

(2010) 10 BOM CK 0034
In the Bombay High Court
Case No : First Appeal No. 55 of 2007

Comunidade of Curca, through their attorney Mr. Antonio
Manuel Elizabeth Da Costa and through the Administrator of
Comunidade

APPELLANT

Vs

Deputy Collector (Rev) Land Acquisition Officer and Inspector
General of Prisons

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 58, 58(1), 7
Land Acquisition Act, 1894 — Section 11, 18, 30, 4

Citation : (2010) 10 BOM CK 0034

Hon'ble Judges : F.M. Reis, J;D.G. Karnik, J

Bench : Division Bench

Advocate : A.R. Kantak, for the Appellant; S. Vahidulla, Government Advocate,
for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—The above appeal challenges the judgment and award dated 30th November, 2006 passed by the learned Additional District Judge at Panaji in Land Acquisition Case No. 35/2003. The land belonging to the Appellant came to be acquired pursuant to a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) on 23rd November, 2000 published in the Official Gazette on 11th January, 2001 for the construction of a new modern central jail for the State of Goa in village of Curca in Tiswadi Taluka. The land belonging to the Appellant sought to be acquired was admeasuring an area of 92,200 square metres from the property surveyed under survey No. 48/2. By an award u/s 11 of the said Act the Acquisition Officer offered a compensation for the land acquired at the rate of Rs. 37/-per square metre, besides a sum of Rs. 56,386/-towards the value of the trees existing therein.

2. Being dissatisfied with the said amount, the Appellant sought a reference u/s 18 of the said Act and claimed compensation at the rate of Rs. 400/-per square

metre. By judgment and award dated 30th November, 2006 the learned Additional District Judge rejected the reference filed by the Appellant.

3. Being aggrieved by the said judgment, the Appellant has preferred the present appeal. Shri A.R. Kantak, the learned Counsel appearing for the Appellant has assailed the impugned judgment and submitted that the Reference Court has misdirected itself in refusing the reference filed by the Appellant. He further submitted that the Appellant have produced the evidence of comparable sale instance which demonstrates that the market value of the acquired land was much higher than the one offered by the Land Acquisition Officer. He further submitted that the Reference Court failed to consider that there is no tenant in the acquired land and the persons whose names figure in the revenue records are not the tenants of the land acquired . The learned Counsel further submitted that the Reference Court has come to the conclusion that the land acquired had no potentiality of being used for non-agricultural purpose merely on the ground that the land was tenanted which is erroneous. The learned Counsel further submitted that as there is no tenant in the acquired land and the question of applying the provisions as provided in the Goa Land Use (Regulation) Act, 1991 would not arise. The learned Counsel as such submitted that in any event the dispute with regard to the tenancy has been referred to the competent authority by the Reference Court wherein the proceedings u/s 30 of the said Act are under adjudication.

4. On the other hand, the learned Government Advocate Shri S. Vahidulla, appearing for the Respondent has supported the impugned judgment. He submitted that the land is tenanted and as such the land acquired had no potentiality of being used for non-agricultural purpose. As far as the contention of the Appellant about the fact that the issue of tenancy has been referred to the Mamlatdar, the learned Counsel submitted that the matter can be stayed and await for the decision of the learned Mamlatdar on that count.

5. Having heard the learned Counsel appearing for the Appellant and Respondent and on perusal of records, the following point arise for our determination in the present appeal:

POINT FOR DETERMINATION

Whether the Reference Court was justified to reject the reference on the ground that the land acquired was tenanted ?

6. There is no dispute that there is a reference pending u/s 30 of the said Act with regard to the claim of tenancy in respect of the land acquired. There is also no dispute that in the said proceedings the issue of tenancy has been referred to the learned Mamlatdar. Once such an issue is pending, the question of determining the market value on the basis that the land is tenanted or not would not arise at all. No doubt in case the land is tenanted the provisions of Goa Land Use (Regulation) Act, 1991 will apply and the land can be used only for agricultural purpose. On the contrary, if issue of tenancy is decided in favour of

the Appellant, the market value of the acquired land will have to be assessed after consideration whether such land has potentiality of being used for non-agricultural purpose. The Division Bench of this Court in First Appeal No. 310 of 2006 dated 5th July, 2010 has held that the issue of tenancy will have to be adjudicated by the Mamlatdar in view of the provisions of Section 7 read with Section 58 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. There is also bar of jurisdiction by any other Court to decide an issue of tenancy as such jurisdiction is specifically ousted in view of Sub-section (1) of Section 58 of the said Act, 1964. As such this Court has remanded the matter to the Reference Court and directed that the proceedings be stayed to await the decision of the learned Mamlatdar on the issue of tenancy. We find no reason not to take a similar view in the present appeal. Hence, in view of the above, we pass the following order:

O R D E R

- (a) The impugned judgment and award dated 30th November, 2006 is quashed and set aside and the Land Acquisition Case No. 35/2003 u/s 18 of the said Act is restored to the file of the Reference Court.
- (b) The proceedings before the Reference Court will remain stayed till final disposal of reference u/s 30 of the said Act wherein the issue of tenancy has been referred for decision before the Mamlatdar.
- (c) After the issue of tenancy is finally decided in the said proceedings, the Reference Court shall decide the reference afresh after hearing both the parties in accordance with law.
- (d) All the contentions raised by the parties on merits are left open.
- (e) Appeal is disposed of accordingly with no order as to costs.
- (f) The parties are directed to appear before the Reference Court on 20th December, 2010 at 10.00 a.m. and abide by all further directions.