
(2012) 01 BOM CK 0138
In the Bombay High Court
Case No : First Appeal No. 336 of 2005

Comunidade of Lotulim

APPELLANT

Vs

Shiva Guna Gawade

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 30, 4(1)

Citation : (2012) 5 BomCR 234

Hon'ble Judges : Bakre U.V., J

Bench : Single Bench

Advocate : P. Talaulikar, for the Appellant; Sudesh Usgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

Bakre U.V., J.—This appeal is directed against the judgment and Award dated 26/08/2005, passed by the learned ad hoc Additional District Judge, Fast Track Court -II, South Goa, Margao (Reference Court), in Land Acquisition Case No. 21/2004. Vide notification issued u/s 4(1) of the Land Acquisition Act, 1894 ("L.A. Act" for short) published in the Official Gazette dated 23/11/2000, land was acquired from Verna-Loutolim villages for expansion of Industrial Estate and this included an area of 975 square metres from survey holding no. 266/1 of Loutolim village. By Award dated 29/9/2003, the Land Acquisition Officer (L.A.O.) awarded compensation of Rs. 32,168/- for the said acquired land. As there was dispute regarding the entitlement to the compensation awarded by the L.A.O., for the acquired land, a reference was made u/s 30 of the L.A. Act which gave rise to the said L.A. case No. 21/2004.

2. The appellant, in its written statement, filed before the Reference Court, claimed that the land in question constitutes as part of the private village of the Comunidade of Loutolim, as stands declared in terms of Diploma Legislativo No. 2070 dated 15/4/1961, and that the entire land in the said village stands declared to be absolute private property of the Comunidade. The appellant further alleged, in its written statement, that the respondent is neither lessee nor

tenant and has no right to the said property. According to the appellant, the respondent has fraudulently claimed benefits under the Tenancy Act and has obtained the Purchase Certificate, as against the objections raised by the appellant and the said exercise is not binding on it.

3. The respondent, in his written statement, alleged that he is the tenant of the paddy field known as "Kongal" admeasuring 975 square metres bearing survey no. 266/1 of Loutolim Village, having declared as such by Mamlatdar of Salcete, vide judgment and Order dated 27/2/2003, passed in case No. JM-I/TNC/69/2001. The respondent further stated that subsequently the said property has been purchased by him from the Comunidade of Loutolim under the Goa Agricultural Tenancy Act, through the Mamlatdar of Salcete, Margao and Purchase Sanad has been issued by the Mamlatdar, bearing No. JM-III/TNC/Pur/Loutolim/3/2002 dated 17/10/2002. The respondent further alleged that the said land vests in him from the tiller's day, free from all encumbrances, u/s 18-C of the Goa Agricultural Tenancy Act and hence the entire compensation has to be paid to him.

4. The appellant examined its attorney, namely Shri Francisco Monteiro as AW-1 and two more witnesses namely Shri Ajit Kuwelkar as AW-2 and Shri S.R. Rane, the Inspector of Survey and Records, as AW-3. The respondent examined himself as RW-1 and he produced on record the Purchase Certificate as Exhibit 24.

5. The learned Reference Court, upon consideration of the entire evidence on record, held that the Purchase Certificate at Exhibit 24 proves that the respondent, who was tenant of the acquired land, has purchased the said land under the provisions of Agricultural Tenancy Act and has become owner of the acquired land. The Reference Court found that the appellant has not produced any document to show its ownership over the acquired land, as on the date of acquisition. The Reference Court found that the Purchase Certificate has not been challenged by the appellant due to which the said purchase has become final. The respondent, therefore, has been held to be entitled to receive the entire compensation awarded for the acquired land, along with interest.

6. Heard Shri. P. Talaulikar, learned Advocate for the appellant and Shri. Sudesh Usgaonkar, learned Advocate for the respondent.

7. Perused the entire material on record.

8. Admittedly, the appellant was previously the owner of the acquire land. The respondent has stated in his affidavit-in-evidence all that is averred in the written statement. He has produced on record the Purchase Certificate, which has been issued by the Joint Mamlatdar of Salcete, in case No. JM-I/TNC/Pur/Loutolim/3/2002, under sub-section (1) of section 18(H) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 in his favour, as Exhibit 24. In this certificate, it has been stated that the Shiva Guno Gaudo is the tenant of land bearing survey Nos. 266 /1, admeasuring 975 square metres and 267/1 admeasuring 4450 square metres, of Loutolim village and has deposited Rs. 1890/-, under the

provisions of section 18-E of Agricultural Tenancy Act, as the lumpsum of the purchase price in respect of the said land. It has been certified that the said Shiva Gaudo is the deemed purchaser of the said land.

9. In the case of (The Goa, Daman and Diu Industrial Development Corporation Vs. Shri Vassu Jaidev Gaonkar)¹, 2001 (2) Goa L.T. 63, the learned Single Judge of this High Court has held as follows:-

As agricultural tenants were absolute owners as deemed purchasers on 20th April, 1976, prior to commencement of acquisition proceedings on 2/4/77, tenants are entitled to entire compensation as well as enhancement, excluding deemed purchase price which goes to the original owner of the land.

10. In the case of (Comunidade of Colvale and others Vs. Benjamin Pereira)², 2005 (2) G.L.R. 431, a Division Bench of this Court has held that if a certificate of purchase is given by a Competent Authority under the Act, it could be safely presumed that it was given to person, who was tenant in respect of the property, who is deemed to have been purchaser.

11. The appellant has not challenged the said Purchase Certificate before the Competent Authority and the same has attained finality.

12. It is therefore clear that the respondent is the owner of the acquired land, by virtue of the Purchase Certificate, and is, therefore, entitled to receive the entire compensation.

13. The impugned judgment and Order is therefore in accordance with the settled principles of law and no interference is called for. In the result, the appeal is dismissed with no order as to costs.