

(2013) 02 BOM CK 0118

In the Bombay High Court

Case No : First Appeal No. 185 of 2004 and M.C.A. No. 755 of 2008

Mr. Krishna Balchandra Hadfadkar, Mr. Vinayak Balchandra
Hadfadkar and Mr. Somnath Balchandra Hadfadkar APPELLANT

Vs

Special Land Acquisition Officer and The Managing Director RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (2013) 02 BOM CK 0118

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

Bench : Single Bench

Advocate : A.A. Agni, for the Appellant; D.J. Pangam and Mr. J. Supekar,
Advocates, for the Respondent

Judgement

U.V. Bakre, J.—This appeal arises out of the Judgment and Award dated 5th May, 2004 passed by the learned Additional District Judge-II, Panaji (hereinafter referred to as the Reference Court) in Land Acquisition Case No. 83/2002. The above Miscellaneous Application No. 755/2008 has been filed by the appellants, under Order XLI, Rule 27(b) of the Code of Civil Procedure, for leave to produce the certificate of purchase dated 25/4/1997. As per order dated 13/10/2008, passed in the said M.C.A., the same is being considered along with the Appeal. The parties shall hereinafter be referred to in the manner in which they appear in the cause title of the said Land Acquisition case.

2. Vide Notification published u/s 4(1) of the Land Acquisition Act, 1894 (L.A. Act, for short), in the Official Gazette dated 18/4/2002 and lastly published at concerned places through the Mamlatdar of Bardez Taluka on 7/5/2002, Government acquired land from village Marra of Bardez Taluka, for expansion of Pilerne Industrial Estate. This included land admeasuring 9645 square metres from survey no. 85/1 of village Marra, in which the applicants were interested. By Award dated 25/9/2002, the Land Acquisition Officer (L.A.O.) offered the rate of Rs. 21/- per square metre for the acquired land. Not being satisfied with the

said offer, the applicants filed reference u/s 18 of the L.A. Act before the L.A.O. and that gave rise to the said Land Acquisition Case No. 83/2002.

3. In their reference application, the applicants stated that they are deemed owners of the property admeasuring 35325 square metres bearing survey no. 85/1 of village Marra from which, land admeasuring 9645 square metres has been acquired and the compensation awarded is inadequate, being without considering the nature of the acquired land and the locality wherein it is situated. The applicants further stated that the L.A.O. did not consider the sales statistics of the land in the vicinity of the acquired land and also did not consider that the acquired land is situated in prime locality, ideal to set up an industry. The applicants claimed the market rate of Rs. 400/- per square metre.

4. Accordingly, an issue came to be framed, in terms of the claim of the applicants. The applicants examined the applicant no. 2 as AW. 1 and an Architect and Government Registered Valuer, namely Subhashchandra Bhobe as Aw. 2. The respondents did not examine any witness.

5. The learned Reference Court, upon assessment of the entire evidence on record, held that since indisputably the acquired land was tenanted agricultural land, the same could not have been used for any purpose other than agriculture, in view of the provisions of Section 18(k) of the G.D.D. Agricultural Tenancy Act, 1964 and Section 2 of the Goa Land Use (Regulation) Act, 1991, which came into force as from 2/11/1990. The Learned Reference Court, therefore, found force in the submission made by the learned counsel appearing on behalf of respondent no. 2 that the only way for claiming enhanced compensation, in the case, was by showing the agricultural income from the acquired land. The Reference Court found that there was no electricity connection, water connection and telephone connection or drainage provision in the acquired land at the time of issuance of notification u/s 4(1) of the L.A. Act. It has been held that the sale deed dated 27/4/2002 at Exhibit 12 had all infrastructure such as approach roads, internal tar roads, gutters, drainages etc. and that the same was a totally developed plot and close to Porvorim town and abutting the tar road. It is further held that the land of the sale deed dated 26/4/2002, at Exhibit 13 was also a flat and even land adjoining Panaji-Mapusa National Highway and situated in Porvorim town itself in a developed area with all basic amenities at a close distance. Insofar as plot of the sale deed dated 09/01/2002, at Exhibit 14 is concerned, it was found that the same was sold along with an existing bungalow therein and the plot had roads on two sides and it was a developed corner plot with even and flat land. The learned Reference Court, therefore, held that the said sale instances are not comparable with the acquired land which has a steep slope coupled with existence of statutory impediments on it. The learned Reference Court further found that at the time of issuance of notification u/s 4(1) of the L.A. Act, there were several factories existing in Pilerne Industrial Estate adjoining the acquired land and some of them were sound emitting and smoke emitting factories. It was, thus, held that the applicants are not entitled to enhancement of the

compensation, in respect of the acquired land.

6. The applicants had contended before the learned Reference Court that they are also entitled to receive compensation on account of severance of the remaining land which has become useless. The Reference Court held that the said claim was beyond the terms of reference. Therefore, the reference came to be rejected. The applicants are aggrieved by the Judgment of the Reference Court and have filed this appeal.

7. In M.C.A. No. 755/08, the applicants have stated that they had produced the purchase certificate dated 25/4/1997 issued by the Mamlatdar of Bardez before the L.A.O. and that this fact has been stated in the award dated 25/9/2007. It is further stated that the applicants bonafide believed that copies order of the Mamlatdar and the purchase certificate would be placed by the L.A.O. before the Reference Court, along with the award and the reference application. They submitted that the purchase certificate is material and relevant document to enable this Court to decide the matter in a more satisfactory manner. They therefore prayed for leave to produce the same. The respondents have not filed any reply resisting the application. During the course of arguments, learned Counsel appearing on behalf of the respondent no. 2 did not seriously object to the production of the said purchase certificate. Hence the M.C.A. No 755/2008 is allowed.

8. Learned counsel appearing on behalf of the applicants submitted that the reference has been rejected mainly on the ground that the acquired land was tenanted agricultural land. Learned counsel contended that having regard to prohibition of the use of land for any purpose other than agriculture, the acquired land had to be treated and valued as agricultural land without any development potential for being used as residential/commercial/industrial plots. She submitted that the sale deeds produced by the applicants, more particularly, the sale instance at Exhibit 12, which was comparable but lowest as far as the sale price is concerned, had to be considered by making appropriate deductions on account of it being a developed plot and ultimately further deduction of 50% had to be made on account of prohibition regarding the use of land. In this regard, reliance has been placed upon the case of Goa Housing Board Vs. Rameshchandra Govind Pawaskar and Another, . Learned Counsel submitted that there is a road and there is some space belonging to the applicants after that road and the acquired land lies beyond that space. She, therefore, contended that the acquired land was accessible to the main road. She invited my attention to the valuation report prepared by AW. 2 who inspected the land on 14/10/2010 and considered the sale deeds which have been produced by the applicants and gave a deduction of 60% on the ground that the sale deed plots were developed plots. According to her, the valuer had taken into account all the aspects and had reasonably fixed the market value of the acquired land at Rs. 400/- per square metre and of the unacquired land which was rendered useless, at Rs. 100/- per square metre. She further pointed out from the cross-examination of AW. 2 that the zone of the

acquired land was changed from Orchard to Industrial. Relying upon the judgment of the Apex Court in the case of Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., , the learned Counsel appearing on behalf of the applicants, submitted that one third deduction in the price of plot of the sale deed towards development charges is appropriate, in the present case. She submitted that in terms of the judgment in the case of "Ramchandra Pawaskar" (supra), further deduction of 50% from the remainder can be done and the balance should be held as the market value of the acquired land. She pointed out that the Reference Court had rejected compensation towards severance mainly because the same was not claimed in the reference application. Relying upon the judgment of this Court in the case of Dr. Caetano Jose Filomeno Jacinto de Loiola Pereira alias Dr. Caetano de Loiola Pereira Vs. Deputy Collector, South, Sub-Division and The Directorate of Tourism, , she submitted that even if the reference was not made in the original application u/s. 18 of the L.A. Act and even if no such issue was framed, the applicants are entitled for some compensation on account of severance of their remaining land. She further submitted that in terms of purchase certificate, the total area purchased by the applicants admeasures 10,500 square metres and the acquired land admeasures 9645 square metres, which means that land admeasuring 855 square metres, which is the space between the acquired land and the road is totally rendered useless, for which some compensation is bound to be awarded. Learned Counsel showed the photographs which are at Exhibits 15-colly, 16-colly and 17-colly, in which the said space is seen, adjacent to the road. According to her, compensation at the rate of Rs. 100/- per square metre, for the said severed land, as arrived at by AW. 2, would be adequate. She further submitted that the respondents have not led any evidence.

9. Per contra, learned Counsel, appearing on behalf of the respondent no. 2, submitted that a perusal of the entire judgment of the Apex Court in the case of "Ramchandra Pawaskar" (supra), reveals that for determination of the market value of the acquired land which is tenanted agricultural land, a comparable land can be an agricultural free hold land, but cannot be a land which has been already converted and fully developed, before sale. He invited my attention to all the three sale deeds which are at exhibits 12, 13, and 14, and submitted that they pertain to small sub-divided and fully developed plots. He further pointed out from the evidence on record that these plots are 2 kilometres to 2 1/2 kilometres away and towards Alto-Porvorim side, which is near to the city of Panaji. He further pointed out from the said sale deeds that plots were out of the property already converted to non-agricultural use prior to the transaction. He further submitted that even otherwise, the evidence on record would reveal that the nature of the sale deed plots is not at all similar to the acquired land and they do not match with the acquired land, which is a steep hill, as stated by the claimant himself in his cross-examination. On the issue of severance, the learned Counsel submitted that there are only vague statements made by AW. 1 and AW. 2, which are not sufficient. According to him, cogent evidence has to be led to

prove that the applicants have suffered loss by reason of severance or that the balance land was injuriously affected, or that the earnings of the applicants were affected. In this regard, he has relied upon the following citations:

(i) Balammal and Others Vs. State of Madras and Others, .

(ii) Arvind Bhaskar Limaye, through his Power of Attorney Shri Prakash V. Deodhar Vs. The State of Maharashtra, .

(iii) Judgment dated 28/9/2004 of this High Court in First Appeal No. 20 of 2003.

10. Learned Counsel appearing on behalf of the respondent no. 2 further submitted that the Reference Court might have observed that the only way for the applicants to claim enhanced rate was by showing the agricultural income from the acquired land, however, the Reference Court has taken into consideration the entire evidence on record, namely, the valuation report as well as all the sale deeds. He, therefore, submitted that the impugned judgment is not not assailable.

11. I have gone through the records and proceedings and have considered the submissions made by the learned counsel on behalf of the parties and also the judgments cited by them.

12. The point that arises for determination is whether the Reference Court has erred in rejecting the reference and if yes what should be the just and reasonable compensation.

13. Indisputably, the applicants were tenants of the acquired land under the Agricultural Tenancy Act and they became deemed purchasers by virtue of the Fifth Amendment and ultimately purchased the acquired land. As per the purchase certificate, the applicants have deposited Rs. 1680/- being lump-sum of the purchase price in respect of area admeasuring 10,500/- square metres from survey no. 85/1 of Marra village and have accordingly purchased the said land u/s 18E of the Agricultural Tenancy Act. Thus, indisputably, the applicants were the owners of the acquired land prior to acquisition. There is also no dispute that in terms of Section 2 of the Goa Land Use (Regulation), Act 1991, which came into force as from 2/11/1990, no land vested in a tenant under the provisions of Agricultural Tenancy Act shall be used or allowed to be used for any purpose other than agriculture.

14. The appeals in the case of "Ramchandra Pawaskar" (supra), arose out of the judgment dated 26/9/2008 passed by the Division Bench of this Court in First Appeal No. 216/2003. In fact, the present appeal was kept pending during the pendency of the said appeals before the Apex Court, since the decision of the Apex Court was likely to have impact on the issue involved in the present case. In the case of "Ramchandra Pawaskar" (supra), the Apex Court has held that there can be no doubt that similarly situated lands in the same area, having the same advantages and acquired under the same notification should be awarded the same compensation. In paragraph 17 of the judgment supra, the Apex Court

has held thus:

17. Where an acquired land is subject to a statutory covenant that it can be used only for agriculture and cannot be used for any other purpose necessarily it will have to be sold as agricultural land as the land owner cannot sell it for any purpose other than agriculture and the purchaser cannot sell it for any purpose other than agriculture. As a consequence, the price fetched for such land will be low even if it is situated near any urban area. But if the same land is not subject to any prohibition or restrictive covenant regarding use and has the potential of being developed either as a residential layout or put to commercial or industrial use, the land will fetch a much higher price, and the market value of such other land with development potential can be determined with reference to the sale price of nearby residential plots by making appropriate deduction for development. On the other hand if the land is to be used only for agricultural purposes, it may not be possible to arrive at the market value thereof with reference to the market value of nearby residential plots. Therefore, we are of the considered view that in regard to the land in question, in view of the permanent restriction regarding user, that is it should only be used for agricultural purposes, and the bar in regard to any non-agricultural use, it will have to be valued only as an agricultural land and cannot be valued with reference to sales statistics of other nearby lands which have the potential of being used for urban development.

Further, in paragraph 19, the Apex Court has held thus:

19. On the facts and circumstances, having regard to the prohibition regarding use of land for any purpose other than agriculture, the land will have to be treated and valued as agriculture land without any development potential for being used as residential/commercial/industrial plots. We are of the view that at least 50% will have to be deduced from the market value of freehold land with development potential to arrive at the market value of such land which can be used only for agricultural purposes. As we have already determined the market value of neighboring land (which is not subject to the prohibition under Land Use Act) as Rs. 110/- per sq. metre, we are of the view that an appropriate compensation for the acquired land should be 50% thereof, that is Rs. 55/- per sq. metre.

15. From the above, it is evident that a tenanted agricultural land is to be valued as an agricultural land and not as land having potentiality of being used for urban development. A perusal of the judgment of the Division Bench of this Court in the said First Appeal No. 216/2003 reveals that the claimant i.e. Ramchandra Pawaskar was declared as tenant and had obtained purchase certificate u/s 18H of the Agricultural Tenancy Act on payment of the purchase price. He had relied upon four sale deeds, which were in respect of sub-divided developed plots. Considering the above, it cannot be said that the sale instances pertaining to sub-divided developed plots cannot be considered as comparable for determination of market value of the acquired land which is tenanted agricultural land. They can

be considered by making deductions on account of all the advantages/plus factors they have in comparison with the acquired land, which has disadvantages/minus factors.

16. The evidence on record reveals that the acquired land abuts the Pilerne Industrial Estate. It falls within the jurisdiction of Pilerne-Marra Village Panchayat. It was accessible to the public road, since the space between the public road and the acquired land belongs to the applicants. AW. 1 has stated in paragraph 11 of his affidavit-in-evidence that the plots of all the sale deeds are subdivided but they are identical in nature and adequate for construction and that they are about two to two and half Kilometres away from the acquired land towards the Alto Porvorim area. No doubt, in his cross-examination, AW. 1 has admitted that the nature of the acquired land and the sale deed lands is not similar since acquired land is a hill and sale deed lands are flat lands. The photographs which are at Exhibits 15-colly, 16-colly and 17-colly do reveal that the acquired land had an up-gradient. The evidence of AW. 2 reveals that the nature of the plots of sale deeds at Exhibits 12 and 13 was similar to the acquired land and they were subsequently developed. AW. 2 has valued the acquired land at the rate of Rs. 400/- per square metre, which in my considered opinion, is on a higher side. Aw. 2 has not considered the fact that the acquired land is tenanted agricultural land. He has merely stated in the valuation report that considering the factors stated by him vis-a-vis the size of the acquired land and it's tenure, a reduction of 60% over the lowest sale transaction is considered as fair and reasonable. Neither in his valuation report nor in his evidence, he has stated that the acquired land was tenanted agricultural land though he has casually stated in the report that he has considered the tenure of the acquired land.

17. The finding of the Reference Court that the only way for the applicants to claim enhanced compensation was by showing the agricultural income from the acquired land, is not acceptable. The applicants have relied upon three sale deeds. The sale deed which is at Exhibit 13 dated 26/4/2002 pertains to plot no. 3 admeasuring 1000 square metres and it was sold for Rs. 25,00,000/- i.e. at the rate of Rs. 2500/- per square metre. From the sale deed itself it can be understood that this plot is a fully developed plot out of a sub-divided property. As seen from the sale deed and as deposed by AW. 2, it adjoins the Panaji-Mapusa National Highway and is situated in fully developed Porvorim town, which has all the basic amenities very close to it. It is about three Kilometres away from the acquired land. This sale deed has been rightly discarded by the learned Reference Court. Insofar as the sale deed dated 9/1/2002, which is at Exhibit 14, is concerned, the plot therein has been sold along with existing bungalow thereon and the said plot has two roads on its sides as it is a developed corner plot. There are several buildings in the vicinity of the said sale deed plot and the distance from the acquired land is also about 3 to 3.25 kilometres. Thus, this sale deed has also been rightly discarded. The sale deed dated 27/4/2002, which is at Exhibit 12 is at a distance of about 2 to 2.5 kilometres. from the acquired

land and a perusal of the said sale deed reveals that it is bounded on all four sides by hills. It can be said that this sale deed plot is carved out by sub-dividing the property which was originally a hill. As stated by AW. 1, the acquired land is also a hill. This sale deed plot is in proximity with the acquired land from date-angle as well as distance-angle and being similar in nature, prior to the development carried out, can be considered for determination of the market value of the acquired land.

18. The plot of said sale deed dated 27/4/2002 (Exhibit 12) was out of hilly land which was converted for non-agricultural use and various permissions for sub-division, development of the said property into sub-plots, etc. were obtained and the said property was divided into plots by making approach roads, internal tar roads, gutters, drainages, laying water and electric pipelines. Thus, in order to make this plot comparable with the acquired land, it has to be brought back to its hilly nature, with no conversion and development, by making appropriate deductions and thereafter, the said land would become an hilly agricultural land, though, freehold land, still, comparable with the acquired land. Thereafter, as has been held by the Apex Court in the case of "Ramchandra Pawaskar" (supra), a deduction of 50% will have to be made since the acquired land is tenanted agricultural land whereas the sale deed plot is free hold land.

19. It is true that in the case of "Valliyammal and anr." (supra), the Apex Court held that one-third deduction as applied by the High Court was appropriate. However, in paragraph 21 of the said judgment it has been held that whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing the lay out plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur and that such development charges may range between 20% and 50% of the total charge. In the case of Lal Chand Vs. Union of India (UOI) and Another, , it was held that in order to determine the market value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20% to 75% of the price of such developed plot(s) could be made. Each case depends upon facts and circumstances of that particular case.

20. The area of the plot of the sale deed at Exhibit 12 is small i.e. 471 square metres and the same was sold for Rs. 5,18,100/- i.e. at the rate of Rs. 1100/- per square metre. A perusal of the sale deed and the evidence of witnesses reveals that this is a fully developed plot, meant for construction. Conversion sanad, order of Planning Development Authority, N.O.C. from Chief Town Planner and N.O.C. of Village Panchayat have all been obtained and development of the property by means of sub-division was done by making roads, internal tar roads, gutters, drainages, laying water and electric pipelines, etc.. Compared to the above, the acquired land is not at all a developed land and is a hilly land. Besides the above, the area of the acquired land is comparatively larger than that of the sale deed plot. In addition to the acquired land, the applicant is also claiming

severance charges towards further area of 855 square metres. On account of the above, and further since expenditure will have to be incurred towards making the land levelled, in my view, a lumpsum deduction of 80% would be appropriate. That brings down the value of the plot of the sale deed at Exhibit 12 to Rs. 220/- per square metre. Then, it has to be further considered that the acquired land is tenanted agricultural land. As has been held by the Apex Court in the case of "Ramchandra Pawaskar" (supra), a further deduction of 50% has to be made, on this count. That brings down the value of the sale deed plot to Rs. 110/- per square metre. I, therefore, hold that Rs. 110/- per square metre is just and reasonable market value of the acquired land admeasuring 9645 square metres.

21. As per the purchase certificate produced on record, the area of land purchased by the applicants is 10,500/- square metres. The acquired land admeasures 9645 square metres, which means that the remaining land owned and possessed by the applicants admeasures 855 square metres. AW. 1 has produced six photographs along with negatives on record, which are taken on record as Exhibit 15-colly, 16-colly and 17-colly. These photographs show the said remaining space after acquisition by the side of the road. One can easily understand from the said photographs that the said space by the side of the road has been rendered useless for the applicants on account of its width and on account of its location. AW. 1 has stated in paragraph 12 of his affidavit-in-evidence that certain portion of the land has been left unacquired and the same is without any use. Even AW. 2 has stated in paragraph 8 of his affidavit as well as in his valuation report that some portion of the land belonging to the applicants has been left unacquired and same is rendered without any benefit. AW. 2 has valued the same at Rs. 100/- per square metre. The respondents have not led any evidence. In my view, there is sufficient evidence to hold that severed land has been rendered useless. Therefore, the judgments in the case of "Balammal and ors." (supra); "Arvind Bhaskar Limaye" (supra) and in First Appeal No. 20/2003, relied upon by the learned counsel appearing on behalf of the respondent no. 2, do not help the respondent no. 2.

22. It is true that in the reference application, the applicants had not claimed compensation towards severance charges. It is also true that no issue was framed in that regard. However, the fact remains that due evidence was led by the applicants on this aspect. In the case of "Caetano Jose Filomeno (Dr.)" (supra), this Court has held that the question of severance of land was liable to be considered even if no such issue was framed and even if no such plea was taken by the applicant in his application for reference. Therefore, applying the same principle to the present case, the applicants are entitled to severance. Since the ownership of the severed land remains with the applicants, in my view, the valuation made by AW. 2 at Rs. 100/- per square metre is on the higher side. Half of the market value fixed for the acquired land can be granted as severance charges. Therefore, I hold that the applicants are entitled to compensation at the rate of Rs. 55/- per square metre towards severance charges in respect of the severed land admeasuring 855 square metres.

23. The learned Reference Court has therefore erred in rejecting the reference. The applicants are entitled to receive enhanced compensation towards the acquired land and also compensation towards severance charges, as above. In the result, the appeal is partly allowed.

(a) Impugned judgment and award is quashed and set aside.

(b) The applicants are entitled to receive compensation at the rate of Rs. 110/- per square metre in respect of the acquired land admeasuring 9645 square metres and at the rate of Rs. 55/- per square metre as severance charges for unacquired land admeasuring 855 square metres.

(c) The applicants are entitled to receive all the statutory benefits under the L.A. Act.

(d) Amount already paid to the applicants, if any, shall be adjusted.

(e) Respondents shall pay costs of Rs. 2000/- to the applicants.

The appeal stands disposed of accordingly.