

**V.M. Salgaocar and Brother Pvt. Ltd., with Registered Office at Salgaocar House Off F.L. Gomes Road, Vasco-Da-Gama, Goa Vs The Deputy Collector and LAO, for the State of Goa, Collectorate of South Goa, Margao, Goa
 Deputy Collector (L.A.) Collectorate of South Goa, Margao-Goa Vs V.M. Salgaokar and Brother Pvt. Ltd. Vasco-da-Gama, Goa, Domnic Dias C/o. Hotel La Flor Erasmo Carvalho Street, Margao, Richard Dias C/o Hotel La Flor Erasmo Carvalho Street, Margao and Jacinta F.P. Camara B-9, Shalimar Apartments, Pajifond, Margao- Goa**

Court: Bombay High Court (Goa Bench)

Date of Decision: Dec. 18, 2012

Acts Referred: Land Acquisition Act, 1894 â€” Section 18, 4, 4(1)

Citation: (2013) 1 ABR 737 : (2013) 2 ALLMR 893 : (2013) 2 BomCR 668 : (2013) 3 MhLj 447

Hon'ble Judges: U.V. Bakre, J; A.P. Lavande, J

Bench: Division Bench

Advocate: A.F. Diniz in First Appeal No. 208 of 2007 and Mr. M. Salkar, Government in First Appeal No. 228 of 2008, for the Appellant; M. Salkar, Government Advocate in First Appeal No. 208 of 2007 and Mr. A.F. Diniz, Advocate for the Respondent No. 1 in First Appeal No. 228 of 2008, for the Respondent

Judgement

U.V. Bakre, J.

This common judgment shall dispose of both the above appeals as they are filed against the judgment and award dated

30/04/2007 passed by the learned Adhoc District Judge (2), Fast Track Court II, South Goa, Margao (Reference Court, for short) in Land

Acquisition Case No. 52 of 2004. The parties shall hereinafter be referred to in the manner in which they appear in the cause title of the Land

Acquisition Case No. 52 of 2004.

2. Facts giving rise to both the appeals, in short, are as follows:

Vide notification published u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), in the Official Gazette dated

02/03/2000, land at Margao was acquired for construction of proposed ring road from Damodar College to Railway Gate on NH-17. This

included land admeasuring 320 square meters from Chalta no. 219 of P.T. sheet no. 237; 250 square meters from Chalta no. 220 (part) of P.T.

Sheet no. 237; 120 square meters from Chalta no. 229 of PT Sheet no. 237; 75 square meters from Chalta no. 230 (part) of P.T. sheet no. 237;

483 square meters from Chalta no. 96 of P.T. sheet no. 238, and 370 square meters from chalta no. 382 of P.T. Sheet no. 238 (total area 1618

square meters), in which the applicant was interested as owner thereof. By award dated 06/06/2003, the Land Acquisition Officer (LAO, for

short) offered compensation at the rate of Rs. 71/- per square meter for the acquired land and separate compensation was awarded for structures

therein. Not being satisfied with the offer made by the LAO, the applicant filed application u/s 18 of the Act before the LAO and this gave rise to

the said Land Acquisition Case No. 52 of 2004.

3. In the said Reference Application, the applicant claimed to be the absolute owner in possession of the acquired land totally admeasuring 1618

square meters, by virtue of deed of sale dated 01/11/1963. According, to the applicant, the said land is situated in a commercial area of Margao

city, right in the heart of the city in the vicinity of hotels, market, schools, banks, churches and within 200 meters from various Government offices

i.e. the Collectorate and Margao Municipality Counsel and at a distance of about 250 meters from petrol pumps and the bus stand. The applicant

further stated that the said land is directly accessible by an existing motorable road. It was alleged that the said land is bounded on the west by

settlement area, on the south by railway track, on the east by market area and on the north by remaining land of the applicant beyond which lies the

commercial complexes. The applicant claimed the market value @ Rs. 5000/- per square meter for the acquired land and also claimed the amount

of Rs. 6,00,000/- to be the value of structures in Chalta no. 229 of PT Sheet no. 237; Rs. 3,75,000/- as value of structures situated in Chalta no.

230 of PT sheet no. 237; Rs. 15,975/- towards value of boundary wall having length of 71 meters and Rs. 15,000/- as value of two mango trees.

4. Accordingly, issues came to be framed by the learned Reference Court. The applicant examined its attorney namely Samir Audi as AW. 1 and a

Civil Engineer namely Pascoal Barbosa Naronha as AW. 2 who prepared the valuation report which is Exhibit 47. The respondent no. 1 examined

a Junior Engineer of Works Division VI of PWD namely Joaquim Fernandes as RW. 1.

5. Upon analysis of the entire evidence on record the learned Reference Court found that the sale deed dated 03/02/1999 produced by the

applicant was most comparable instance for arriving at the market value of the acquired land by making necessary deductions in view of minus

factors of the acquired land. On the ground that the acquired land is a strip of land which forms the northern boundary of the railway property and

as the railway lines/tracks are running parallel to it, the Reference Court held that there was no scope for development of the acquired land unless

permission is taken from the Railway Authorities and therefore she deducted 80% from price of the plot of said sale deed. Further, on the ground

that the acquired land was a strip of land as compared to the sale deed plot which was purchased by M/s. Grace Intensive Cardiac Care Centre

for construction of super specialty hospital, deduction of 40% was made, from the remainder. Since, the said sale deed was dated 3/2/1999 and

the date of publication of notification u/s 4(1) of the Act was 2/3/2000, the learned Reference Court gave 10% increase per annum on

compounding basis and ultimately fixed the market value of the acquired land at Rs. 262/- per square meter. Insofar as the value of the structures

and trees are concerned, the learned Reference Court held that the applicant had not made out a case for enhancement of the market value given

by the Land Acquisition Officer towards the said structures and the trees. Thus, the reference was partly allowed. The market value of the

acquired land was fixed at Rs. 262/- per square meter. All statutory benefits under the Act were awarded and costs of reference were fixed at Rs.

1,000/- to be paid by the respondents.

6. The applicant has filed the aforesaid First Appeal no. 208 of 2007 claiming enhancement of compensation to Rs. 5,000/- per square meter for

the acquired land and also the value of the structures as originally claimed in the reference application. The respondent no. 1 has filed the above

First Appeal no. 228 of 2008 praying therein to quash and set aside the judgment and award dated 30/04/2007.

7. Mr. A.F. Diniz, learned Counsel appearing on behalf of the applicant submitted that the acquired land was part of larger property admeasuring

2630 square meters belonging to the applicant. Relying upon the judgment of the Apex Court in the case of State of Goa and Another Vs. Gopal

Baburao Gaudo and Others, , the learned Counsel submitted that the deduction of 40% made by the learned Reference Court in the price of the

sale deed was unwarranted. The learned Counsel further submitted that there was absolutely no reason for deducting 80% from the price of the

sale deed dated 03/02/1999 on the ground that permission from Railway Authorities would be required for development. He submitted that there

is nothing on record to prove that there is any ban on construction by the side of railway property. He submitted that the acquired land falls in

Commercial Zone C-I and therefore the same was more valuable.

8. The learned Counsel appearing on behalf of the applicant further submitted that in respect of the similar land acquired under the notification

published u/s 4(1) of the Act in Official Gazette dated 17/9/1998, and situated in the close vicinity of the acquired land, the Reference Court, by

judgment dated 31/8/2005, in Land Acquisition Case No. 20/2002, had awarded compensation @ Rs. 747/- per square meter to land measuring

639 square meters from chalta no. 38 of P.T. Sheet no. 206 of Margao City. He further contended that in First Appeal No. 199 of 2006, filed

against the judgment and award dated 31/8/2005, passed by the District Court in a reference u/s 18 of the Act, relating to the land measuring

4105 square meters from the same chalta no. 38 of P.T. Sheet No. 206 of Margao City, this Court reduced the compensation of Rs. 710/- per

square meter awarded by the District court to Rs. 639/- per square meter. The learned Counsel argued that the applicant need not construct any

residential building in the acquired land and that the applicant could have built office buildings. Relying upon the judgment of the Apex Court in the

case of ""General Manager, Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel and another"" [(2008) 14 SCC 745], the

learned counsel submitted that the reference court has committed an error in giving increase of only 10% per annum, instead of 15% per annum, to

the price of the sale deed dated 03/02/1999 to arrive at the market value as on 02/03/2000. He contended that the compensation awarded by the

learned Reference Court is too less without any basis and the same requires to be reasonably enhanced.

9. Per Contra, Mr. Manish Salkar, the learned Government Advocate appearing on behalf of the respondent no. 1 submitted that as per the

evidence on record it is not established that the acquired land falls in C-I Zone and in fact it falls in Road Zone due to which the acquired land does

not have much value, as no construction can be done therein. According to the learned Government Advocate, apart from the proximity, no other

similarity between the sale deed plot and the acquired land was shown by the applicant and hence the sale deed dated 3/2/1999 could not have

been considered. In the alternative, he submitted that since the acquired land was a boundary of the railway property, the deduction of 80% made

by the learned Reference Court in the price of the said sale deed plot was appropriate. He further contended that the acquired land was a strip of

land having old structures and hence further deduction of 40% was also justified. He submitted that the land which is subject matter of First Appeal

No. 199 of 2006 is in the heart of Margao city and is not comparable with the acquired land. He, therefore, submitted that there was no evidence

produced by the applicant to prove that the market value of the acquired land was more than what was awarded by the LAO. He therefore urged

that the appeal filed by the applicant be rejected and the appeal filed by the respondent be allowed.

10. We have carefully perused the oral as well as documentary evidence produced by both the parties and we have also considered the judgments

relied upon on behalf of the applicant.

11. Insofar as the claim of compensation for structures and trees is concerned, the learned Counsel appearing for the Applicant submitted that the

Applicant would not press for the same. Even otherwise, a perusal of the evidence on record reveals that the same is not sufficient to consider the

said claims. The Reference Court has rightly rejected those claims by giving cogent reasons, thereby leaving no scope for interference.

12. The limited question that, therefore, arises for determination is as to what was the true market value of the acquired land on the date of

publication of notification u/s 4 of the Act.

13. The evidence of AW. 1, the constituted attorney of the Applicant, reveals that the acquired land is part of a larger property measuring 2630

square meters and that there are hotels, markets, banks, schools, colleges, churches, Government offices like Collectorate, Margao Municipal

Council, petrol pumps, etc. existing in the vicinity of the acquired land from the time of acquisition and there was facility of electricity and water

supply in the property of the Applicant. The acquired land was plain and flat and was accessible by motorable road even at the time of acquisition.

Hotel La Flor is situated upon the land forming the eastern boundary of the survey holding no. 220 of P.T. Sheet No. 237. Thus, the acquired land

was land having all major amenities and facilities nearby.

14. AW. 1 had produced on record the judgment and award dated 31/8/2005 passed by the District Court in Land Acquisition Case No.

20/2002 as Exhibit 50. He stated that the acquired land which was the subject matter of the said LAC No. 20/2002 is at a distance of about 650

to 700 meters from the acquired land and that the nature of the land pertaining to LAC no. 20/2002 is similar to and having same amenities as the

acquired land. Mere denials have been put to AW. 1 in respect of the above statements made by him. The acquired land of the said case was out

of chalta no. 38 of P.T. Sheet No. 206 of Margao City and had an area of 639 square meters. It was acquired for construction and B/T of link

road from Gaylin to Ana Fonte spring. The notification u/s 4(1) of the Act was published in the Official Gazette dated 17/9/1998. The LAO had

offered Rs. 71/- per square meter as compensation and the District Court enhanced the same to Rs. 747/- per square meter. The said Judgment

and Award in Land Acquisition Case No. 20/2002 was, however, not considered by the Reference Court since the same was challenged before

this Court and this Court had stayed its execution.

15. The learned Counsel on behalf of the applicant has produced before us a copy of the judgment dated 23/06/2010 passed by the learned

Division Bench of this Court in First Appeal No. 199 of 2006 which was filed against the judgment and award dated 31/08/2005 passed by the

District Court in a reference u/s 18 of the Act, made at the instance of the applicants of L.A.C. No. 20/2002. The said acquisition related to land

bearing Chalta no. 38 of P.T. Sheet no. 206 of Margao city and the area of the acquired land was 4105 square meters. The notification u/s 4(1) of

the Act was published in the official gazette dated 19/03/1998. The LAO had offered the rate of Rs. 71/- per square meter and the District Court

had awarded the market rate of Rs. 710/- per square meter. The learned Division Bench of this Court in the said First Appeal No. 199 of 2006

found that there was a negative factor in so far as the said acquired land is concerned and the same was that the land which was subject matter of

the sale deed Exhibit 18 relied upon in that case was in level with the Padre Miranda road whereas the acquired land was below the level of the

said road by five meters. Because of the said negative factor the market value fixed by the Reference Court at Rs. 710/- per square meter was

reduced by 10% and was fixed at Rs. 639/- per square meter. As contended by the learned Counsel for the applicant, the said rate of Rs. 639/-

fixed by the learned Division Bench of this Court was as on 19/03/1998 whereas the relevant date for the acquired land of the present case is

2/3/2000 which means that there is a gap of two years. Beside the above, as far as the acquired land of the present case is concerned it is in level

of the road and the same is not below the level of the road due to which the question of reduction of market value by 10% does not arise. The

learned Division Bench relied upon the case of "ONGC Ltd. V/s Rameshbhai Jivanbhai Patel" [(2008) 14 SCC 745], wherein the Apex Court

noted the fact that in nineties, there was increase in the market value in Urban/Semi Urban areas by 10% to 15% per annum and held that there

was no fault with escalation at the rate of 15% granted by the reference Court. By increasing the said market value of Rs. 710/- awarded by the

reference Court in the said reference case, by 15% per annum on compounding basis, on account of two year's gap, the same becomes Rs. 939/-

per square meter. It was contended by learned Counsel for the applicant that since the notification u/s 4(1) of the Act in the said reference case,

which was subject matter of challenge in the First Appeal No 199/2006 was published on 19/3/1998 whereas that in L.A.C. No. 20/2002 was

published on 17/9/1998, the party in those cases could not rely upon the sale deed dated 03/02/1999 which has been relied upon in the present

case. He therefore contended that the market value of the acquired land, by placing reliance upon the sale deed dated 03/02/1999, is bound to be

more than Rs. 939/- per square meter. There is some substance in the above submission of the learned Counsel for the Applicant. However, it has

to be kept in mind that the acquired land of the present case is by the side of Railway property, which is not the case with the lands which were

subject matter of the above cases.

16. The sale deed dated 15/3/1999 (Exhibit 36), relied upon by the Applicant, has been rightly discarded by the Reference Court because the

evidence on record reveals that the plot of this sale deed contained R.C.C. super structure meant for the offices of the vendors. The next sale deed

dated 12/2/2001 (Exhibit 37), relied upon by the Applicant has not been considered by the Reference Court because the same is a post-

notification sale transaction. Relying upon the judgment of the Apex Court in the case of Karan Singh and others etc. Vs. Union of India, , since

there was no evidence on record to show that the price of the land remained static and there was no upward rise in the price of the land during the

period of issue of notification u/s 4 of the Act and the transaction of the said sale deed, Exhibit 37, the learned Reference Court held that the said

sale transaction cannot be taken into consideration. No fault can be found with the above finding of the Reference Court. Insofar as the valuation

report prepared by AW. 2, Mr. Pascoal Noronha, a Civil Engineer, is concerned, though, AW. 2 says that he inspected the acquired land on

13/3/2001, for the purpose of estimating the market value as on 26/3/2000, however, the valuation report is dated 11/02/2005, which is about five

years after the date of publication of notification u/s 4(1) of the Act and there is no explanation for such long delay in preparing the report. The

estimate made by AW. 2 is based on the assumption that the acquired land falls in commercial C-1 Zone. But there is no cogent evidence to

establish that the acquired land falls under that Zone. It does not appear that AW. 2 has taken into consideration that the acquired land was very

close to the railway tracks. The valuation report is also therefore rightly not considered by the Reference Court.

17. The last piece of evidence produced by the Applicant is the sale deed dated 03/02/1999 which is Exhibit 35. This sale transaction has been

considered by the learned Reference Court. It pertains to a plot measuring 1012 square meters from chalta no. 30 of P.T. Sheet No. 206 of City

Survey, Margao and it was sold for a price of Rs. 20,00,000/- i.e. at the rate of Rs. 1976/- per square meter. AW. 1 has stated that this sale deed

plot lies at a distance of about 770 meters from the acquired land and that the same is comparable to the acquired land being similar in nature and

situated in the vicinity of the acquired land and having all essential amenities and facilities similar to that of the Applicant's property. AW. 2 has also

confirmed that this sale deed plot is similar to and comparable with the acquired land. In our view, the learned Reference Court has rightly selected

this sale deed for determination of the market value of the acquired land.

18. In the Case of ""Gopal Baburao Gaudo and others"" (supra), the acquired land measuring 2715 square meters, was a narrow strip which fell

within the 40 meters margin from the centre of the highway where constructions were prohibited. Therefore it was contended that the acquired land

could not be used for construction and that the land had to be considered as not having any development potential. However, it was found that the

acquired land was a part of a bigger property. The Apex Court held that a long strip of land measuring more than two-third 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, upto a depth of 40 meters from the centre of the Highway. It

was held that all that was required to create or realize 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. The Apex Court held that the

contention that the 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 and, or other adjoining lands of

the same extent, but having more depth (so as to extend beyond the 40 meters margin) as having potential for development, is illogical and cannot

be accepted. It was further held that the determination of market value of the acquired land with reference to the value of comparable land cannot

be faulted. In the present case, the acquired land measures 1618 square meters but the same is a part of a larger property measuring 2630 square

meters. There were structures already existing in the acquired land as well as in the unacquired land. In such circumstances, the learned Reference

Court, in our considered opinion, has wrongly made deduction of 40% on the ground that acquired land was a strip of land. No deduction at all is

required to be made on such ground.

19. The sale deed dated 03/02/1999 is one year prior to the date of publication of notification u/s 4(1) of the Act. On this ground, the learned

Reference Court has given only 10% increase per annum, on compounding basis. In First Appeal No. 199/2006, relying upon the case of ""ONGC

Ltd"" (supra) and by taking into consideration the location of the acquired land, the learned Division Bench of this court has held that the escalation

given at the rate of 15% per annum is not wrong. Therefore, in our view the applicant is entitled to escalation at the same rate of 15% per annum.

By increasing the price of Rs. 1976/- by 15%, the same becomes Rs. 2272/-.

20. Upon perusal of the entire evidence on record it can be said that the applicant has not proved that the acquired land lies in commercial zone C-

I. However, at the same time it can also be said that the respondent no. 1 has failed to prove that the same falls in road zone. But, it is a fact duly

proved that the distance between the compound wall of the property of the applicant on the south to the railway property is only 12 - 15 meters

and in fact it is also clear that the acquired land forms the northern boundary of the railway property and the railway lines are running parallel to the

acquired land. However, the learned Reference Court has not cited any provision of law or any rule which says that in such circumstances no

development or no construction can be made on such land unless permission is taken from the railway authorities. The learned Government

Advocate, in the present appeal, has also not brought to our notice any provision of law or rule which requires permission from the railway

authorities, in such case. Be that as it may, since the acquired land forms the boundary of the railway property, it can certainly be said that a willing

purchaser would hesitate to buy such land since there is bound to be smoke and noise pollution as well as disturbance on account of railways

passing by the said tracks. However, in our considered opinion, the deduction of 80% made by the learned Reference Court from the purchase

price of the sale deed dated 03/02/1999 is much on higher side. We are of the view that 50% deduction on account of the said negative factor

would be reasonable and appropriate. That brings down the price of Rs. 2272/- to Rs. 1136/-.

21. The plot of the sale deed dated 03/02/1999 was purchased by M/s. Grace Intensive Cardiac Care Centre and the vendors already had

subsisting right to develop the access road to the said land. The said land fell in S-I Zone meant for settlement purposes and it is bounded towards

west by the public road namely Padre Miranda road. Admittedly, hospital by name Grace Cardiac Hospital has been built on this plot and

surrounding this hospital there were already existing multi-storied buildings with apartments and also bungalows. Therefore, the said plot of the sale

deed dated 03/02/1999 was lying in a prime area of Margao city as compared to the acquired land which was at a distance of about 770 meters

from the plot of the said sale deed. Therefore, on this count also some deduction is bound to be made and in our considered view a further

deduction of 30% would be reasonable. By deducting the price of Rs. 1136/- per square meter further by 30%, the same comes down to Rs.

796/- per square meter. We are of the view that Rs. 796/- per square meter is just and reasonable market value of the acquired land. To that

extent the impugned judgment and award requires modification. In the result, we pass the following:

ORDER

(a) First Appeal No. 228 of 2008 is dismissed.

(b) First Appeal No. 208 of 2007 is partly allowed.

(c) The impugned judgment and award dated 30/04/2007 stands modified.

(d) The market rate of the acquired land is fixed at Rs. 796/- per square meter. Rest of the operative part of the impugned judgment and award is

maintained.

(f) Both the appeals stand disposed of accordingly, with no order as to costs.