
(2005) 04 BOM CK 0103
In the Bombay High Court
Case No : First Appeal No. 3 of 2002

Benjamin Pereira

APPELLANT

Vs

comunidade of Colvale

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2010) 6 BomCR 218 : (2005) 5 BomCR 271

Hon'ble Judges : Lavande A.P., J; Britto N.A., J

Bench : Division Bench

Advocate : R. Satardekar, for the Appellant; S.S. Kantak, for the Respondent

Final Decision : Allowed

Judgement

Britto N.A., J.—Heard Shri Satardekar on behalf of the appellant and Shri Kantak on behalf of the respondent.

2. By Notification dated 16-8-1994, issued u/s 4(1) of the Land Acquisition Act, 1894, published on Gazette dated 16-8-1994, land was acquired for the purpose of setting up of an Industrial Estate at Colvale and, in the said acquisition, an area of 1,09,090 square metres and 525 square metres were acquired from Survey Nos. 220/1 and 218/3 respectively. There was a dispute as regards payment of the said compensation between the appellant and the respondent which was referred to the learned District Judge, Panaji. The said dispute arose on account of the claim of tenancy put forward by the appellant. By Award dated 30-4-2001, in LAC No. 111/95, the learned Additional District Judge has ordered the entire compensation in respect of Survey No. 218/3 to be paid to the comunidade while the entire compensation in respect of Survey No. 220/1 to be paid to the appellant. This appeal has been filed by the appellant against that part of the award by which the compensation in respect of Survey No. 218/3 has been ordered to be paid to the comunidade.

3. The contention of the appellant who claims to be a tenant of the comunidade

is that since the claim of tenancy put forward by the appellant was disputed, the reference could not have been decided by the learned Additional District Judge without deciding the issue of tenancy. Shri Kantak, the learned Advocate of the respondent fairly concedes that in the light of plea taken by the appellant that he was a tenant in respect of Survey No. 218/3, the plea of tenancy ought to have been referred to the Mamlatdar and depending upon the decision of the Mamlatdar, the reference ought to have been decided.

4. In the light of the above, the appeal deserves to succeed and the impugned judgment/Award dated 30-4-2001, to the extent that it directs the payment of compensation to the comunidade in respect of the area acquired from Survey No. 218/3 deserves to be set aside. The learned Reference Court (Addl. District Judge) is, therefore, hereby directed to make a reference to the Mamlatdar whether the appellant is a tenant of the comunidade in respect of Survey No. 218/3 of Colvale, belonging to the respondent and only after the decision of the Mamlatdar, dispose of the reference in accordance with law.