

State of Goa and Another Vs. Ramchandra Bhaskar Suria

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Court : Mumbai Goa

Decided On : Aug-01-2014

Judge : U.V. Bakre

Appeal No. : First Appeal Nos. 27 of 2002, 139 of 2002, 178, 177, 179, 180 & 293 of 2006

Appellant : State of Goa and Another

Respondent : Ramchandra Bhaskar Suria

Judgement :

Oral Judgment:

1. Heard the learned Counsel for the respective parties.
2. This common judgment shall dispose of all the aforesaid appeals since they pertain to the lands acquired under the same notification.
3. First Appeal No.27/2002 and First Appeal No.139/2002 are directed against the judgment and award dated 30/08/2001 passed by the learned Additional District Judge, Panaji (Reference Court, for short) in Land Acquisition Case No.1/2000. First Appeal No.27/2002 has been filed by the respondents in the Land Acquisition Case No.1/2000 whereas First Appeal No.139/2002 has been filed by the applicant therein. First Appeal No.177/2006 arises out of the judgment and award dated 20/02/2006 passed by the learned District Judge, North Goa (Reference

Court, for short) in Land Acquisition Case No.57/2006. First Appeal No.179/2006 has been filed against the judgment and award dated 20/02/2006 passed by the learned District Judge, North Goa (Reference Court, for short) in Land Acquisition Case No.75/2000. First Appeal No.180/2006 is directed against the judgment and award dated 20/02/2006 passed by the learned District Judge, North Goa (Reference Court, for short) in Land Acquisition Case No.83/2000. Lastly, First Appeal No.293/2006 has been filed against the judgment and award dated 30/06/2006 passed by the learned District Judge, North Goa in Land Acquisition Case No.11/2000.

4. The parties shall, hereinafter, be referred to as per their status in the above Land Acquisition Cases.

5. Vide notification No.22/123/89/RD dated 25/09/1989, issued under Section 4(1) of the Land Acquisition Act, 1894 (L. A. Act, for short) and published in the official gazette dated 24/11/1989, land was acquired for construction of bye-pass road for Ponda Town. This included an area of 5619 square metres from Survey No.24/26, an area of 607 square metres from Survey No.27/1 (total area:- 6626 square metres) of Varkhandem village of Ponda Taluka. By award dated 15/03/1992, the Land Acquisition Officer (L.A.O.) awarded compensation at the rate of Rs.55/- per square metre for bharad land admeasuring 2326 square metres from Survey No.24/26; at the rate of Rs.20/- per square metre for waste land admeasuring 2843 square metres from said Survey No.24/26; at the rate of Rs.55/- per square metre for coconut land admeasuring 450 square metres from said Survey No.24/26; and at the rate of Rs.55/- per square metre for bharad land admeasuring 607 square metres from Survey No.27/1. These acquired lands were the subject matter of Land Acquisition Case No.1/2000. The said acquisition also included bharad land admeasuring 130 square metres from Survey No.242/3 of Bandora village of Ponda Taluka.

The L.A.O. awarded compensation at the rate of Rs.55/- per square metre, to this acquired land. This land was the subject matter of L.A.C. No.59/2000, L.A.C. No.57/2000 and L.A.C. No.83/2000. The aforesaid acquisition further included land admeasuring 1200 square metres from Survey No.252 (cashew land), 3189

square metres from Survey No.253/1 (coconut land, with house), 2000 square metres from Survey No.255(cashew land); 1110 square metres from Survey No.239 (cashew land, with house), 145 square metres from Survey No.242/6 (coconut land) and 240 square metres from Survey No.238 (cashew land), all from Bandora village of Ponda Taluka. The L.A.O. awarded compensation at the rate of Rs.55/- per square metre in respect of the acquired land from Survey Nos.252, 253/1, 255, 242/6 and 238 and at the rate of Rs.250/- per square metre for the acquired land from Survey No.239. The above acquired lands were subject matter of L.A.C. No.75/2000. The said acquisition also included coconut land and paddy land all admeasuring 8089 square metres from Survey Nos.50/1, 50/3 to 20, 53/1, 53/9, 53/12 to 30, 54/7 to 12, 54/18 to 22 and 55/1, 55/2 to 6. The L.A.O. awarded compensation at the rate of Rs.15/- per square metre in respect of paddy portion of the said acquired land and at the rate of Rs.20/- per square metre in respect of coconut garden portion of the acquired land. This land was subject matter of L.A.C. No.11/2000.

6. Not being satisfied with the offer made by the L.A.O., the applicants filed applications under Section 18 of the L. A. Act before the L.A.O. and references made by the L.A.O. gave rise to the above land acquisition cases.

7. In Land Acquisition Case No.1/2000, the applicant, who had 3/4th share in the acquired land, situated at Warkhandem-Ponda, claimed compensation at the rate of Rs.225/- per square metre. In the reference application, he alleged that the L.A.O. wrongly divided the acquired land into three classes as (i) bharad land, (ii) waste land and (iii) coconut land, when the entire land formed one unit and had to be valued at uniform rate. He stated that the acquired land was close to Ponda bus stand and had to be considered as residential cum commercial area. He examined himself as AW1 and produced development permission dated 11/11/1996 granted by South Goa Planning and Development Authority for plots No.1 to 19 in survey Nos.24/26 and 27/1, along with the plan of sub-division. He also produced a sale deed dated 13/11/1990, along with plan. He produced a letter dated 25/08/1989, by which the Chief Officer of Ponda Municipal Council informed the applicant that the Council had resolved to acquire land admeasuring 80 square metres for construction of Sulabh Souchalaya in survey No.27 of

Warkhandem at the rate of Rs.170 per square metre. The applicant also examined one Dr. Sandip Sardessai as AW2 and one Mathew Dias as AW3. The respondents did not examine any witness in this case. The Reference Court found that the acquired land was within the Ponda Municipal Council area and was similar to the plot of sale deed dated 13/11/1990. It was held that the entire acquired land was bharad type land with coconut trees. It was however found that the sale deed plot was a small fully developed plot as compared to the vast undeveloped acquired land and was also far away. Therefore no reliance was placed on the said sale deed. The Reference Court relied upon the transaction, proved by the evidence of AW1 and AW2, whereby the Ponda Municipal Council purchased an area of 131 square metres from same survey No.27/1 of Warkhandem village, for a price of Rs.170/- per square metre. Though the said plot was very small, the reference Court took the said transaction into account as the same was genuine and the plot was from the same property of the applicants. Considering that the said area purchased by the Municipality was small, deduction of 40% was made and compensation at the rate of Rs.102/- per square metre, was awarded for the acquired land.

8. In Land Acquisition Cases No.59/2000, 57/2000 and 83/2000, subject matter was the same acquired land admeasuring 130 square metres from survey no.242/3 of Bandora village and the applicants, who were the co-owners, had claimed compensation at the rate of Rs.300/- per square metre. According to them, the acquired land was very close to Ponda Town and had potential for constructing houses. The applicants also claimed that further setback of 20 metres will have to be kept in the balance land and, therefore, the compensation should be paid according to the principles analogues to severance. Each of the applicants examined himself as AW1, in each case. They produced two sale deeds dated 20/12/1991 and 21/07/1989 and valuation report of one Ravindra V. Tamba. But the said valuer was not examined. The respondents examined Shri Vijay Mardolkar, the assistant Engineer, Works Division III, Government of Goa as RW1, in all the said three cases. The sale deed dated 21/07/1989 was taken, by the Reference Court, as basis for determination of the market value of the acquired land. By this sale deed an area of 516 square metres was sold at the rate of Rs.232/- per square metre. It was found that the plot of sale deed dated

21/07/1989 was a fully developed plot as compared to the undeveloped acquired land, due to which deduction of 40% was made which brought down the price to Rs.139/-. The acquired land was in Bandora Panchayat area whereas the sale deed plot was in Ponda Municipal Council area, due to which further deduction of 20% was made and this brought down the price to Rs.108/- per square metre. The Reference Court found that the acquired land was abutting the road and thus falling within the setback area, due to which a further deduction of 33% was made and ultimately the market value of the acquired land was fixed at Rs.75/- per square metre. The claim of the applicants in so far as severance is concerned, was rejected by the Reference Court.

9. In Land Acquisition Case No.75/2000, the applicants claimed compensation at the rate of Rs.300/- per square metre. They stated that the acquired land was very close to Ponda Town and had potential for construction of houses. They also claimed that further setback of 20 metres will have to be kept in the balance land and, therefore, the compensation ought to be paid for the said land according to the principles analogous to severance. The applicants examined the applicant No.1 (Mulla Abubaker) as AW1. He produced the same two sale deeds dated 20/12/1991 and 21/07/1989 and valuation report of one Ravindra V. Tamba. But the said valuer was not examined, even in this case. The respondents examined Shri Vijay Mardolkar, the assistant Engineer, Works Division III, Government of Goa as RW1. The sale deed dated 21/07/1989 was taken as basis for determination of the market value of the acquired land. By this sale deed an area of 516 square metres was sold at the rate of Rs.232/- per square metre. It was found that the plot of sale deed dated 21/07/1989 was a fully developed plot as compared to the undeveloped acquired land, due to which deduction of 40% was made which brought down the price to Rs.139/-. The acquired land was big having an area of 6626 square metres and was in Bandora Panchayat area as compared the the sale deed plot admeasuring only 516 square metres which was in Ponda Municipal Council area, due to which further deduction of 20% was made and this brought down the price to Rs.108/- per square metre. The Reference Court found that the acquired land was abutting the road and thus falling within the setback area, due to which a further deduction of 33% was made and ultimately the market value of the acquired land was fixed at Rs.75/- per square metre. The claim of the

applicants in so far as severance is concerned, was rejected by the Reference Court.

10. In Land Acquisition Case No.11/2000, the applicants claimed market value at the rate of Rs.200/- per square metre for paddy portion of the acquired land. According to the applicants, the acquired land was very close to Ponda Town and had potential for construction of houses. They stated that the persons claiming to be tenants in the acquired land had no right to the same. The applicants further claimed that an additional area of about 2500 square metres from their property was rendered useless for which they are entitled to receive compensation of Rs.5,00,000/-. The applicants examined their power of attorney holder namely Shri Jose Fernandes as AW1. He produced a sale deed dated 18/06/1990. The applicants examined Shri kamlamant Parab as AW2. The respondents examined shri Vijay Mardikar, the assistant Engineer, Works Division III, Government of Goa as RW1. The Reference Court found that the acquired land under survey Nos.50/1, 50/3 to 20, 53/1, 53/9, 53/12 to 30, 54/7 to 12, 54/18 to 22 and 55/1 to 6 comprised of paddy field and 50% of compensation was paid by the L.A.O. to the applicants and the remaining 50% was paid to the tenants. Hence it was held that the said paddy field land was tenanted and in view of Goa Land Use Act, which came into force as from 1990, it could not be put to any use other than agriculture. There were also restrictions under the Agricultural Tenancy Act. Hence no enhancement was granted with regard to the paddy land. The claim of the applicants for additional compensation in respect of the area of 2500 which was allegedly rendered useless, was also rejected. The market value of the acquired land of coconut garden portion surveyed under Nos.53/1, 53/9 and 55/1 was enhanced to Rs.77/- per square metre.

11. Aggrieved by the judgment and award passed by the learned Reference Court in the above land acquisition cases, the applicants have filed the present appeals.

12. Mr. Salkar, learned Government Advocate appearing on behalf of the respondents submitted that in none of the cases, the applicant had produced sufficient reliable evidence for enhancement of the market value as offered by the L.A.O. According to him, the lands in sale instances relied upon by the Reference

Court were not at all comparable with the acquired lands, considering the small area of said sale deed plots vis-a-vis the area of the acquired land, nature of the acquired land as also its locality. He further submitted that the Reference Court relied upon fully developed sale deed plots when the acquired lands were undeveloped agricultural lands, including tenanted paddy fields. It was, therefore, urged by the learned Government Advocate that all the appeals are bound to be allowed and the references ought to be rejected or in the alternative, compensation should be appropriately reduced.

13. On the other hand, Ms. Soniya Chodankar, learned Counsel appearing on behalf of the respondents in First Appeals No.178 of 2006, 179/2006 (for respondents No.1, 2 and 3), and in 180/2006, as also Mr. Kholkar, learned Counsel appearing on behalf of respondents No.4(a) to 4(c), 4(e) to 4(h) and 6, in First Appeal No.179/2006, submitted that in First Appeal No.105/2001, decided by this Court, land from Curti village of Ponda Taluka was involved and the said acquisition was under the same notification published on 24/11/1989 and that the said acquired land also consisted of two portions namely, paddy portion and coconut portion. They further submitted that the L.A.O. had awarded compensation at the rate of Rs.15/- per square metre for paddy land and at the rate of Rs.55/- per square for coconut land. They further submitted that the Reference Court awarded compensation at the rate of Rs.120/- per square metre only with regard to the coconut portion of the acquired land. A copy of the Judgment dated 4th July, 2014, passed by this Court, in the said First Appeal No.105/2001, has been produced for perusal. They submitted that the acquired lands in all the cases in which they appear are similar to that from the said First Appeal No.105/2001 and therefore, the compensation as granted by the learned Reference Court in all the said cases, should be maintained as it is less than that awarded in said First Appeal No.105/2001. According to them therefore, no interference with the impugned judgments and awards in the said cases is warranted.

14. I have minutely gone through the original record and proceedings in all the land acquisition cases as also the arguments advanced by the learned Counsel for the parties.

15. The point for determination is whether interference is warranted with the impugned judgment and award in Land Acquisition Cases No.59/2000, 57/2000, 75/2000, 83/2000 and 11/2000 and as to what should be the true market value of the acquired land, concerned in Cross First Appeals No.27/2002 and 139/2002, which land is subject matter of land Acquisition Case No.1/2000.

16. In First Appeal No.105/2001, decided by this Court on 4th July, 2014, land admeasuring 8500 square metres from Survey Nos.74/1 and 74/0 was acquired for construction of bye-pass road for Ponda town between Kilometres 121/950 to 126/200 vide notification published under Section 4(1) of the L.A. Act in the Official Gazette dated 24/11/1989. The acquired land was situated at Curti of Ponda Taluka. The acquired land consisted of two portions i.e. paddy portion admeasuring 6325 square metres and coconut portion admeasuring 2175 square metres. The L.A.O. had awarded compensation at the rate of Rs.55/- per square metre for coconut portion and at the rate of Rs.15/- per square metre for the paddy portion. The applicants, who were interested in the said acquired land had filed application under Section 18 of the L.A. Act which had given rise to L.A.C. No.135/1997. The applicants therein, claimed compensation at the rate of Rs.300/- per square metre, for the entire acquired land. In that case, a sale deed dated 05/04/1989 was produced under which a developed plot admeasuring 354 square metres was sold at the rate of Rs.160/- per square metre. The fact that the sale deed plot was developed and small in area was taken into account. 30% deduction was made towards development charges. Leaned Reference Court in the said acquisition case, rejected the reference with regard to the paddy portion of the acquired land since it was tenanted but enhanced the compensation in respect of the coconut portion of the acquired land to Rs.120/- per square metre.

17. All the acquired lands, which are subject matter of the present appeals were also acquired vide the same notification published under Section 4(1) of L.A. Act in the Official Gazette dated 24/11/1989 for the same purpose of construction of the bye-pass road to Ponda Town.

18. In First appeal No.27/2002, the respondents in L.A.C. No.1/2000, have prayed for setting aside the impugned Judgment and Award of the Reference Court,

whereas in First Appeal No.139/2002, the applicant in the same case, has prayed for enhancement of compensation from Rs.102/- per square metre as awarded by the Reference Court, to Rs.225/- per square metre. In L.A.C. No.1/2000, the entire land admeasuring 6226 square metres was of bharad type having coconut trees as is evident from the evidence on record in the said case. The acquired land was within Ponda Municipality area. The acquired land was not falling within the setback area. Therefore, the learned Reference Court had granted uniform rate of Rs.102/- per square metre for the said entire acquired land. In First Appeal No.105/2001, this Court has maintained the rate of Rs.120/ per square metre awarded to coconut land. There can be no dispute that the same market value of Rs.120/- per square metre as allowed by this Court in F. A. No.105/2001 i.e. Rs.120/- per square metre should be awarded to the acquired land in L.A.C. No.1/2000, since the land is of the same nature, i. e. coconut land. Therefore, relying upon the judgment of this Court in the First Appeal No.105/2001, the applicants, in L.A.C. No 1/2000 are entitled to receive compensation at the rate of Rs.120/- per square metre for the said entire acquired land admeasuring 6226 square metres.

19. The acquired land, which was the subject matter of Land Acquisition Cases No.59/2000, 57/2000 and 83/2000 was the same land admeasuring 130 square metres from Survey No.242/3 and the applicants are the co-owners of the said land. The compensation awarded for the said acquired land by the Reference Court is Rs.75/- per square metre. The acquired land, which was the subject matter of L.A.C. No.75/2000 totally admeasured 7884 square metres and was from survey Nos.252(part), 253/1, 255(part), 239 (part), 242/6 and 238 (part). The evidence of the applicants, in all the above cases, reveal that the acquired land concerned in all these cases was from the same property. According to them the acquired land was from the property known as "Mukta Shapur" or "Mukta Barod" situated at Bandora-Ponda, bearing land registration description No.11679 at folio 198V, Book B-30 New. The learned Reference Court has awarded uniform market value of Rs.75/- per square metre to the said acquired land. The evidence on record in all the said Land Acquisition Cases No.59/2000, 57/2000, 75/2000 and 83/2000 established that the said acquired land was of bharad type having coconut plantation, i. e. similar to the acquired land concerned in First Appeal

No.105/2001, decided by this court on 4th July 2014. However, it is pertinent to note that the evidence in all the above cases further established that the said acquired land, in all the above cases, was falling within the setback area as it was abutting the road. This fact was also mentioned by the L.A.O., in his award dated 15/03/1992. Considering the above disadvantage, the market value, fixed by the Reference Court, at Rs.75/- per square metre is just and reasonable. The applicants of the said land acquisition cases are satisfied with the compensation as awarded and thus have not filed any appeal against the judgments and awards of the Reference Court. There is no case made out by the respondents, in the First Appeals No.178/2006, 177/2006, 179/2006, and 180/2006, for setting aside the impugned judgments and awards or even for reducing the compensation awarded by the Reference Court.

20. Lastly, in the Land Acquisition Case No.11/2000, the acquired land was partly coconut garden and partly paddy field. Insofar as the acquired land which was paddy field, is concerned, the reference was rejected. Therefore, the respondents cannot make any grievance insofar as the said paddy land is concerned. However, as regards the acquired land which was coconut plantation from Survey Nos.53/1, 53/9 and 55/1, the compensation was enhanced to Rs.77/- per square metre. A sale deed dated 18/06/1990, produced by the applicant, in this case was relied upon by the reference Court. By this sale deed, a developed plot admeasuring 315 square metres was sold for Rs.90,000/- i. e. at the rate of Rs.285 per square metre. On account of the sale deed plot being a developed plot as compared to the undeveloped acquired land, a deduction of 40% was made which brought down the price to Rs.171/- per square metre. Since the acquired land was agricultural land requiring conversion as compared to the sale deed plot which was already converted and was ready for construction, a further deduction of 30% was made which brought down the price to Rs.111/- per square metre. Further, since the acquired land did not have the advantage of the amenities such as electricity and water connection, which were all available for the sale deed plot, further deduction of 30% was made and ultimately, the market value was fixed at Rs.77/- per square metre. The applicants are satisfied with the said compensation as awarded by the reference Court and hence have not challenged the said Judgment and Award.

Considering that in First Appeal No.105/2001, this Court had enhanced the compensation for similar coconut land to Rs.120/- per square metre, and in the peculiar facts and circumstances in the L.A.C. No.11/2000, in my view, no case is made out by the respondents for setting aside the impugned Judgment and Award or for reducing the compensation for the coconut land. No interference is called for with the compensation of Rs.77/- granted to the applicants in this L.A.C. No.11/2000.

21. In view of the above, I pass the following:

ORDER

(a) First Appeal No.27/2002, First Appeal. No.177/2006, First. Appeal No.178/2006, First Appeal No.179/2006, First Appeal No.180/2006 and First Appeal No.293/2006 all filed by the respondents i.e. the State of Goa are all rejected.

(b) First Appeal No.139 of 2002 filed by Dr. Ramchandra Bhasker Suria Rao Sardessai is partly allowed.

(c) The compensation for the acquired land admeasuring 6226 square metres from Survey No.24/26 and 27/1, in L.A.C. 1/2000, is enhanced to Rs.120/- per square metre. The applicant, shall be entitled to all the statutory benefits and costs of Rs.1,000/-. The amount already paid to the applicant shall be adjusted.

(d) All the aforesaid appeals stand disposed of accordingly.

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