

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 44 OF 1997

State of Goa through:

1. The Deputy Collector
(LA) & Land Acquisition
Officer, Panaji.
2. The Executive Engineer,
W.D. II, P.W.D.
Panaji.

... Appellants

versus

Smt. Rucmabai Pandurang
Raikar, r/o Mestabhat,
Merces, Ilhas, Goa.

... Respondent

Mr. S. Vahidulla, Additional Government Advocate for
the Appellants.

Mr. M. K. Kambli, Advocate for the Respondent.

CORAM : P. V. HARDAS, J.

DATE : 30TH JANUARY, 2004.

ORAL JUDGMENT

The State being aggrieved by the Judgment
and Award of the District Judge, Panaji, dated 31st
July, 1995, in Land Acquisition Case No.75 of 1993,

enhancing the compensation payable to the Respondents from Rs.25/- per sq. meter granted by the Land Acquisition Officer to Rs.245/- per sq. meter for 102.50 sq. meters and Rs.61/- per sq. meter for the remaining 62.50 sq. meters, has filed the present First Appeal.

2. The facts in brief as are necessary for the decision of this First Appeal are stated hereunder:-

The Government issued a Notification under Section 4 of the Land Acquisition Act and the same was published in the Official Gazette dated 19th April, 1990. Section 4 Notification so published was in relation to the acquisition of a narrow strip of land from out of survey no.8/9, for the construction of road. By virtue of this Notification, an area of 165 sq. meters for the construction of the road was sought to be acquired. The dimension of the narrow strip of land sought to be acquired was 4 meters in width and 44 meters in length. Thus, the total area sought to be acquired was 165 sq. meters.

3. The Land Acquisition Officer by his Award dated 5th February, 1993, fixed the compensation at the rate of Rs.25/- per sq. meter. The Respondent

herein claimed Rs.500/- per sq. meter and on a reference under Section 18, the learned Reference Court enhanced the compensation as aforestated.

4. Admittedly, the area of 165 sq. meters was acquired from a larger area of survey no.8/9. The acquired area admeasured 4 x 41 meters and comprised of total 165 sq. meters. Admittedly, there was a cart track running the entire length of the acquired area. Initially, the cart track was 1 1/2 meters wide which was subsequently increased to 2 meters.

5. The learned Reference Court has placed reliance on the Sale Deed at Exh.AW1/D which is dated 18th March, 1985. The said Sale Deed was in relation to the sale of area of 1153 sq. meters and the rate of which it was sold was Rs.375/- per sq. meter. The learned Reference Court found that the area covered under the Sale Deed was in close vicinity to the area under acquisition and after certain deductions which were made for the acquired area not having a direct access and not having facilities like piped water, fixed the compensation at the rate of Rs.245/- per sq. meter for 102.50 sq. meters and for the cart track land was fixed at the rate of Rs.61/- per sq. meters for the balance 62.50 sq. meters.

6. Mr. S. Vahidulla, learned Additional Government Advocate appearing on behalf of the Appellants has urged before me that the learned Reference Court should not have placed implicit reliance at the sale instance at Exh.AW1/D. He submits that the land covered under the sale instance deferred materially from the acquired land. According to him, the land under the sale instance was a fully developed land having building potentials and in fact, the Sale Deed at Exh.AW1/D evidences a fully constructed building at the time of the execution of the Sale Deed. He thus, submits that the acquired land was a narrow track of land over which already a cart track was existing and the acquired land had thus no building potentials and the rate and market value as per the sale instance could not have been applied for the acquired land. Mr. Vahidulla, learned Additional Government Advocate appearing on behalf of the Appellants has placed strong reliance on a Judgment of the Apex Court in **Shaji KuriaKose and another v. Indian Oil Corporation Ltd. and others** reported in (2001) 7 SCC 650.

7. Mr. M. K. Kambli, learned Counsel appearing on behalf of the Respondent has by referring to the evidence of A.W.2, an expert, urged that the land covered under the sale instance and the acquired

land were similar and as such, the learned Reference Court was perfectly justified in coming to the conclusion that the acquired land had building potentials and was capable of being put to developed activity. He thus, submits that the Judgment and Award of the learned Reference Court needs no interference in the present Appeal.

8. The Apex Court in **Shaji KuriaKose and another v. Indian Oil Corporation and others**(supra) has held in para 3 of the Judgment as under:-

"It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the

acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land".

9. Undisputedly, the sale instance at Exh.AW1/D, dated 18th March, 1985, related to a larger

area of 1153 sq. meters. The rate in the said Sale Deed is Rs.375/- per sq. meter. However, according to me, implicit reliance ought to have been placed on the said Sale Deed at Exh.AW1/D. The land under the sale instance was a larger area as compared to the narrow strip of the acquired land. The land under the sale instance had building potentials and in fact, the Sale Deed recites that a multi-storeyed building had been constructed by the Society(purchaser) and the owners therein had been granted certain flats in lieu of consideration. Apart from this, the acquired land defers substantially and materially. The acquired land is a narrow strip of land i.e. 4 meters x 41 meters having a total area of 165 sq. meters. Admittedly, there was a cart track 2 meters wide running the entire length of the acquired land. It was not open to the learned Reference Court to have segregated the area of cart track from the total area of the acquired land in this case and award lesser amount for the cart track land and higher amount for the remaining land. The learned Reference Court ought to have considered whether the area of 165 sq. meters was capable of development i.e. whether the said acquired land had any building potentials. In view of the fact that a cart track was running through the length of the acquired land and as admitted by the

Respondent through his witness, A.W.1 who has admitted that the said cart track was being used by the public as a way for a long time. Thus, the acquired land would have absolutely no building potentials whatsoever. The acquired land was acquired for the purpose of construction of the road. It is no doubt true that in the survey no.8/9 there are houses and the acquired land has been carved out from out of the survey no.8/9 and interference that the narrow strip of land acquired by the Government had building potentials cannot be inferred. The learned Reference Court has not considered that on the date of issuing of the Notification under Section 4 of the Land Acquisition Act, the acquired land had absolutely no building potentials. The compensation which has been awarded to the Respondents is grossly disproportionate to the value of the acquired land, which according to me, has been rightly assessed by the Land Acquisition Officer at Rs.25/- per sq. meter. The reasonings given by the learned Reference Court in this behalf, which had been referred to above are unsustainable.

10. In the result, therefore, the Appeal is allowed. The impugned Judgment and Award of the learned Reference Court is hereby quashed and set aside and the Award of the Land Acquisition Officer is

restored. It is made clear that the Respondent would be entitled for interest on solatium. The Appeal is allowed with no order as to costs.

P. V. HARDAS, J.

RD.