

(2010) 11 BOM CK 0092
In the Bombay High Court
Case No : First Appeal No. 137 of 2008

Goa Industrial Development Corporation	APPELLANT
Vs	
Comunidade of Nagoa, through the Administrator, of Comunidades through its Attorney, Shri Antonio Bernardo Francisco Pereira and Dy. Collector and S.D.O. and L.A.O.	RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 4

Citation : (2011) 113 BOMLR 648

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : M.S. Sonak, for the Appellant; S.D. Padiyar, for the Respondent

Judgement

F.M. Reis, J.—The above appeal challenges the judgment and award dated 11.10.2007 passed by the learned District Judge, South Goa, Margao in Land Acquisition Case No. 74/2000.

2. By Notification published u/s 4 of the Land Acquisition Act (hereinafter referred to as the said Act) on 29.4.1988 different portions of the property belonging to Respondents were intended to be acquired by the Appellants for the benefit of the Appellants for setting up an Industrial Estate at Verna Plateau. The areas which were sought to be acquired from the property surveyed under No. 27/1 was 2750 sq. metres, under survey No. 30 different portions having an area of 10,500 sq. metres, 58,070 sq. metres, 70,844 sq. metres, 84,666 sq. metres, 3,325 sq. metres and 1,02,495 sq. metres. In respect of the property bearing survey No. 34, the areas sought to be acquired were admeasuring 19,710 sq. metres and 8,590 sq. metres and with regard to the property surveyed under No. 40 an area of 7,100 sq. metres and 6,150 sq. metres were to be acquired. After complying with the formalities under the said Act, the Land Acquisition Officer (LAO for short) passed an award u/s 11 of the said Act and fixed the compensation in respect of the property surveyed under No. 27/1 admeasuring

2750 at the rate of Rs. 5/- per sq. metre, property surveyed under No. 30 area admeasuring 10,500 sq. metres at the rate of Rs. 3/- per sq. metre, area admeasuring 58,070 sq. metres at the rate of Rs. 8/- per sq. metre area admeasuring 70,844 sq. metres at the rate of Rs. 7/- per sq. metre area admeasuring 84,666 sq. metres at the rate of Rs. 6/- per sq. metre area admeasuring 3,325 sq. metres at the rate of Rs. 5/- per sq. metre area admeasuring 1,02,495 sq. metres at the rate of Rs. 2/- per sq. metre. In respect of property surveyed under No. 34 the compensation awarded for any area of 19,710 sq, metres was at the rate of Rs. 4/- per sq. metre and area admeasuring 8,590 sq. metres at the rate of Rs. 2/- per sq. metre and in respect of survey No. 40 the compensation awarded for an area admeasuring 7,100 sq. metres was at the rate of Rs. 4/- per sq. metre and for an area admeasuring 6,150 sq. metres at the rate of Rs. 3/- per sq. metre. Besides the said amount, the LAO also awarded a sum of Rs. 3,033/- for the structures existing therein and a sum of Rs. 12,213 on account of the trees standing in the property bearing survey No. 30.

3. Being dissatisfied with the amount awarded as per the said award, the Respondent No. 1 sought a reference u/s 18 of the said Act and claimed a sum of Rs. 200/- per sq. metre towards the land acquired and further sum of Rs. 2,23,596/- for the trees and a sum of Rs. 21,231/- towards the structure existing therein.

4. By judgment and award dated 11.10.2007, the learned District Judge, South Goa, Margao fixed the compensation for the land acquired at the rate of Rs. 51/- per sq. metre and rejected the claim of the Respondents towards the value of the structure and the trees existing therein.

5. Being aggrieved by the said judgment, the Appellants who are the acquiring body have preferred the present appeal.

6. Mr. M. S. Sonak the learned Counsel appearing for the Appellants submitted that the reference court has failed to consider that the land was Comunidade land and it was located in an isolated locality and there was no appreciation in value of land in the vicinity. Learned Counsel further submitted that the land which was acquired had no potentiality for being used for non agricultural purpose as no development had taken place as on date of notification in the vicinity. Learned Counsel further submitted that the substantial portion of land acquired was waste land and the same by no stretch of imagination could be used for any development as the same would incur substantial expenses for its development. Learned Counsel further submitted that the Reference Court has failed to consider that different portions of land had different features which were not at all considered by the Reference Court and which in fact were rightly noticed by the LAO while fixing different rates of compensation as per the specific nature of such respective portion. The learned Counsel further submitted that this Court by judgment in the other appeal bearing No. First Appeal No. 317/2003 passed on 22.7.2010 had accepted the belting which was done by LAO

and had awarded compensation at different rates depending on such specific features in respect of the notification which were issued in the year 1990 for the expansion of the same Industrial Estate. The learned Counsel has further pointed out that the subject matter of the land acquired in respect of the said notifications in the year 1990 were also portions of the property surveyed under No. 30 and 34 belonging to the Respondent No. 1. The learned Counsel has further submitted that the land which was the subject matter of the acquisition in L.A. C. No. 116/1989 was better. The learned Counsel has further submitted that the learned judge erred in relying upon the sale deed dated 1.10.1986 for fixing the market value of the land acquired as subject matter of the sale instance were only 200 sq. metres as compared to the vast area involved in the present acquisition. Learned Counsel further submitted that the Reference Court misdirected himself in coming to the conclusion that the acquired land was superior to the land in Land Acquisition Case No. 23/1987. The learned Counsel has further submitted that the Reference Court has totally misappreciated the evidence on record and came to an erroneous conclusion that the acquired land had market value of Rs. 51/- per sq. metre as on the relevant date. Learned Counsel further submitted that the Reference Court has arbitrarily fixed the compensation at the rate of Rs. 51/- per sq. metre without considering the material on record which establishes that the Respondent No. 1 has failed to adduce any legal evidence to establish that the price offered by the LAO was inadequate.

7. On the other hand, the learned Counsel appearing for Respondent No. 1 has supported the impugned judgment. He submitted that the Reference Court after minutely examining the evidence on record has rightly come to the conclusion that the acquired land had market value at the rate of Rs. 51/- per sq. metre. He further submitted that the Reference Court has rightly relied upon the award passed in LAC No. 116/1989 wherein the amount of compensation was at the rate of Rs. 79/- per sq. metre and after effecting necessary deductions had fixed the market value at Rs. 51/- per sq. metre. The learned Counsel as such submitted that there is no infirmity in the impugned judgment and as such no interference is called for by this Court in the impugned judgment and award and as such, the appeal deserves to be rejected.

8. After hearing the learned Counsel and on perusal of the record, we find that the following point arises for determination arises in the present Appeal:

POINT FOR DETERMINATION

1. Whether the Reference Court was justified to fix the compensation at the rate of Rs. 51/- per sq. metre for the whole land acquired?

9. In support of their claim for enhancement of the compensation the Respondent No. 1 has examined their attorney. He has stated in the affidavit that the nature of the land acquired was flat, bharaad, ideal for construction and was 100 metres from Nagoa market and 500 metres from three schools besides being

2 kms. from the post office and police station. He has further stated that the Comunidade is permitted to sell lands and that the land acquired was better than the land which was the subject matter of the acquisition in LAC No. 116/1989. He has further stated that the award passed in LAC No. 23/1987 in respect of the land acquired by the Government for 20 point programme could be taken into consideration for the purpose of fixing the market value of the land under acquisition as the land was similar to the acquired land. He has further stated that by virtue of a sale deed dated 1.10.1986, the land touching the Highway was sold at the rate of Rs. 95/- per sq. metre. The said land was opposite the Highway and was 300 metres away and was similar to the acquired land. He has also relied upon an award dated 5.1.1994 passed by the learned District Judge wherein an area of 25,000 sq. metres was acquired at the rate of Rs. 40/- per sq. metre in LAC No. 23/1987. He has further stated that the said land was touching the acquired land. He has further stated that the land surrounding the acquired land is developing and there is a Motel known as Kesarval which is a 3 star hotel which came up in the year 1986 which is about 800 metres from the acquired land. He has also relied upon the transaction of Ismael Bepari in respect of an area of 559 sq. metres situated at Quelossim village at a distance of 2 kms. wherein the land was sold at the rate of 87 per sq. metres. He has further stated that the Respondent No. 1 has claimed compensation of Rs. 150/- per sq. metre for the acquired land. In the cross examination he has stated that the Respondent No. 1 had made some attempts to raise some projects in the acquired land. He has further admitted that the land which is subject matter of LAC No. 116/1989 is smaller plot of land compared to the acquired land. He has further stated that the land which is subject matter of exhibit 16, which has sale deed dated 1.10.1986 is an agricultural land. He has also admitted that land subject matter in LAC No. 23/1987 was smaller compared to the acquired land. He has admitted that the land which is surveyed under No. 46 and 48 is adjoining the acquired land which is surveyed under No. 40.

10. The next witness who has been examined is Grenville Pereira who has produced the award passed in LAC No. 116/1989 wherein he was a party and he has stated that his land was next to the Highway touching the land of Comunidade of Nagoa and 200 metres away from the land of Comunidade of Cortalim and that his land was on a steep slope.

11. The next witness is AW3, Shashank Shirwaikar who has stated that the land is situated in the village of Nagoa and is bounded towards the east by land of Comunidade of Loutolim; west by National Highway 17 and Comunidade of Cortalim and Comunidade of Nagoa, on the north by Comunidade of Quelossim and on the South by the property of Grenville Pereira and others. He has stated that the land acquired is at a distance of about 10 to 11 kms. from Margao city and that the land is located adjoining the road from Panaji to Margao city and it is bharad/quarry land and the sale ability is very good. He has produced a Valuation Report dated 10.10.1988. In his valuation report he has stated that he had visited the site on 2.5.1988 to prepare the said report. In his report he has

classified the land as bharad and quarry and the total area acquired by the Appellants is said to be an area of 3,73,200 sq. metres. He has valued the land at the rate of Rs. 70/- per sq. metre. In his cross examination he has stated that he was working with N. K. Naik and Associates for about an year in 1983-84 and thereafter for about two years in P.W.D. from May 1984 to September 1986. He had gone to the Gulf in the year 1986 and returned in the year 1989. He has also stated that he was unable to give survey Number/survey holding of the acquired land.

12. The next witness examined by the Appellants is RW1, Parmanand Gaonkar. He has stated in his affidavit that the land acquired was undulating terrain and mostly bharad and quarry in nature. There were some stone quarries and blasting depressions of sizable area and some sloppy low lying areas from 3 to 4 metres which required substantial filling. He has further stated that there were sizable areas having depressions and also some sloppy low lying areas in the acquired portion of the land. He has further stated that there was no water supply arrangement to the site and that the area was classified as barren land and that the plateau was earmarked for Export Promotion Zone in the regional plan. He further stated that there was no basic infrastructure in the acquired land at the relevant time and that there were many stone quarries existing in the acquired land where quarry activities were going on. In his cross examination he has stated that he cannot specify the survey numbers in which the quarry was seen but they were spread in all the survey holdings. He has denied the suggestion that there were no stone quarries in the acquired land. He has further stated in his cross examination that the acquired land was falling in all the three belts namely paddy land, bharad and sloppy with quarries. He has denied the suggestion that the Appellants land was not classified in any of the said three categories.

13. The Reference Court by the impugned judgment after considering the over all evidence on record has fixed the market value of the land acquired at the rate of Rs. 51/- per sq. metre.

14. On perusal of the award passed u/s 11 of the said Act, we find that the land which is the subject matter of the present appeal was classified into different categories namely bharad land, rocky land and quarry. The land which was classified as quarry are said to have no potential value as they require substantial filling and development before its use for better purpose. The award further states that the land which was subject matter of the award dated 5.1.1994 passed in LAC No. 23/1987 in respect of an area of 25,000 sq. metres acquired for the 20 Point Programme is situated at a distance of 300 metres from the land acquired wherein the compensation was fixed at Rs. 40/- per sq. metre. The land is therefore said to have similar advantage, potential and locations but standing at a slightly better footing. All the dissimilarities which have been highlighted in the award are with regard to the setback to be maintained from the National Highway with regard to the acquired land. The land acquired is also

classified as bharad land into three categories namely belt-1, belt-2 and belt - 3. The land which is classified as valley-quarry land is said to require substantial filling to bring it to the level of the remaining land. Stone quarries are said to occur in a portion of the acquired land and as such a nominal value is said to be fixed for such land. In the present case the land which is the subject matter of the present acquisition, has been classified in belt -1 bharad land having an area of 58070 sq. metres from property surveyed under No. 30. In bharad belt -2 the LAO has classified an area of 70,844 sq. metres from survey No. 30. In bharad belt - 3 the LAO has classified an area of 84,666 sq. metres from survey No. 30. The areas involved in the present acquisition which are untenanted paddy fields were 2750 sq. metres from survey No. 27/1 and 3325 sq. metres from property surveyed under No. 30. The orchard land was admeasuring 19,710 sq. metres from survey No. 34 and 7,100 sq. metres from survey No. 40. The buffer zone was shown to be an area of 10,500 sq. metres from survey No. 30 and 6150 sq. metres from survey No. 40. The subject matter of the property which was acquired in the award passed in LAC No. 23/1987 is 25,000 sq. metres in respect of the property surveyed under No. 40. The present acquisition proceedings are also in respect of the portion of the property surveyed under No. 40. Hence subject to the deductions on account of the dissimilarities of the land vis a vis the said land in LAC No. 23/1987, we find that the compensation fixed in the said award can form a basis for the purpose of ascertaining the market value of the acquired land in the present case after appropriate escalation. The amount fixed as per the said award is at the rate of Rs. 40/- per sq. metre and the notification therein was issued in August 1985. In the present case, the notification was issued in April 1988 which is within a gap of two and a half years. In view of the judgment of the Apex Court in the case of General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and Anr. Reported in (2008) 14 SCC 745 as the said land is located in a rural/semi rural area, the escalation of 7% per annum would be effected for a period of two and half years, the amount works out to Rs. 48.99 per sq. metre which is rounded up to Rs. 49/- per sq. metre. On perusal of the records including the Reference Application and deposition of AW1, the classification about the nature of the acquired land as done by the LAO has not been seriously challenged. No evidence to the contrary has been adduced by the Respondent No. 1. As such we accept the said classification. As per the classification which has been effected by the LAO, the area which is covered by bharad belt - I is considered to be more superior than the remaining areas. The land which is acquired under survey No. 30, situated in bharad belt - 1, belt -2 and belt-3 can be considered of a similar nature. The areas involved are 58,070 in belt - 1, 70,844 sq. metres in belt - 2 and 84,666 sq. metres in belt - 3. The area involved in the said LAC No. 23/1987 is only 25,000 sq. metres, while in the present case the area involved having similar features admeasures more than 2,00,000 sq. metres. The largeness of the land acquired will have to be taken into consideration for the purpose of determining the market value of the land acquired.

15. In the decision of the Apex Court reported in Subh Ram and Others Vs. Haryana State and Another, has held at paras 12, 15, 17 as under:

12. In a standard layout with plots measuring say 2500 sq ft (50" x 50") each, to provide road access to each plot, it will be necessary to provide a road after every two rows of plots. If the depth of each plot is 50", and if the road width is 25 ft, then for every two strips of plots, there will have to be a strip of road of 25 ft. This means a minimum of 25% of the total land area will be utilised for roads. A typical layout will also have cross-roads, and areas earmarked for park, and/or community areas. Consequently non saleable area (area which cannot be sold as plots) would be around 30% to 40% of the total area.

15. Thus, if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads, etc.) plus one-third (for expenditure of development), in all two-thirds (or 67%), as "development cost" from the value of small plot. The percentage of deduction may however vary between 20% to 75% depending on several circumstances.

17. It is no doubt true that this Court in some decisions has observed that purpose of acquisition will also be relevant. But it is made in a different context. The Land Acquisition Collectors in some cases adopt belting methods for valuation of land, with reference to a focal point, that is, either with reference to the distance from the main road, or distance from a developed area. Lands that adjoin a developed area or a main road are given a higher value than a land farther away from the road or the developed area. The Land Acquisition Collectors also award different compensation depending upon whether the acquired land is a dry land or wet/irrigated land.

16. In the present case there is no dispute that the land surveyed under No. 30 was adjoining the main National Highway and had better value than the one which is the subject matter of the said land Acquisition Case No. 23/1987 which was though not adjoining the Highway was accessible by road.

17. Considering the said largeness of the land acquired in the present case and also the advantages as far as the said land acquired is concerned being adjoining the main Highway, a net deduction of 30% would be just and proper in the circumstances of the case. We accordingly fix the market value of the land acquired surveyed under No. 30 which was within said bharad belt - 1, 2 and 3 at the rate of Rs. 34/- per sq. metre.

18. As far as the paddy fields are/is concerned, the area which has been acquired in the present proceedings is 2,750 sq. metres from property surveyed under No. 27/1 and 3,325 sq. metres from property surveyed under No. 30. There is no dispute that the said paddy fields are not tenanted. The LAO has fixed the value of the paddy fields portions at the rate of Rs. 5/- per sq. metre, while with regard to bharad land located in Belt 1, 2 and 3 at the rate of Rs. 7/- per sq. metre concluding that the paddy field portions also can be used for development

though after substantial investment on account of conversion and land filling as far as untenanted portions are concerned. The amount will have to be deducted by 25% on that count. We accordingly fix the market value of such land which works out to Rs. 25/- per sq. metre approximately. With regard to the land which was the subject matter of the acquisition and classified as orchid land, such land cannot be used for development purpose as it has very negligible potentiality for being used for construction purpose. Considering that the said land cannot be used for non agricultural purpose but however as the land is located in the area which was classified for Industrial purpose, we find that the amount fixed by the LAO at the rate of Rs. 4/- per sq. metre is inadequate. After taking the totality of the circumstances of the case, we find that the areas covered by; the orchid zone from the property surveyed under No. 40 admeasuring an area of 7,100 sq. metres and an area of 19,710 sq. metres from property surveyed under No. 34 can be fixed after effecting deductions of 50% from the said sum of Rs. 49/- per sq. metre. We accordingly fix the market value for the area admeasuring 7,100 sq. metres from survey No. 40/part and 19,710 sq. metres from survey No. 34 at the rate of Rs. 24 per sq. metres.

19. The area which is classified as buffer zone is the area which is said to come under road widening area. The Apex Court in the judgment reported in *State of Goa and Another Vs. Gopal Baburao Gaudo and Others*, . has held at para 4 and 5 thus:

4. A long strip of land measuring more than two-thirds of an acre lying alongside and adjoining the highway cannot be treated as a land without value or without any potential for development, merely on the ground that the law relating to highways prohibited construction on either side of the highway, up to a depth of 40 m from the centre of the highway. All that was required to create or realise potential of such land was to annex or merge the said strip of land with the land to its rear. In that event, the strip of land will become the "access" to the rear side land from the main road and will also become the frontage of the aggregate land, thereby enhancing the potential and value of the rear side land, as also creating a potential for its own use.

5. The contention that a land adjoining the highway should be treated as having no development potential (and therefore as land without much value except as ordinary agricultural land), while considering the lands to its rear which are farther away from the road, or other adjoining lands of the same extent, but having ore depth (so as to extend beyond the 40 m margin) as having potential for development, is illogical and cannot be accepted.

Considering the said judgment of the Apex Court and in view of the fact that the Respondent is the owner of the land, beyond the area which was coming within the road widening area we find that the land which was subject to such restrictions can also be valued on the basis of the price fixed for developed lands after effecting substantial deductions in view of the statutory restrictions. In the present case the areas involved is 10,500 from property surveyed under No. 30

and 6,150 s q. metres from the property surveyed under No. 40. The Apex Court in the said judgment has confirmed the judgment passed by this Court in First Appeal No. 242/2002 decided on 6.8.2008. While passing the said judgment, this Court had considered deduction of 25% on account of such restrictions as fair and reasonable. We accordingly fix the market value in respect of the said area under buffer zone considering all the factors after deducting 20% which comes to Rs. 27/- per sq. metre for the said land acquired. With regard to the quarry land admeasuring an area of 1,02,495 sq. metres from the property surveyed under No. 30 and an area of 8590 from survey No. 34, the land acquired therein was valley land which would require substantial investment for the purpose of development. Such land is said to be quarry land which is also admitted by the expert examined by Respondent No. 1. Considering the said judgment of the Apex Court in Sukram (Supra) we find that a maximum 75% of deduction is required to be effected for arriving at the market value of the said land. We as such fix the market value of the said land which is coming within valley/quarry land at the rate of Rs. 12/- per sq. metre. The Reference Court was as such not justified in fixing the market value of the land at the rate of Rs. 51/- per sq. metre without considering the classification which is effected by the LAO nor the dissimilarities of the land acquired and the sale instance produced by Respondent No. 1. Considering all aspects, we find that the Reference Court was in error in fixing the market value at a uniform rate of Rs. 51/-. The Apex Court in the judgment reported in 2007 (15) SCC 577 in the case of Mandal Revenue Officer, Andhra Pradesh v. Yedlapally Anjeneyulu has held that even in the same survey numbers the basis for working out market value cannot be the same. As such, the Reference Court, we find has failed to consider the nature of different portions of the land acquired whilst fixing the compensation. The impugned judgment therefore, deserves to be modified. Even assuming, we consider the judgment passed by this Court in First Appeal No. 300/2003 and First Appeal No. 318/2003 wherein the land which was the subject matter of acquisition bearing survey No. 40/part was valued at Rs. 43/- and Rs. 48/- per sq. metre and the remaining portion of the property surveyed under the same survey No. bearing 40/part was fixed at Rs. 24/- per sq. metre. We find that the notification therein was issued in March 1990 whereas in the present case the notification came to be issued in April 1988 i.e. within a gap of nearly 2 years. The escalation after the Industrial Estate came to be constructed in the year 1987 was quite substantial as there was natural demand for the land as the land was originally undeveloped/rural area and had changed into a semi urban area. Considering the said judgment of the Apex Court reported in (2008) 14 SCC 745 in the case of General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and Anr. we find that an appropriate appreciation would be 10% on cumulative basis. Considering the said escalation, the amount works out around Rs. 43/-per sq. metre which appears to be just and reasonable in the facts and circumstances of the case. We accordingly find the said area which is considered to be superior for the reasons stated herein above should be given a compensation of Rs. 34/- per sq. metre for the land acquired and the

compensation for the remaining area should be as per the classification done by the LAO. The market value of the land acquired should as such be fixed in the manner stated herein above. The point for determination is answered accordingly.

20. In view of the above, the appeal is partly allowed. The impugned judgment and award is modified as under:

i. For an area of 58,070 sq. metre situated in belt -1; 70,844 sq. metres situated in belt -2 and 84,666 sq. metres situated in belt - 3 the compensation is fixed at Rs. 34/- per sq. metre.

ii. With regard to an area of 2750 sq. metres from property surveyed under No. 27/2 and 3,325 sq. metres from property surveyed under No. 30 the compensation is fixed at Rs. 25/- per sq. Metre.

iii. With regard to the land coming under orchard land for an area of 7,100 sq. metres from property surveyed under No. 40 and 19,710 sq. metres from survey No. 34 the compensation is fixed at Rs. 24/- per sq. metre.

iv. With regard to the area coming within the buffer zone an area of 6150 sq. metres from property surveyed under No. 40 and 10,500 sq. metres from property surveyed under No. 30 the compensation is fixed at Rs. 27/- per sq. metre.

v. With regard to the area admeasuring 1,02,495 sq. metres from property bearing survey No. 30 and area admeasuring 8,590 sq. metres from property surveyed under No. 34 which is valley land the compensation fixed is Rs. 12/- per sq. metre.

vi. The remaining part of the award granting statutory benefits for the said amount by the Reference Court is confirmed.

The appeal is disposed of with no order as to costs.

Decree be drawn accordingly.