

**(2008) 10 BOM CK 0119**

**In the Bombay High Court**

**Case No :** First Appeal No. 123 of 2003 with Cross Objection (ST) No. 2111 of 2003

Deputy Collector (Dev) and Land Acquisition Officer and  
Another

APPELLANT

Vs

Sitadevi @ Jaya Raghuraj Deshprabhu and Others

RESPONDENT

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**Date of Decision :** 14-10-2008

**Acts Referred:**

Land Acquisition Act, 1894 — Section 30, 4

**Citation :** (2009) 1 BomCR 163

**Hon'ble Judges :** Deshpande A.P., J; Britto N.A., J

**Bench :** Division Bench

**Advocate :** S.R. Rivonkar, for the Appellant; M.S. Sonak, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

Britto N.A., J.—This appeal with cross objection is directed against judgment/ Award dated 17-12-2002 by which the learned Reference Court (Additional District Judge, Panaji) has enhanced the compensation payable to a further sum of Rs. 40/- per sq. meter, as against Rs. 17/- per sq. meter awarded by the Land Acquisition Officer and Rs. 350/- per sq. meter as claimed by the applicants (i.e. the respondents in the first appeal).

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said reference.

3. There is no dispute that vide Notification issued u/s 4 of the Land Acquisition Act, 1894 and published on Gazette dated 1-2-1990 the Government acquired about 1,06,864 sq. meters of land for the construction of their office complex at Pernem from Survey Nos. 284/0, 281/1, 281/2 and 282/0 from Pernem Village and by award dated 27-3-1991 the learned Land Acquisition Officer was pleased to award compensation to the applicants at the rate of Rs. 17/- per sq. meters. Various types of trees existing in the acquired land were separately valued and

compensation for the same was paid in the sum of Rs. 5,69,464/-.

4. Dissatisfied with the compensation awarded to the applicants, the applicants sought a reference to be made, and, in the said reference the applicants examined applicant No. 4 as AW 1, and an expert, namely, Shri Bhohe as AW 2. The Government examined their Assistant Director of Agriculture as RW 1, and, upon considering the evidence produced, the learned Reference Court enhanced the compensation payable to an additional sum of Rs. 40/- per sq. meter, as already stated.

5. In enhancing the compensation payable, the learned Reference Court used the award in L.A.C. No. 77/86 as a guide and as far as this aspect is concerned no issue is raised on behalf of either of the parties. The said award was in respect of an acquisition by Notification dated 16-4-1985 in respect of the applicants land which was acquired for house sites under 20 Point Programme and the said land was situated at a distance of about 700 meters from Pernem market. Compensation awarded by the L.A.O. at the rate of Rs. 15/- per sq. meter in respect of 5533 sq. meters was enhanced by the Reference Court to Rs. 100/- per sq. meter in L.A.C. No. 77/86, relying upon three sale deeds. The learned Reference Court noted that there was a gap of about 5 years between the present acquisition and the acquisition in L.A.C. No. 77/86 and also took note of the fact that prices of land in Goa have been arising steeply from 1973. In fact judicial notice can always be taken of the fact that the prices of land are by and large always on the increase. The learned Reference Court therefore considered an increase of 10% per year and fixed the market value of the acquired land at Rs. 150/- per sq. meter. However, and as already stated as far as this aspect is concerned, there is no dispute raised on behalf of either of the parties. That 10% increase for each subsequent year is neither excessive nor unreasonable is a view held by the Apex Court in *The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib*, and followed by this Court in *(Managing Director, I.D.C., Goa v. Shiv Sadashiva S.N. Sardessai)* 2005(1) G.L.R. 36, on which reliance has been placed on behalf of the respondents.

6. However, the learned Reference Court noted that the land acquired in the present case was vast admeasuring 1,06,864 sq. meters and on account of the vastness of the land proceeded to take a deduction of 60% from Rs. 150/- per sq. meter which deduction as per Mr. S.R. Rivonkar, learned Government Advocate, is reasonable but according to Mr. M.S. Sonak, learned Counsel on behalf of the respondents is highly excessive. The learned Reference Court also gave additional enhancement of Rs. 2/- per sq. meter and considering that separate value of the trees was awarded to the appellants came to the conclusion that the rate including trees awarded by the L.A.O. was Rs. 22/- per sq. meter. This latter approach of the learned Reference Court has been criticized by Mr. Rivonkar, learned Government Advocate submitting that it was impermissible for the learned Reference Court to come to such a conclusion, and we are inclined to uphold such a submission. Undisputably, the Land Acquisition Officer had

awarded to the applicants compensation at the rate of Rs. 17/- per sq. meter for the land, and for the trees, separately in the sum of Rs. 5,69,464/- after the same were valued by their experts. The applicants had raised no dispute as regards the value of the trees being less than what was awarded to them and in any event they had also not examined any expert to prove that they were entitled to higher compensation for the trees from the acquired land, and, therefore the learned Reference Court ought to have focused his attention only on the aspect of the value of the land to find out whether the same was the market value or whether the applicants were entitled to a higher value. In our view, the learned Reference Court was also not justified, without any apparent reason, to come to the conclusion that the L.A.O. had awarded total compensation at the rate of Rs. 22/- per sq. meter for the acquired land including trees. Likewise the learned Reference Court was also not justified in adding Rs. 2/- per sq. meter without any basis.

7. Be that as it may, and as already stated, the main contest between the parties is as regards the deduction taken of 60% which according to Mr. Sonak ought to have been not more than 15%. Mr. Sonak has placed reliance on a Division Bench Judgment of this Court in the case of Managing Director, GIDC v. Shri Sadashiva S.N. Sardesai and Ors. 2005(1) G.L.R. 36 . In this case, the learned Division Bench of this Court (to which one of us was a party Britto, J.) had referred to the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , wherein the Apex Court had stated that it is common knowledge that when a large block of land is required to be valued, appropriate deductions is to be made for setting aside land for carving out roads, leaving open spaces and plotting out small plots suitable for construction of buildings. The extent of the area required to be set apart in this connection has to be assessed by the Court having regard to the shape, size and situation of the concerned block of land, etc. There cannot be any hard and fast rule as to how much deduction has to be made to account for this factor. It is essentially question of facts depending on the facts and circumstances of each case. It does not involve drawing upon any principle of law. In that case 25% deduction was taken towards development.

8. The learned Division Bench had also noted that as far as standard deductions are concerned, it is well established that about 30% deductions are found to be just and proper but at the same time the deductions could go even upto 60% depending upon the facts of each case. The Division Bench further noted that the I.D.C. had liberty to bring on record such evidence as to demonstrate a deduction permissible beyond 30% which was not done. The Division Bench further noted that there was also no evidence to accept the contention that the subject land was located in one of the most backward areas and notwithstanding the failure on the part of the acquiring body to bring on record this evidence to justify more than 30% deduction, the Court proceeded to hold that 30% deduction was justifiable.

9. The learned Reference Court noted that the acquired land was at a distance of 150 to 175 sq. meters from the Pernem market, a fact which is sought to be highlighted by Mr. Sonak, learned Counsel on behalf of the respondents contending that the acquired land in the Award of L.A.C. No. 77/86 was much further. The learned Reference Court noted that there was a slight slope in the acquired land which would not make much of a difference. However, this observation of the learned Reference Court does not appear to be quite correct in view of the evidence of AW2/Shri Bhobe who has opined that a belt of about 10 to 25 meters width and 250 meters length touching the road was slopping downwards towards Pernem village overlooking the fields and the balanced area was terraced and levelled. No percentage of gradient is mentioned by him. The applicants' witness AW1, it appears has tried to shrink the distances given by him in relation to the civic amenities available. For example according to him the Court building was at a distance of about 50 meters from the acquired land but according to respondents witness it was at a distance of about 700 meters. The L.A.O. has also noted that distance is of one kilometer. The distances given by the respondents' witness appear to be more realistic. Nevertheless, on the respondents own showing, it appears that the acquired land had residential houses at a close distance of about 150 meters or so, there was electricity and water pipe line available on the boundary of the plot; it was abutting the Pernem-Tuem road and was situated at a distance of about 150 to 175 meters from Pernem market with other civic amenities like a Government Hospital, schools, industrial estate, Arts and Commerce College, Police Station, all within a radius of 1 to 2 kilometers. The Telephone Exchange itself was at a distance of about 100 meters from the acquired land. In other words the acquired land had great potential for development and in fact was acquired for construction of Government offices. There is no dispute that at the time of acquisition of land in L.A.C. No. 77/86 the areal of Pernem town was within Village Panchayat and at the time of present acquisition, it was elevated to a Municipal Council but this factor, in our view, cannot make any appreciable difference in fixing the market value.

10. As already stated, with reference to the case of Chimanlal Hargavinddas v. Special Land Acquisition Officer (supra) the percentage of deduction to be made is not a matter of a principle of law. It varies from place to place, area to area and the amount of development which is required to be carried out and thus there cannot be any fixed amount of deduction towards development charges. The area acquired in this case is comparatively large than the area acquired in the previous acquisition in L.A.C. No. 77/86 which was merely 5533 sq. meters. Deductions were therefore required to be made not only towards development but also on account of the largeness of the area. It is common knowledge that when several plots are made of a large area time is taken to sell the same and smaller plots always fetch a higher value than large areas of land. Although the subject land was closer to the market place than the land acquired in L.A.C. No. 77/86, it appears that the subject land was more sloppy and terraced than the

other land and considering the same in order to make it developed land a considerable amount of expenditure would have been required. Considering the facts and circumstances of the case, therefore, in our view 40% of deduction both towards development as well as largeness of area would be appropriate and if such a deduction is made, the fair market value of the acquired land works out to Rs. 78.00 per sq.meter. Therefore we fix the fair market of the acquired land in this case at Rs. 78.00 per sq. meter and modify the impugned award accordingly.

11. Consequently, we dismiss the appeal and allow the cross-objection partly. The market value of the acquired land is fixed at Rs. 78.00 per sq. meter. Needless to say the applicants would be entitled to all consequential statutory benefits.

12. We make it clear that the enhanced compensation would be restricted to Survey No. 281/1, 281/2 and 280/0 and would be further subject to any claim made u/s 30 of the Land Acquisition Act, 1881.