

(2012) 02 BOM CK 0036
In the Bombay High Court
Case No : First Appeal No. 27 of 2004

Shri Narayan Vithu Vaigankar(dec) through his heirs, Smt. Shantabai Narayan Vaigankar and Others APPELLANT

Vs

Deputy Collector (Rev) and Land Acquisition Officer, Panaji, Goa and Goa Housing Board RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30, 4, 4(1)

Citation : (2013) 2 BomCR 786

Hon'ble Judges : R. P. Sondurbaldota, J;A.P. Lavande, J

Bench : Division Bench

Advocate : A. R. Kantak with Ms. R. Kantak, for the Appellant; P. Talaulikar, Additional Government Advocate for the no.1. and Mr. A. N. S. Nadkarni with Mr. H. D. Naik, Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.P. Lavande, J.—By this appeal, the appellants take exception to the Judgment and Award dated 29.10.2003 passed by the learned Ist Additional District Judge, Panaji in Land Acquisition Case No. 43/1999 by which reference u/s 18 of the Land Acquisition Act, 1894 ("the Act" for short) has been rejected. Vide notification issued u/s 4(1) of the Act which was published in the official gazette dated 16.11.1992, the Government of Goa acquired for public purpose land admeasuring 1,15,000 square metres from the survey no.499/0 situated at Tivim, belonging to Shri Narayan Vithu Vaigankar. The appellants are the legal representatives of said Narayan Vithu Vaigankar. The claimant late Narayan Vaigankar mss FA27 claimed Rs.170/-per square metre. The Land Acquisition Officer by an award dated 22.3.1995 fixed the market rate of the acquired land at Rs.20/-per square metre. Late Shri Narayan Vaigankar claimed to be lawful tenant in possession of the property which was belonging to Comunidade of Tivim.

2. Dissatisfied with the award late Shri Narayan Vaigankar sought reference u/s 18 of the Act and claimed compensation at the rate of Rs. 170/- per square metre.

3. In Land Acquisition Case no. 43/1999 before the Ist Additional District Judge, Panaji, the legal representatives of late Narayan Vaigankar examined four witnesses namely AW1 Bhiku Narayan Vaigankar, appellant no.1(b), AW2 Mr. Subhashchandra Bhobe, Valuer, AW3 Gurudas Toraskar and AW4 Arminio Ribeiro. The Reference Court framed following issue:-

Whether the applicants prove that the rate of compensation for the acquired land at the time of acquisition was Rs.170/- per square metre?

4. The Reference Court after analysing the evidence led by the appellants herein held that appellants herein had not discharged the burden cast on them to prove that the market rate of the acquired land as on date of Section 4 notification was Rs.170/-per square metre and consequently rejected the reference.

5. Mr. Kantak, learned Counsel appearing for the appellants submitted that the Reference Court did not properly appreciate the evidence led by the appellants and without applying its mind dismissed the reference. Learned Counsel further submitted that the acquired land was bharad type of land and, as such, the Reference Court ought to have taken into consideration the sale deeds dated 20.12.1989, 11.7.1990 and 2.10.1987 relied upon by the appellants which were in close vicinity of the acquired land. Learned Counsel further submitted that the acquired land had the facility of electricity as well as water pipe lines. Mr. Kantak, further submitted that the reference u/s 30 of the Act was settled between the parties by filing consent terms and Comunidade of Tivim was paid an amount of Rs.4,52,240/-and the entire balance compensation was paid to the appellants. Learned Counsel further submitted that the facilities like transport, hospital, market, shops, banks, church etc were available in the close proximity of the acquired land. Learned Counsel further submitted that the industrial estate at Tivim was situated at a distance of about 600 metres and Mapusa market is situated at a distance of about 4 kms. Learned Counsel further submitted that the Reference Court could not have rejected the reference on the ground that the Goa mss FA27 Land Use (Regulation) Act, 1991 was attracted. Learned Counsel further submitted that the finding recorded by the Reference Court that the sale deeds were not in respect of comparable lands, is patently unsustainable in law. Learned Counsel further submitted that the appellants were "interested parties" and at no point of time had approached Mamlatdar for tenancy under the Goa Agricultural Tenancy Act. Learned Counsel further placed reliance upon the judgment dated 11.10.2011 delivered by the Apex Court in the case of Goa Housing Board Versus Rameshchandra Govind Pawaskar & another and submitted that even in respect of tenanted agricultural land, the Apex Court has granted enhancement relying upon the sale deed in respect of a property which is not an agricultural tenanted property. Mr. Kantak, further submitted that the acquired land is situated at a distance of about 550 metres from the land

involved in the case of Rameshchandra Pawaskar (supra). Learned Counsel further submitted that it would be just and proper to remand the matter to the Reference Court by placing reliance upon unreported Judgment of this Court in the case of Smt. Tulia Aguiar e Oliveira Vs. Deputy Collector & S.D.O, Ponda in First Appeal No. 11/2004 dated 28.7.2010. Mr. Kantak further submitted that the appellants are entitled to higher compensation as claimed by them.

6. Per contra, Mr. Nadkarni, learned Senior counsel appearing on behalf of respondent no. 2 submitted that no fault can be found with the impugned judgment and award. Mr. Nadkarni submitted that the appellant late Narayan Vaigankar was tenant of Comunidade and the acquired land is tenanted agricultural land. Learned Counsel submitted that the provisions of Goa Land Use (Regulation) Act, 1991 are squarely applicable since notification was published in the Official Gazette on 16.11.1992 after coming into force of the Goa Land Use (Regulation) Act, 1991. Placing reliance upon the Division Bench Judgment of this Court in the case of Smt. Janaki N. Morajkar Vs. Spl. Land Acquisition Officer and Another, , learned Counsel submitted that the ratio of the said judgment is squarely applicable in the present case. Learned Counsel further submitted that the SLP filed before the Apex Court challenging the said Judgment was also dismissed. Learned Senior Counsel further submitted that the three sale deeds relied upon by the appellants were not in respect of tenanted agricultural land and as such, rightly not relied upon by the Reference Court. Learned Senior Counsel further submitted that in any case the sale deed plots are in respect of small area as compared to present land which has been acquired by the Government and, therefore, no reliance can be placed upon mss FA27 the said sale deeds. Mr. Nadkarni relied upon the Judgment of the Apex Court in the case of Administrator General of West Bengal Vs. Collector, Varanasi, . According to learned Counsel the Apex Court in the case of Rameshchandra Pawaskar (supra) has not set aside the ratio laid down in the Judgment of Janaki Morajkar(Supra) and on the facts of the case has granted enhancement. Learned Counsel therefore submitted that no case has been made out by the appellants for enhancement of the compensation.

7. We have carefully considered the rival submissions, perused the record and the judgments relied upon.

8. In view of the rival submissions, following points arise for determination in the appeal:

1. Whether the matter deserves to be remanded to the Reference Court?

2. Whether the appellants are entitled to compensation at the rate of Rs.170/-per square meter in respect of the acquired land, if not what is the market rate of the acquired land?

9. Perusal of the impugned judgment discloses that the appellant relied upon three Sale Deeds namely sale deed dated 20.12.1989, by which a sub-divided plot admeasuring 501.86 sq. mts., was sold @ Rs.160/-per sq. mt.; Sale Deed

dated 11.7.1990 by which sub-divided plot admeasuring 528.74 sq. mts., was sold @ Rs.170/-per sq. mt. and Sale Deed dated 2.10.1987 by which a plot admeasuring 8,433 sq. mts. was sold @ Rs.50/- per sq. mt.

10. Admittedly the acquired land is tenanted agricultural land. The deceased Narayan Vaigankar was tenant of Comunidade of Tivim. The Reference Court placing reliance upon Section 2 of the Goa Land Use (Regulation) Act, 1991 which came into force from 2/11/1990 held that the acquired land being agricultural tenanted land could not have been used for any purpose other than the agriculture. The Reference Court rightly did not place reliance upon the sale deeds relied upon by the appellants and consequently dismissed the reference.

11. In the case of Smt. Tulia Aguiar e Oliveira (supra), relied upon by Mr. Kantak, the Division Bench of this court remanded the matter to the Reference Court in order to give opportunity to the appellants therein, in view of the judgment of the Apex Court in respect of land acquired for the same purpose by different Notification and situated in nearby village, since there was no material on record to ascertain the comparability of the land acquired with the land in the said proceedings. In view of the said judgment and having regard to the fact that the sale deeds relied upon by the appellants are not in respect of the land comparable to the acquired land, it would be appropriate to remand the matter to the Reference Court.

12. In the case of Janaki N. Morajkar (supra) (to which one of us, A.P. Lavande, J. was party) the Division Bench of this court held in case of tenanted agricultural land building potential of the land cannot be considered for determining compensation and in case tenanted agricultural land is acquired, its value has to be fixed on the basis of agricultural income. SLP preferred against the said judgment which was delivered by Division Bench of this Court on 9/2/2005, was dismissed.

However, in the case of Rameshchandra Govind Pawaskar (supra), the Apex Court considered the judgment of this court in the case of Janaki Morajkar and did not specifically disagree with the view taken therein. In the said case the Apex Court placing reliance upon the value of the land in the neighbourhood which was not tenanted which could be used for all purposes deducted 50% and arrived at a figure of Rs.50/- per sq. mt.

13. In the present case, the Reference Court in its judgment dated 29/10/2003 placing reliance upon the provisions of Goa Land Use (Regulation) Act, 1991 rejected the reference. Admittedly the judgments in the case of Janaki Morajkar (supra) and Rameshchandra Pawaskar (supra) were delivered much after the impugned judgment. Therefore, in our considered opinion, it would be just and proper to remand the matter to the Reference Court to give an opportunity to the appellants to place on record any material including sale instances in respect of lands similar to the acquired land and also to give opportunity to the respondents to lead evidence in rebuttal. We, therefore, do not propose to appreciate the

evidence led by the appellants in support of their claim for higher compensation.

14. In our opinion, the interest of justice would be served by remanding the matter and giving opportunity to the appellants to lead further evidence in support of their claim for higher compensation more particularly having regard to the fact that the judgments in the case of Janaki Morajkar (supra) and Rameshchandra Pawaskar (supra) were delivered after the impugned judgment.

15. In view of the above discussion, the impugned judgment and award dated 29.10.2003 passed by Ist Addl. District Judge, Panaji in Land Acquisition Case No. 43 of 1999 is quashed and set aside and the matter is remanded to the Reference Court.

The Reference Court shall permit the appellants to lead further evidence, if they so desire and also permit the respondents to lead evidence in rebuttal. The Reference Court after considering the evidence already led and the additional evidence, if any, led by the parties shall proceed to pass award in the light of the ratio laid down by this Court in the case of Janaki Morajkar (supra) and the Apex Court in the case of Rameshchandra Pawaskar (supra).

16. Since the Reference is of the year 1999 and the acquisition is of the year 1992, we deem it appropriate to expedite the disposal of Land Acquisition Case No. 43 of 1999.

The parties shall appear before the Reference Court on 9.4.2012 at 11 a.m. The Reference Court shall disposed of the reference expeditiously and in any case on or before 30th September, 2012, in the light of the observations made above.

Appeal is allowed in the aforesaid terms with no order as to costs.