
(2009) 01 BOM CK 0030
In the Bombay High Court
Case No : First Appeal No. 81 of 2004

Confraria de Ssmo Jesuse Nossa Confraria de Ssmo Jesus e do Rosario APPELLANT

Vs

Deputy Collector RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30(2), 4

Citation : (2009) 4 BomCR 817

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

Bench : Division Bench

Advocate : S.D. Lotlikar and P. Lotlikar, for the Appellant; S.R. Rivonkar, Government Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Majmudar P.B., J.—This appeal is directed against the Judgment and Award dated 6th September, 2003, passed by the 1st Additional District Judge, Panaji in Land Acquisition Case No. 193 of 1998.

2. By the aforesaid Judgment the learned Judge has rejected the reference of the present appellant u/s 18 of the Land Acquisition Act, 1894.

3. Vide Notification dated 6-5-1993 published u/s 4 of the Land Acquisition Act the Government decided to acquire certain lands for the purpose of development of playground at St. Cruz (Calapur) of Tiswadi Taluka. The total area acquired was 15,965 sq. meters which included the area of 14330 of land from various survey numbers belonging to the present appellant. By award dated 10-10-1996 the Land Acquisition Officer awarded the compensation at the rate of Rs. 30/- per sq. meters for the said acquired land. While awarding the said rate the Land Acquisition Officer found that the acquired land was tenanted agricultural land. A reference u/s 30(2) was also made at the instance of some persons who were claiming tenancy rights in the lands in question. Since the present appellant was

not satisfied with the compensation awarded by the Land Acquisition Officer, a reference was made at the instance of the appellant u/s 18 of the Act.

4. The learned trial Judge after recording the evidence and after hearing the parties to the reference came to the conclusion that the Land Acquisition Officer has awarded a proper compensation and that no additional compensation can be awarded. Ultimately the reference was rejected by the learned trial Judge. Before the trial Court the appellant claimed compensation at the rate of Rs. 600/- per sq. meter. On behalf of the appellant the present and past Presidents of the Institution were examined. The learned trial Judge came to the conclusion that the land in question is a tenanted agricultural land as the same was occupied by the tenants. The learned Judge came to the conclusion that the claimant has failed to show that the land would fetch more price than the one awarded by the Land Acquisition Officer. The reference was accordingly rejected against which this appeal has been preferred by the original claimant.

5. Learned Senior Counsel Mr. S.D. Lotlikar for the appellant submitted that the learned Judge of the Reference Court has committed an error in coming to the conclusion that the acquired land is a tenanted land. It is submitted that whether a land is a tenanted land or not is a question which is required to be decided by the competent authorities under the Agricultural Tenancy Act and that the Reference Court cannot decide the said question. It is submitted that the learned Judge should have referred the issue to the appropriate Authority under the Tenancy Act in this behalf and should have kept the proceedings pending before it till the reference is decided by the Mamlatdar. It is submitted that whether a person is a tenant or not is a question to be decided only by the Mamlatdar and not by the Reference Court or by any other Court. The learned Senior Counsel Mr. Lotlikar further submitted that simply because the land was occupied by certain cultivators, it is not a ground for coming to the conclusion that they were tenants unless a declaration is given in this behalf by the Competent Authority.

6. It is submitted that the Reference Court has committed an error in coming to the conclusion that the land, in question, was a tenanted agricultural land, as the Reference Court could not have decided the status of the persons cultivating the land. It is further submitted that in that view of the matter, the land, in question, can be even put to any use by taking permission from the Authorities. It is submitted that simply on the basis of the entry in the Revenue Record, the Reference Court could not have come to the conclusion that the land, in question, was an agricultural tenanted land, as the entry in the Revenue Record is for the fiscal purpose only and cannot confer any title to any one.

7. Mr. S.R. Rivonkar, learned Government Advocate, on the other hand, supported the Judgment of the Reference Court. It is submitted by the learned Government Advocate that in order to arrive at a just compensation, the Land Acquisition Officer, as well as the Reference Court are required to consider the nature of the land and only on the basis of the same, a fair compensation can be awarded.

8. We have heard both the learned Advocates and gone through the record and proceedings. We have also perused the Judgment of the Reference Court. The sole question which is required to be considered is as to whether the land in question is to be considered as an agricultural tenanted land? Though the learned Counsel for the appellant has fairly submitted that if it is ultimately held that the Reference Court was competent to come to the conclusion that it was an agricultural tenanted land, then the compensation awarded at the rate of Rs. 30/- per sq. metre cannot be faulted with. The submission of the learned Counsel for the appellant is that the land in question could not have been treated as an agricultural tenanted land.

9. Before examining the rival contentions, there are certain undisputed aspects which are required to be noted.

(a) The land, in question, was under cultivation of certain cultivators since more than 10 years prior to the Notification u/s 4 of the Land Acquisition Act.

(b) At the time when the Land Acquisition Officer declared the Award, dispute was raised by the cultivators, claiming tenancy right over the land in question and in that view of the matter, reference was made u/s 30(2) of the Land Acquisition Act.

(c) In the said proceedings u/s 30(2) of the Land Acquisition Act, the appellant herein settled the dispute with the said objectors by paying them 50 % of the compensation amount which the appellant had received.

(d) The former President of the appellant/institution has admitted in his cross-examination the fact about the land being cultivated by the cultivators since more than 10 years prior to the date of Section 4 Notification.

10. Keeping in mind the aforesaid aspects of the matter, it is required to be considered as to whether the Land Acquisition Officer has given the just compensation to the appellant by treating the land in question as an agricultural tenanted land. So far as the State of Goa is concerned, there is an Act called "Goa Land Use Act" and as per the provisions of the said Act, an agricultural tenanted land cannot be used for any other purpose and such a land has to be used only for the agricultural purpose. The user of such a land, therefore, cannot be changed and it has to be restricted only for agricultural purpose. The land, therefore, is a restricted land, on which no development permission can be granted. Considering this aspect, the compensation was awarded at the rate of Rs. 30/- per sq. metre by the Land Acquisition Officer.

11. So far as the argument of the learned Counsel regarding making reference to the Competent Court is concerned, it is required to be noted that on behalf of the appellant one Lourenco Mendonsa was examined before the Reference Court as witness No. 1. The said witness was a President of the Comunidade at the relevant time. In his cross-examination, he has clearly admitted that the land in question was being cultivated by the cultivators. He has also stated that they

were cultivating the said land as auction holders since 10 years prior to the acquisition of the land. It is required to be noted that land was under cultivation by the cultivators for a considerable period of time and even the Revenue Record reflected the same. The Revenue Record suggests that the land in question was an agricultural tenanted land. The appellant has also tendered an affidavit of the ex-President of the Comunidade by name Caetano Joaquim Braganza, which is at Exhibit-18. The said witness, in his cross-examination, has clearly admitted that the paddy fields were tenanted and the same were cultivated by various cultivators.

12. On behalf of the appellant, reference is made to a decision of the Full Bench of this Court in the case of Bhimaji Shanker Kulkarni Vs. Dundappa Vithappa Udupudi and Another, . Relying on the said judgment, it is submitted that when a question of tenancy arises, the Court is required to refer the matter to the Competent Court for deciding the issue of tenancy and that the Civil Court is not competent to decide the issue on merits. It is, however, required to be noted that in the instant case the concerned cultivators are not before the Court raising tenancy dispute. Though it may be true that if the question of tenancy arises in any proceeding, the Court has to refer it to the Competent Authority for its determination, but, considering the facts of the, case since no issue arises for such determination as the so called tenants are not joined as party u/s 18, it is not possible to accept the argument that in order to determine the nature of the land, reference is required to be made to the Competent Court under the Tenancy Act. It is also required to be noted that no request to frame and send it to the Competent Court was made to the Reference Court. No attempt even was made by the appellant in this behalf.

13. The learned Counsel for the appellant relies upon a Full Bench decision of this Court in the case of Rajaram Totaram Patel v. Mahipat Mahadu Patel reported in 1967 BCI (soft) 60 : 1967 Mh.L.J. 522, wherein the Full Bench has taken a view that where any issue is raised in any suit whether the person is a tenant, the issue will have to be decided by the Mamlatdar. The learned Counsel for the appellant has stated that in view of the said decision, even if the appellant has raised an issue that the issue should have been referred to the Competent Authority. It is not possible for us to accept his submission because in the instant case no issue is required to be tried as to whether a particular person is a tenant or not. The only question which arises for determination is regarding the nature of the land for the purpose of deciding the just compensation. Even, otherwise, as stated earlier, the appellant has not prayed for framing of the issue and referring it to the Competent Authority for its decision. No party is asserting any tenancy right before the Reference Court and, therefore, there is no question of referring any issue in this behalf. It is required to be noted that ultimately it was the Reference Court which was required to determine the just and fair compensation based on the nature of the land and there was ample material on record for coming to the conclusion that the land in question was an agricultural tenanted land.

In the instant case, the Reference Court was concerned with the fixation of fair market value under the Land Acquisition Act. If the land in question is an agricultural tenanted land, naturally it will always fetch less price as it cannot be put to any other use. If the land is an agricultural land and not tenanted" land, the same can be put to any other use, after getting permissions from the authorities. However, tenanted agricultural land is under restriction and it should be used only for the agricultural purpose and not for any other purpose. In the instant case, the revenue entry was in existence since many decades and no attempt was made by the appellant for correcting such entries and due to the said reason the land in question was determined as tenanted agricultural land.

14. Considering the aforesaid aspect, no fault can be found with the view taken by the learned Reference Court as the fair market value has to be determined on the basis of the nature of the land. It is required to be noted here that since the present appellant settled the dispute u/s 30(2) of the Land Acquisition Act with the so called objectors, who were allegedly cultivating the lands, by paying them 50 % of the compensation, therefore, naturally there was no question of the cultivators moving the Court for seeking declaration in connection with their tenancy. Simply because the cultivators have not got any declaration, it cannot be said that the nature of the land has changed. In view of overwhelming evidence on record, and considering the fact that the land is a tenanted agricultural land, the market value is fixed. The material available with the learned Reference Court was the entries in the Revenue Record for the purpose of finding out the nature of the land and fixing the appropriate market price. Considering the aforesaid aspect of the material, the learned Reference Court was duty bound to fix the compensation on the basis of the nature of land and has rightly treated the land in question as an agricultural tenanted land.

15. The learned Counsel for the appellant is not in a position to demonstrate that the rate of Rs. 30/- per sq. metre awarded is less by treating the land in question as an agricultural tenanted land. No other points were canvassed before us. Since we do not find any substance in any of the submissions made by the learned Counsel for the appellant, the appeal deserves to be dismissed and is, hereby, dismissed. No order as to costs.