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**(2014) 09 BOM CK 0118**  
**In the Bombay High Court**  
**Case No : First Appeal No. 31 of 2011**

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| Deputy Collector and SDO | Vs | APPELLANT  |
| R.M.S. Khandeparkar      |    | RESPONDENT |

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**Date of Decision :** 12-09-2014

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 4

**Citation :** (2014) 09 BOM CK 0118

**Hon'ble Judges :** A.S. Gadkari, J

**Bench :** Single Bench

**Advocate :** S. Linhares, Additional Government Advocate, Advocate for the Appellant; R.G. Ramani, Advocate for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.S. Gadkari, J.—The appellants have questioned the correctness of the judgment and award dated 19.03.2010 passed by the Principal District Judge, North Goa, Panaji, in Land Acquisition Case No. 60/2005 whereby the said Reference Court has awarded the compensation at the rate of Rs. 99.8/- per square metre to the respondent herein.

2. By Notification No. 22/101/90-RD dated 08.01.1991 issued u/s 4 of the Land Acquisition Act, 1894, published in the Official Gazette dated 25.01.1991, the lands of the respondent were acquired for the purpose of widening two lanes and improvement of Geometries between Km. 116/00 to 121/950 of National Highway 4-A. The lands of the respondent bearing survey No. 107/6 admeasuring 4225 square metres from within Village Khandepar, survey No. 279/1 admeasuring 6065 square metres and survey No. 279/2 admeasuring 495 square metres from Village Usgao came to be acquired by the said Notification dated 08.01.1991. The survey No. 107/6 admeasuring 4225 square metres was consisting of coconut garden. The survey No. 279/1 admeasuring 6065 square metres was consisting of (i) 708 square metres of bharad land, (ii) 4472 square metres of paddy land, (iii) 190 square metres of road and (iv) 195 square metres

of coconut garden. The survey No. 279/2 admeasuring 495 square metres was bharad land. The Land Acquisition Officer by its award dated 15.03.1994 awarded Rs. 25/- per square metre for the bharad land, Rs. 20/- per square metre for paddy land, Rs. 20/- per square metre for coconut garden and Rs. 5/- per square metre for road, for the lands acquired of the respondent.

3. The respondent feeling aggrieved by the compensation awarded by the Land Acquisition Officer which according to the respondent was much below than the prevailing market price preferred a reference u/s 18 of the Land Acquisition Act and claimed the compensation at the rate of Rs. 500/- per square metre. The Reference Court i.e. the Principal District Judge, North Goa, Panaji, numbered the said reference as Land Acquisition Case No. 60/2005. The issues were framed by the learned Reference Court below Exhibit 9. The respondent/original applicant examined himself in support of his case. The appellants herein cross examined the respondent. The learned Judge of the Reference Court after recording the evidence and hearing the parties thereto, after relying on the sale deed dated 14.06.1991 which is at Exhibit 18 was pleased to partly allow the reference holding that the market value of the acquired land on the date of Section 4 Notification was Rs. 99.8/- per square metre and enhanced the same from that, fixed by the Land Acquisition Officer accordingly. The Reference Court without making any difference in the nature of the land has awarded compensation at the rate of Rs. 99.8/- per square metre. The Reference Court also granted all the related statutory benefits in favour of the respondent herein.

4. The appellants/original respondents feeling aggrieved by the enhancement granted by the Reference Court have preferred the present appeal for reduction in the enhanced compensation.

5. Heard the learned counsel appearing for the appellants/State and the learned counsel appearing for the respondent at length. I have also minutely scrutinized the evidence available on record. The learned Additional Government Advocate submitted that the learned Trial Court though has taken into consideration the deduction at the rate of 25% towards the development charges has not taken into consideration the further deduction which was necessary for filling up the land. She contended that the acquired land was approximately 1.5 to 2 metres below the road level and, therefore, further deduction ought to have been granted by the Reference Court in favour of the appellants. She further contended that in the case of Smt. Malini Nevrekar, in Land Acquisition Case No. 19/99, the Reference Court had awarded compensation at the rate of Rs. 121/- per square metre which came to be reduced by this Court in an appeal preferred by the State bearing First Appeal No. 131 of 2002. In that appeal, this Court has reduced the compensation for the acquired land in the said land reference to Rs. 106/- per square metre. She further contended that in view of the judgment passed by this Court dated 04.07.2014 in First Appeal No. 131 of 2002, i.e. in the case of Smt. Malini Nevrekar, the compensation awarded to the respondent herein be reduced in proportion thereto. She, therefore, submitted that the

appeal may be allowed and the amount fixed by the Land Acquisition Officer be maintained.

6. Mr. Ramani, learned counsel appearing for the respondent, per contra supported the impugned judgment and award passed by the Reference Court dated 19.03.2010 and urged before this Court that the present appeal preferred by the State may be dismissed. Mr. Ramani further submitted that in First Appeal No. 131 of 2002, this Court in para no.14 of the judgment has noted the mathematical error while calculating the rate awarded by the Reference Court which was erroneously mentioned as Rs. 121/- per square metre after deducting 30% from the price of Rs. 151/- per square metre. He submitted that this Court has only corrected the said mathematical error and has mentioned the amount as Rs. 106/- per square metre therein. He further submitted that therefore it cannot be said that, in the reference the amount awarded by the Reference Court was reduced by this Court. He further submitted that it was only the mathematical error which came to be corrected without causing any interference in the judgment passed by the Reference Court.

7. In the present case, the relevant date for considering the market value of the acquired land is 08.01.1991 i.e. the date on which the Notification u/s 4 of the Land Acquisition Act was issued. The respondent has relied upon the award dated 28.11.2001 passed in Land Acquisition Case No. 19/99 in the case of Smt. Malini Nevrekar whose land was covered under the same Notification. The respondent in his testimony has stated and contended that there was a lot of similarity between the said land and the land under acquisition in the present appeal. The land acquired was situated at Village Khandepar and Usgao which are hardly 2.5 Km away from the land in the said award in the case of Smt. Malini Nevrekar. The evidence of respondent further discloses that in the present case/land there were two wells with perennial source of water, a farm house, three store rooms and same were closer to the city of Ponda and were at the road level. It has come on record that the major portion of the proposed road was going through the property of the respondent and away from the existing Ponda Belgaum road and similar portion was adjoining the existing road. The acquired land was approximately 2 metres below the existing road towards Ponda and less than one metre below the road level towards Usgao side. The respondent in his testimony had maintained that the acquired land was a part of the bigger property with building potential and denied the suggestion to the contrary. A close scrutiny of the evidence of the respondent shows that his testimony was not shaken at all on the existence of various facilities and amenities, proximity to the main road, school, church, market place, water and electricity facility apart from industries which would be determining factor for considering whether the Reference Court has awarded compensation rightly and correctly in favour of the respondent herein.

8. It is to be noted here that in Land Acquisition Case No. 19/99 i.e. in the case of Smt. Malini Nevrekar, the Reference Court after relying upon the sale instance

dated 14.06.1991 which is at Exhibit 18 in the present appeal came to the conclusion that the amount of Rs. 121/- per square metre was just and proper compensation for the acquired land of the said land owner. Mr. Ramani, learned counsel appearing for the respondent submitted that the State of Goa had preferred an appeal bearing No. 131 of 2002 so also Smt. Malini Nevrekar preferred the Cross Objection bearing No. 1548 of 2003 in this Court against the judgment and award passed by the Reference Court therein. As stated above, this Court by judgment dated 04.07.2014 while correcting the mathematical error which had occurred at the hands of the Reference Court only corrected the market value of the acquired land to Rs. 106/- per square metre instead of Rs. 121/- per square metre. The said appeal was therefore partly allowed and cross objection preferred by the land owner came to be dismissed by judgment dated 04.07.2014. Mr. Ramani, therefore submitted that after taking into consideration the sale deed dated 14.06.1991, which is at Exhibit 18, this Court has come to the conclusion that the fair market value of the acquired land which is adjoining the land of the present respondent is Rs. 106/- per square metre. I find substance in the submission of Mr. Ramani.

9. It is true that this Court after taking into consideration the sale deed dated 14.06.1991 which was also referred to as comparable sale instance in Land Acquisition Case No. 19/99 i.e. in the case of Smt. Malini Nevrekar has come to the conclusion that the fair market value of the acquired land therein is at Rs. 106/- per square metre. As the land involved in the present appeal is in the proximity of the said acquired land, the rate which is worked out to Rs. 90/- per square metre after deducting 20% towards the development charges by the Reference Court, in my opinion appears to be just, right and proper. The Reference Court after taking into consideration the fact that the respondent's land had better amenities and facilities as compared to the land of Smt. Malini Nevrekar i.e. abutting the highway and possesses all the potential for development apart from various amenities and facilities has fixed the market value after giving due weightage to the aforesaid factors at the rate of Rs. 99.8/- per square metre. After granting due enhancement for the interregnum period i.e. to say that the acquisition of land was actually done on 05.03.1991, while the award was passed by the Land Acquisition Officer on 15.03.1994, the market value fixed by the Reference Court in my opinion is just, right and proper.

10. After giving my earnest consideration to the entire matter, I am of the considered opinion that the learned Reference Court has rightly and correctly enhanced the rate of compensation at the rate of Rs. 99.8/- per square metre for the lands acquired by the Government of the respondent. I further find that the Reference Court has not committed any error either on facts and/or on law while passing the judgment and award dated 19.03.2010 in Land Acquisition Case No. 60 of 2005. I find that the present appeal sans of any merit and, therefore, deserves to be dismissed. The appeal is accordingly dismissed with no order as to costs.