development and towards the expanse of the acquired land. No reasons based upon evidence have been cited by the Reference Court for considering such a huge rate of deduction towards the development cost of the land.

Going through the evidence of the parties which is on record, it is clear that the acquired lands are on either side of the main Mapusa - Assnora road with direct access to the road. The evidence also shows that the acquired lands form part of larger areas of the same survey numbers which were left out from the acquisition. Effectively, the two parcels of acquired land on either side of the road comprise an area of

2,400 square metres under Survey No.6/2 and 3,225 square metres under Survey No.7(part). If one considers the building regulations for the development of each of these parcels into plots, both of them being below the area of 4,000 square metres, in terms of the building regulations in vogue at the time of the acquisition (1991) would not require to leave open spaces, which would comprise 15% of the land. Considering that certain area would go towards the construction of internal roads and other amenities such as gutters, etc., in my opinion, considering the above factors, a deduction of not more than 25% could be made to the rate of Rs.64/- set down by the Reference Court after calculating the appreciation over and above the market price under sale instance dated 03.03.1989. On this count, I am of the opinion that the Reference Court has committed an error in applying an excessive rate of 40% of deduction towards development, merely based upon the expanse of the area instead of examining the building regulations that would apply to the acquired parcels of land.

12. The Supreme Court in ***Viluben Jhalejar Contractor vs. State of Gujarat*** *reported in (2005) 4 SCC 789* has, after referring the matters required to be taken into consideration for determining the compensation in terms of Section 23, has set down the positive and negative factors which would determine the just and fair compensation of land. At para 21 of the Judgment, it has considered the deductions to be made for large blocks of land to be developed under a layout plan wherein roads and open spaces would have to be carved out and has set down development charges for such large lands between 20% and 50% of the total price.

Considering the size of the two parcels of acquired land and the impact of the building regulations thereupon, the deduction of 25% towards development charges is adequate and just. In that view of the matter, after deducting 25% towards development charges from the value of Rs.64/- per square metre as set out by the Reference Court, the market value of the land shall be determined at Rs.48/- per square metre, being the just and fair compensation to be awarded.

13. Consequently, the Appeal is dismissed and the impugned Judgment and Award of the Reference Court in LAC 63/94 shall stand modified to the extent that the rate of compensation as the market value set down at Rs.34/- per square metre shall now be awarded @ Rs.48/- per square metre for the acquired land. The Applicant shall in addition be entitled to an amount calculated at 12% per annum on such market value for the period commencing on and from the date of publication of the notification under Section 4(1) of the Act to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The Respondents will be entitled to the interest on the excess of the compensation @ 9% per annum for the first year from the date on which the Collector took possession of the land to the date of payment of such excess amount into the Court and 15% per annum for the second year till the excess sum or part thereof remain unpaid or was deposited in this Court in terms of Section 28 of the Act. In addition to the market value, the claimant shall be entitled to the benefit of 30% solatium. Award to be drawn accordingly by the Registry. No costs.

VALMIKI SA MENEZES, J.

JOSE FRANCISCO DSOUZA
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