

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 122 OF 1997.

1. Dy. Collector (Dev.) &
Land Acquisition Officer,
Panaji.

2. The Executive Engineer,
Works Division II, P.W.D.,
Panaji, Goa.

... Appellants/
Orig. Respondents.

VERSUS

Mr. Bonifacio do Rego,
resident of Carmichem Bhat,
P.O. Santa Cruz,
Merces, Ilhas, Goa.

... Respondent/
Orig. Applicant.

Mr. H.R. Bharne, Government Advocate for the Appellants.

Mr. E.P. Lobo, Advocate for the Respondent.

CORAM: **N.A. BRITTO, J.**

DATE OF RESERVING THE JUDGMENT: 24.03.2004.

DATE OF PRONOUNCING THE JUDGMENT: 31.03.2004

J U D G M E N T:

The State of Goa has filed the present appeal against the Judgment and Award dated 23.6.97 of the learned District Judge, Panaji in LAC No.76/93.

2. Briefly stated, by virtue of Notification issued under Section 4(1) of the Land Acquisition Act, 1894 and published in the Official Gazette dated 19.4.90 the Government acquired a strip of

land of a width of 4 metres and length of 27 metres admeasuring 108 sq.metres from Survey No.9/3 of Mercas village for the construction of Mestabhat Road at Mercas and awarded compensation to the respondent at Rs.25/- per sq.m. and being dissatisfied with the same, the respondent sought enhancement under Section 18 of the Act to the District Court, Panaji and the learned District Judge by his judgment/Award dated 23.6.97 enhanced the compensation to Rs.220/- per sq.m. with consequential statutory benefits.

3. The respondent as Applicant in the said Reference case and in support of the Reference had examined himself (A.W.1) and had produced a Sale Deed dated 28.3.90 of a plot of land admeasuring 363 sq.m. which was sold at the rate of Rs.275/- per sq.m. The respondent had also examined one Cletus Caldeira and had also produced an Award of the District Court in the case of Smt. Rucmbai Pandurang Raikar in LAC No.75/93 which pertained to the acquisition under the same Notification and for the construction of the same road.

4. The respondent had not examined either the buyer nor the seller or any other person connected

with the Sale Deed dated 28.3.90 - Exh.AW1/B and the learned District Judge by placing reliance on his award dated 31.7.95 in the said LAC No.75/93 enhanced the compensation payable to the respondent at Rs.220/-. It is to be noted that the respondent in his reference before the District Court had solely relied on the said Award of the learned District Judge in LAC No.75/93 - Exh.AW1/C.

5. However, by Judgment of this Court dated 30.1.2004 in First Appeal No.44/97, this Court has set aside the Judgment and Award of the learned District Judge in LAC No.75/93 and it is the submission of learned Government Advocate Shri Bharne that since the case of the respondent was decided based on the Award of the learned District Judge dated 31.7.95 which has now been set aside, this appeal deserves to succeed and on the same grounds the Judgment and Award of the learned District Judge dated 23.6.97 deserves to be set aside.

6. On the other hand, learned Advocate Shri Lobo, on behalf of the respondent, has submitted that the Award of the learned District Judge in LAC No.75/93 was based on sale instance of the property

admeasuring 1395 sq.m. which was sold at the rate of Rs.265/- per sq.m. and since now the law has been changed in that the law does not now require either the seller or buyer of a sale deed to be examined, this Court be pleased to assess the compensation payable to the respondent based on the said Sale Deed dated 28.3.1990 - Exh.AW1/B. Learned Advocate Shri Lobo has next submitted that the Sale Deed dated 28.3.90 was little prior to the Notification while the Notification was of April, 1990. Learned Advocate Shri Lobo has further submitted that the respondent's land was also a small property like the plot of land in Sale Deed dated 28.3.90 and both were of the same nature situated in a residential locality and although the property of the respondent had an access, the plot in the Sale Deed had no such access. Shri Lobo has submitted that there was only a footpath which was existing in the respondent's property and for that reason the respondent was awarded Rs.25/- per sq.m. while the other plot owners whose land was bifurcated because of the existence of a cart track wherein compensation at the rate of Rs.35/- per sq.m. was granted. Learned Advocate Shri Lobo has placed reliance on the cases of **Shaji Kuriakose and another v. Indian Oil Corpn. Ltd. and others**

reported in (2001) 7 S.C.C., 650 and **H.P. Housing Board v. Bharat S. Negi and others**, reported in (2004) 2 S.C.C., 184.

7. In reply it has been submitted by learned Advocate Shri Bharne that what was in existence in the property of the respondent was a cart track over which a road has now been constructed and which cart track is very much visible from the Award produced by the respondent in LAC No.75/93.

8. This Court in First Appeal No.44/97 arising from LAC No.75/93 by Judgment dated 30.1.2004 had observed that :-

" 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 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."

This Court also observed that:-

" 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. "

The Hon'ble Supreme Court in the case of **Shaji Kuriakose and another** (supra) has observed thus:-

" 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 (emphasis supplied). "

9. In the case of **H.P. Housing Board (supra)** the Hon'ble Supreme Court has observed that while computing market value, all proved instances of comparable sales need to be taken into consideration and that deduction of 33 1/3% can be made towards development cost while considering comparable sales of smaller lands.

10. In my opinion, none of the submissions of learned Advocate Shri Lobo can be accepted. AW.1 Herman the attorney of the respondent denied that there was a kacha road crossing through the respondent's property having a width of 1.5 metre but stated that it was only a footpath. He denied that there was a kacha road which was existing in the property. Similarly AW.2 in a different tone stated that there was a footpath which was not defined as path for people to pass, but there was no

road. However, respondent forgot that respondent had produced the award in LAC N.75/93 which property was at a distance of about 20 to 30 metres from the respondent's property and as already stated was acquired under the same Notification and for the same purpose. In the said Award dated 31.7.95 the learned Reference Court had stated that AW.2 had admitted that the said plot surveyed under No.8/9 included the track but according to him the width of the tract was only 1 metre but the said statement of AW.2 could not be admitted because AW.1 admitted it to be 1 1/2 metre width and AW.1 admitted it to be a cart track and it had to be at least 1 1/2 metre. The learned Reference Court had also concluded that the said cart track could not be put to any use by the Applicant/respondent in that case. The learned Reference Court had also referred to the award of the L.A.O. and had observed that it was stated therein that the land under acquisition consisted of a road, a coconut garden and nulla. It is therefore obvious that neither AW.1 Herman nor AW.2 Cletus could be believed when they stated that there was only a footpath passing through the property of the respondent and the very evidence produced by the respondent showed that there was existing through the property of the respondent the said cart track

which was used as a road. The applicant has not produced any plan either of his own property or of all the properties which were acquired by the same notification and one does not know how the said cart track was crossing the property of the respondent. If the said cart track passed through the property of the said Raikar in LAC No.75/93 it is safe to presume that the said cart track/road also passed through the property of the respondent and it is also safe to conclude that what has been acquired in this case is a cart track for the construction of a 'pucca' road at the very request of the respondent and other residents of the locality. There is no doubt that it is not necessary now that the buyer or the seller of a sale deed should be examined in order to prove the same, but the fact remains that the applicant/respondent has failed to prove by cogent and reliable evidence as to what was the size and nature of his own property and how the same could be compared with the property of the sale deed dated 28.3.90. If only such evidence was led by the respondent then the said sale deed dated 28.3.90 could be used as a guide for the purpose of fixing compensation payable to the respondent. Moreover, it is to be noted that the applicant/respondent's property had an encumbrance namely the said cart

track/road which has now been acquired for the purpose of construction of a 'pucca' road. An existing cart track/road could never be assessed as a property having building potential. In my opinion the award in Raikar's case (LAC No.75/93) having been set aside by this Court on which the case of the respondent was based in the reference case before the District Court, the present appeal certainly deserves to succeed and the Judgment/Award of the learned District Judge, Panaji dated 23.6.97 is liable to be set aside.

11. Consequently the appeal is allowed and the Judgment and Order dated 23.6.97 is hereby set aside. There will be no order as to costs.

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N. A. BRITTO, J.