

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**FIRST APPEAL NO. 325/2007.**  
**AND**  
**FIRST APPEAL NO. 326/2007.**

**FIRST APPEAL NO. 325/2007.**

The Director,  
 IPSHEM, O.N.G.C,  
 Betul, Quepem, Goa  
 (the above address is the  
 registered address of the  
 appellant for the purpose  
 of service)

.... Appellants.  
 (Original respondent No.2)

**vs.**

1. Dr. Rui Tito Vaz,  
 major, Medical Practitioner,  
 r/o Near the Church,  
 Assolna, Goa,  
 (since deceased through  
 legal representatives)
- 1.a. Smt. Kamala Tovar Dias  
 e Vaz,  
 widow,
- 1.b. Miss Svetlana Maria Vaz,  
 daughter, spinster,  
 major in age,
- 1.c. Miss Nafisa Fatima Maria  
 Vaz,  
 daughter, spinster,  
 major of age,

All residents of Assolna,  
 Near Church, Assolna,  
 Salcete, Goa.

... (Original applicant)

2. The Dy. Collector & S.D.O.  
Land acquisition Officer,  
Quepem, Goa. ... (Original respondent No. 1)

(The above address is the registered address of the respondents for the purpose of service) ... Respondents.

Mr. M. B. da Costa Senior Advocate with Mr. J. A. Lobo, Advocate for the Appellants.

Mr. A.F. Diniz, Advocate for Respondent No. 1.

Ms. Sapna Mordekar, Addl. Government Advocate for Respondent No. 2.

### **FIRST APPEAL NO. 326/2007.**

1. Dr. Rui Tito Vaz,  
since deceased through  
his legal representatives:

- a. Smt. Kamala Tovar Dias  
e Vaz,

- b. Miss Svetlana Maria Vaz,

- c. Miss Nafisa Fatima Maria  
Vaz,

All residents of Assolna,  
Near the Church, Assolna,  
Salcete, Goa.

.... Appellants.

Vs.

1. The Deputy Collector & S.D.O.  
Land acquisition Officer,  
Quepem, Goa

2. The Director,  
IPSHEM, O.N.G.C.,  
Betul, Quepem, Goa.

.... Respondents.

Mr. A.F. Diniz, Advocate for the Appellants.

Ms. Sapna Mordekar, Addl. Government Advocate for Respondent No. 1.

Mr. M. B. da Costa Senior Advocate with Mr. J. A. Lobo, Advocate for Respondent No. 2.

**Coram :- D. G. KARNIK**

**F. M. REIS, JJ.**

**Judgment Reserved on : 28.10.2010.**

**Judgment Pronounced on : 29.10.2010.**

**JUDGMENT : (Per F. M. Reis, J.)**

Both the above appeals were taken up for final hearing together as they challenge the same judgment and award dated 28.8.2007 passed by the learned Adhoc District Judge,-II, FTC-II, South Goa, Margao in Land Acquisition Case No. 57/2005.

2. The parties shall be referred in the manner they so appeared in the cause title of the impugned judgment.

3. The appellant in First Appeal No. 325/2007 is the respondent No. 2 in the impugned judgment while the appellants in First Appeal No. 326/2007 are the applicants in the impugned

judgment.

4. By notification bearing No. 22/174/89-RD dated 13.12.1989 and published in the Official Gazette dated 4.1.1990 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), two portions of the property belonging to the appellants admeasuring an area of 9,800 sq. metres from property bearing survey No. 69/1 and an area of 28,700 sq. metres from property bearing survey no. 88/1 situated in village Quittal, Quepem taluka was intended to be acquired by the Government for the benefit of the respondent No. 2 for setting up of an Institute of Safety and Environment Management for Petroleum Industries of India. After complying with the formalities under the said Act, by an award dated 17.6.1992, the Land Acquisition Officer (LAO for short) offered a sum of Rs. 5/- per sq. metre for the land classified as coconut/bharad/cashew and Rs. 2/- per sq. metre for the land classified as rice.

5. Being dissatisfied with the said amount, the appellants sought a reference under section 18 of the said Act for enhancement of compensation and claimed an amount of Rs. 75/- per sq. metre for the land acquired. The Reference Court

by judgment and award dated 28.8.2007 partly allowed the said reference and fixed the market value of the acquired land at the rate of Rs. 10.20 per sq. metres.

6. Aggrieved by the said judgment the appellants as well as the respondent No. 2 have preferred the present appeals.

7. The learned Senior Counsel, Mr. M. B. da Costa appearing for the respondent No. 2 has assailed into the impugned judgment and submitted that the Reference Court has totally misdirected itself in fixing the market value of the acquired land. He further submitted that the sale instance produce by the appellants are not comparable to the land acquired. He further submitted that the land acquired had no potentiality for being used for construction purpose as it is located in a remote area. He further submitted that the Reference Court has erred in appreciating the evidence on record and to come to the conclusion that the appellants were entitled for enhancement of compensation. He further submitted that the appellants failed to adduce any evidence to substantiate that the compensation offered by the LAO was inadequate.

8. Per Contra learned Counsel Mr. A. F. Diniz appearing

for the appellants submitted that the Reference Court has totally erred in fixing the market value of the acquired land at Rs. 10.20 per sq. metre. He further pointed out that the land acquired is located at a strategic location and there was high demand for the land in the vicinity for a resort etc. He further submitted that the deductions effected by the Reference Court are exorbitant and land acquired should be valued at a minimum rate of Rs. 75 per sq. metre. He has brought to our notice that the Division Bench of this Court in ***First Appeal No. 175/2004*** has awarded compensation at the rate of Rs. 40/- per sq. metre in the case of ***Director of Institute of Petroleum safety and environment management Vs. Iona Loyola*** in respect of land which was the subject matter of the same notification. He as such submitted that the appellants should be awarded atleast the compensation at the rate fixed by the Division Bench.

9. Learned Senior Counsel for the respondent No.2 has submitted that the land acquired in the present case is not comparable to the land which is the subject matter of the land in First Appeal No. 175/2004. He further submitted that the land acquired was of a inferior quality and was located at a further distance than the land which was the subject matter of the said appeal. He also submitted that the respondent No. 2 would

adduce sufficient evidence to substantiate their contention that there are further deductions to be effected on account of demerits with regard to the acquired land and the land which is the subject matter of the appeal.

10. Having heard the learned Counsel and on perusal of the record the following point arise for our determination in the present Appeals.

**POINT FOR DETERMINATION**

1. Whether the Reference Court was justified to fix the market value of the acquired land at the rate of Rs. 10.20 per sq. metre?

11. On perusal of the said judgment passed by the Division Bench of this Court in First Appeal No. 175/2004, we find that the acquisition therein was in respect of portion of the property surveyed under No. 79/1 admeasuring an area of 92,000 sq. metres situated at village Quittal which was sought to be acquired pursuant to the same notification which was published in the Official Gazette on 4.1.1990 for the same

purpose. The Division Bench of this Court after evaluating the evidence on record has fixed the market value of the acquired land in the said appeal at the rate of Rs. 40/- per sq. metre. There is no dispute that the land which was acquired in the present case is pursuant to the same notification and for the same purpose. As such, we find that the price fixed by this Court in First Appeal No. 175/2004 can form the basis for the purpose of fixing the market value of the land acquired in the present case.

12. The learned Senior Counsel Mr. M. B. da Costa does not dispute that the price fixed by this Court in First Appeal No. 175/2004 can form the basis for determining the market value of the land acquired subject to deductions on account of dissimilarities. Considering the contentions of the learned Senior Counsel appearing for the respondent No. 2 that there are dissimilarities which are strongly disputed by learned Counsel Mr. A. F. Diniz appearing for the appellants, we find that in the interest of justice, the respondent No. 2 should be given an opportunity to lead evidence to substantiate their contention about the said aspect as to whether both lands are comparable and/or to what extent they are dissimilar or not before the Reference Court. The Reference Court will have to decide the



reference afresh after considering the evidence adduced on the same aspect by the respondent No. 2. Needless to say that the appellants are also entitled to adduce evidence in rebuttal. The point for determination is answered accordingly.

13. In view of the above, we pass the following:

**ORDER**

- (i) Both the appeals are partly allowed.
- (ii) The judgment and award dated 28.8.2007 is quashed and set aside.
- (iii) The reference in LAC No. 57/2005 is restored to the file of the Reference Court.
- (iv) The Reference Court shall proceed to decide the reference afresh after giving an opportunity to both the parties to lead evidence, in the light of the observations made herein above, in accordance with law.
- (v) All contentions raised by both the parties on the aspect of comparability to both lands acquired are left open.

14. Both the appeals are disposed of accordingly with not order as to costs.

15. The parties are directed to appear before the Reference Court on 6.12.2010 at 10.00a.m.

**D. G. KARNIK, J**

**F. M. REIS, J.**

**MF/-**