

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.25 OF 1996

State of Goa
through the Special
Land Acquisition Officer,
Selaulim Irrigation Project,
Gogol, Margao, Goa..... APPELLANT

VERSUS

1. Smt. Shantabai S.B.
Caculo;
2. Shri Mohan S.B.
Caculo;
3. Shri Pandurang S.B. Caculo,
all r/o H.No.16, Shanta,
St.Inez, Panaji, Goa..... RESPONDENTS

Shri H.R. Bharne, Government Advocate, for the
Appellant.

Shri Sudin M.S. Usgaonkar, Advocate for the
Respondents.

CORAM : A.S. AGUIAR, J.

DATED : MARCH 22, 2002.

ORAL JUDGMENT

This First Appeal is from the Judgment
and Award dated 15th September, 1995, passed by the
District and Sessions Judge, South Goa, Margao in
Land Acquisition Case No.258 of 1991.

2. By the impugned Judgment and
Award, the Reference was partly allowed and the rate
of compensation in respect of the acquired lands,

namely, Survey No.14/9 admeasuring 150 sq. metres, Survey No.16/1 admeasuring 1220 sq. metres, Survey No.18/2 admeasuring 2320 sq. metres and Survey No.19/1 admeasuring 2640 sq. metres, was enhanced from Rs.5/- per square metre to Rs.20/- per square metre. The Reference in respect of 700 sq. metres of tenanted field surveyed under No.16/3 is dismissed. The amount awarded by the S.L.A.O. in respect of Survey No.16/3 is fixed at Rs.4/- per sq. metre. No Appeal has been filed so far as the Award in respect of Survey No.16/3 is concerned. The Appeal is restricted to the enhancement in respect of the remaining lands from Rs.5/- to Rs.20/-, totally admeasuring 6330 sq. metres. The Award of the Reference Court, i.e. of the District Court, is impugned on grounds stated in the Memo of Appeal, inter alia, that no evidence was adduced before the trial Court so as to enable the court to make a comparative assessment of the lands acquired with the lands covered by the Awards in Land Acquisition Cases No. No.254/91, 257/91 and 253/91 on which the learned Judge placed reliance in making the said Awards.

3. However, before this Court in Appeal, the learned Advocate for the Appellant/Government has submitted that there was

no legal evidence whatsoever adduced by the Respondents on the basis of which the Award was passed; that the Awards in Land Acquisition Cases No.254/91, 257/91 and 253/91 were only produced in the Court across the Bar, and not through the witness who was examined on behalf of the Respondents. Therefore, the contention of the learned Advocate for the Appellant is that the Order ought to be set aside not being based on any legally admissible evidence.

4. Learned Advocate for the Appellant/Government has also taken up the contention that no evidence has been produced by the Respondents showing how the lands acquired are comparable to the lands covered by the Awards on which reliance has been placed for determining the rate that would be applicable in respect of the acquired lands. A.W.1, Rama Redkar, the Attorney of the Respondents, who was managing the properties of the Respondents, has deposed as to the salient features of the properties acquired. He has stated the following facts: that the lands acquired are adjacent to each other; that the lands are at road level and there is a spring at a distance of about 1.5 Kms. of the acquired land which was being used for irrigating the acquired lands; that there were

three pukka houses in the said land; that the said lands consisting of seven survey numbers were at a distance ranging from 150 metres to 600 metres from Sanguem-Molcornem tarred road; that the Church is at a distance of 150 to 200 metres; that the School is at a distance of 1.5 Kms. It is a Marathi school; the Temple Paik Devasthan is at a distance of 2 Kms; the Hospital is at a distance of 3.5 to 4 Kms; Sanguem Market is also at a distance of 3.5 to 4 Kms; Mamlatdar Office, P.W.D., Irrigation Department, Court, Bank, etc. are at Sanguem. There are two Schools also at Sanguem. He has also deposed as to the number of trees and yield of the said trees on the land. Nothing was brought out in cross-examination adversely or materially affecting the value of the land as deposed to by the witness (A.W.1). In fact, in cross-examination, it has been established that water is available to the land throughout the year from the river close to the acquired land.

5. Be that as it may, the main challenge to the Award is the challenge thrown across the Bar for the first time that the Reference Court in passing the Award has relied upon the Awards in Land Acquisition Cases No.254/91, 257/91 and 253/91, which have been

produced by the Respondents across the Bar and which did not constitute legal evidence as they were not produced through the witness. However, the Appellants have not denied or challenged the correctness of the Awards produced in support of the Respondents' claim for enhanced compensation. In fact, the Appellant is a party to the said Awards and have not challenged the Awards in Appeal. Moreover the Awards are in respect of lands in the same village and covered under the same Notification as the lands in the present Award.

6. Under the Award in Land Acquisition Case No.254/91, the Court had enhanced the compensation to Rs.15/- per square metre. In the said Award, reliance had been placed on a number of sale deeds and the Court on the basis of the sale deeds produced therein, came to the conclusion that the rate of the land covered under Land Acquisition Case No.254/91 being similar to the lands in the sale deeds would work out to Rs.19/- per square metre. However, compensation of Rs.15/- per sq. metre was granted in the said case since the Applicant had restricted their claim to Rs.15/- per sq. metre. In fact, the Government Pleader himself had produced the Award in Land Acquisition

Case No.257/91 wherein the Court had granted Rs.20/- per square metre. It is noticed from the Award in the said Land Acquisition Case No.257/91 that there is reference to Land Acquisition Case No.253/91 covered under the same Notification wherein the Reference Court had awarded Rs 35/- per sq. metre. However, it was noticed that the in the said Land Acquisition Case No.253/91 wherein the rate of Rs.35/- per sq. metre was awarded included the value of trees and also took into consideration the fact that the land had frontage along the main road.

7. From the impugned Judgment and Award it is seen that the learned Reference Court has taken into consideration the similarity of the acquired lands to the lands covered under Land Acquisition Cases No.257/91 and 254/91 and also the fact that the land bearing Survey No.16/1 abuts the Sanguem-Molcornem road and the other plots being at a distance ranging from 150 to 250 metres from the said road and the rate of compensation awarded in Land Acquisition Cases No.254/91 and 257/91 and accordingly awarded compensation at the rate of Rs.20/- per square metre in respect of the acquired land, except Survey No.16/3 which was a tenanted land.

8. The basis adopted by the Reference Court in fixing the enhanced rate of compensation at Rs.20/- per sq. metre seems fair and reasonable and cannot be assailed on mere technicalities. In view of the fact that the impugned Award has been passed in the absence of legally admissible evidence, the normal Order would be to remand the matter back to the Reference Court for hearing the matter afresh after allowing the parties to produce necessary evidence. However, it must be borne in mind that the acquisition proceedings commenced in the year 1986. The amount awarded by the S.L.A.O. was paid to the Applicants and the enhanced compensation was also deposited in Court at the time of admission of the Appeal. However, the same has not been paid to the Applicants. It is also to be noted that the matter was by consent of the parties placed for settlement before the Lok Adalat. However, no settlement took place. No useful purpose would be served in remanding the matter back to the Reference Court for re-hearing as more time of the Court will be consumed and the parties would be indefinitely deprived of their legitimate dues. In view of the fact that the Order of the Reference Court enhancing the compensation to Rs.20/- per sq. metre has been based on awards pertaining to lands similarly

situated and comparable to the lands under acquisition and in view of the fact that the learned Government Pleader for the Appellant himself had before the Reference Court produced Awards in Land Acquisition Case No.257/91 wherein the amount awarded was Rs.20/- per sq. metre, it seems to me fair and reasonable to fix the market value of the land acquired at Rs.18/- per sq. metre.

9. Accordingly, I direct that the compensation calculated at Rs.18/- per sq. metre in respect of land admeasuring 6330 sq. metres be paid to the Respondents, owners of the land.

10. Accordingly, the Appeal is partly allowed and the impugned Order is modified as above. Appeal stands disposed of.

(A.S. AGUIAR)
JUDGE.

ac.