

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.10598/2009

STATE OF GOA & ANR.

... PETITIONERS

- VS. -

GOPAL BABURAO GAUDO & ORS.

... RESPONDENTS

O R D E R

Acquisition proceedings were initiated in regard to several lands including Survey No. 85 of Curti Village belonging to the respondents under preliminary notification dated 14.2.1991 for construction of Panda By-pass road. The Land Acquisition Officer awarded compensation at the rate of Rs.7/- per sq.m. The Reference Court increased the compensation to Rs. 154/- per sq.m. The High Court did not disburse the amount awarded by the Reference Court, as it found that in an appeal arising from the award in LAC No. 48/1995 relating to a comparable land compensation at a higher rate had been awarded at the rate of Rs.200/- per

sq.m. Leave is sought to challenge the said judgment of the High Court dismissing the appeal of the petitioner.

2. The petitioner alleges that the acquired land measuring 2715 sq. meters, was a narrow strip which fell within the 40 meters margin from the centre of the highway where constructions were prohibited. It is contended that as the acquired land could not be used for construction, the land had to be considered as not having any development potential; and that therefore it could not be compared with the land (which was the subject matter of LAC No. 48/1995) for which compensation had been determined having regard to its potential for development. It was also contended that being a narrow strip it was also not of much use even for agriculture purposes.

3. 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. 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 contention that a 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, 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.

4. We may demonstrate the absurdity of such a contention with reference to an illustration. Let us take the example of a residential plot of land measuring 60' X 100'. Let us assume that the Municipal Bye-laws require a front (road side) set-back of 20' for construction of houses in a plot of that size. Therefore, the owner would leave a twenty feet wide front strip in the said plot free of any construction while putting up the construction in the plot. Obviously, he cannot thereafter construct in that front strip. Let us further assume that the front strip is

acquired for road widening. Can the acquiring authority deny compensation to that strip on the ground that the said 20' strip acquired for road widening could not in any event be used for any construction purpose and therefore, was not of any value? Obviously not.

5. Therefore, determination of market value of the acquired land with reference to the value of comparable land cannot be faulted.

6. Another argument put forth by the petitioners is that if the statutory benefits like solatium under section 23(2) and additional amount under section 23(1A) of Land Acquisition Act, 1894 ('Act' for short), and interest are added to the compensation awarded, the compensation would bloat up having severe financial implications, and therefore, while determining compensation, the extent of statutory benefits should be taken note of or kept in view. There is absolutely no merit in the said contention. It is well-settled that the solatium, additional amount and interest have no bearing on the determination of the market value under first clause of section 23(1) of the Act. The reason for grant of the additional statutory benefits are clearly different. The additional benefit under section

23(1A) is to mitigate the hardship to the owner on account of deprivation of enjoyment of the land because of the delay in making the award and offering payment. The solatium under section 23(2) is in consideration of the compulsory nature of acquisition. Interest under section 28 of the Act is paid for delay in paying the compensation from the date on which possession is taken. They are distinct from the determination of market value. The fact that the landowner would also be entitled to statutory benefits cannot be taken into account, when determining the market value of the acquired land for purpose of compensation.

7. We find that the High Court has rightly decided the matter with reference to the facts of the case. The judgment does not call for interference. The Special leave petition is therefore dismissed as having no merit.

.....J.
(R V RAVEENDRAN)

.....J.
(B SUDERSHAN REDDY)

New Delhi;
September 14, 2009