

(2011) 09 BOM CK 0172

In the Bombay High Court

Case No : First Appeal No. 80 of 2002 and First Appeals No's. 87, 97, 98, 100, 101 and 102 of 2002

State of Goa and Another

APPELLANT

Vs

Shri Joao Dias

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2012) 1 ALLMR 679 : (2012) 4 BomCR 804

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S. Bandodkar, for the Appellant;

Judgement

A.P. Lavande, J.—Heard Mr. Bandodkar, for the appellants in all the appeals and Mr. Godinho for the respondents in First Appeals No. 87/2002 and 101/2002. None for the respondents in First Appeal Nos. 80/2002, 97/2002, 98/2002, 100/2002 and 102/2002. All these appeals are being disposed of by common judgment, since the appeals are preferred against the judgments and awards passed in the land acquisition cases arising out of the same Notification issued u/s 4 of the Land Acquisition Act, 1894 ("the Act" for short) and admittedly, the nature of the properties involved in all these appeals is also identical.

2. By Notification, issued u/s 4 of the Act, which was published in the Official Gazette on 9th August, 1995, the Government acquired lands of several persons, including those of respondents for public purpose. The respondents claimed Rs. 1,000/-per sq. metre. The Land Acquisition Officer made an award on 13th September, 1996, awarding compensation at the rate of Rs. 25/-per sq. metre. Aggrieved by the inadequacy of the compensation granted, the respondents herein sought reference u/s 18 of the Act, the details of which are as follows:

LAC

No.

Survey

No.

Area acquired.

Name of the Parties

Appeal No.

5/98

48/13

1740 sq. mtrs.

Joao Dias vs. State of Goa and anr.

80/2002

6/98

48/8 part

2125 sq. mtrs.

RenyArtimisa Pereira vs. State of Goa and anr.

. 98/2002

7/98

48/2 part

2484 sq. mtrs.

Joaquim Rosario vs. State of Goa and anr.

102/2002

8/98

48/11 part

1250 sq. mtrs.

Smt. Felicidade Margarida Faria vs. State of Goa and anr.

97/2002

9/98

48/3 part

1050 sq. mtrs.

Anthony Viegas and anr. vs. State of Goa and anr.

87/2002

10/98

48/7 part

1913 sq. mtrs.

Smt. Maria Antonio Fernandes vs. State of Goa and anr.

100/2002

3. Before the Reference Court, the respondents relied upon Sale Deed dated 2.1.1995 Exhibit AW. 1/C and Sale Deed dated 14.8.1995 Exhibit AW. 1/D. In the course of arguments, the respondents placed reliance upon an award dated 25/8/2001, passed in Land Acquisition Case No, 15/1998, in which the compensation awarded by the Land Acquisition Officer was increased from Rs. 25/-per sq. metre to Rs. 100/-per sq. metre. The land in the said case was also paddy field, acquired under the same notification. The Reference Court, after holding that the lands which are subject-matter of the proceedings in the present land acquisition cases, were similar to the land in Land Acquisition Case No. 15/98, enhanced the compensation to Rs. 100/-per sq. metre. Aggrieved by the compensation granted, the appellants herein filed the present appeals.

4. Mr. Bandodkar, learned Addl. Govt. Advocate appearing for the appellants submitted that in so far as the land involved in the Land Acquisition Case No. 15/98 is concerned, the same was a paddy field and the claimants in the said case Shri Jose Pedro Coutinho was a tenant in respect of that land. Mr. Bandodkar further submitted that the appellants have challenged the judgment and award passed by this Court before the Apex Court by filing Special Leave to Appeal (Civil) No. 16830/2011 and the Apex Court has granted interim stay to the award in excess of Rs. 50/-per sq. metre. A copy of the said order has been placed on record. Mr. Bandodkar further submitted that admittedly, the lands acquired were tenanted agricultural lands and, therefore, in view of the Judgment of this Court in the case of Smt. Janaki N. Morajkar Vs. Spl. Land Acquisition Officer and Another, , the same had no building potential and, as such, the Reference Court could not have enhanced the compensation to Rs. 100/-per sq. metre. Mr. Bandodkar further submitted that the judgments passed by the Reference Court in Land Acquisition Case No. 15/98 and in First Appeal No. 39/2001. passed by the learned Single Judge of this Court upholding the compensation granted by the Reference Court have not attained finality inasmuch as the appellants have challenged the Judgment passed by this Court and the Apex Court has granted limited interim stay to the order. According to Mr. Bandodkar, having regard to the Judgment in Smt. Janaki N. Morajkar Vs. Spl. Land Acquisition Officer and Another, the Reference Court could not have enhanced the compensation solely on the basis of the award in Land Acquisition No. 15/98 in which the acquired land was also a tenanted agricultural land i.e. paddy field. Mr. Bandodkar, however, fairly submitted that in First Appeal No. 99/2002 which is arising out of the land acquisition case concerning the same notification and in which the acquired property was also an agricultural tenanted

land, the appeal has been settled before the Lok Adalat and the appellants had agreed to settle the matter at the rate of Rs. 62/-per sq. metre. A copy of the order passed by the Lok Adalat is also placed on record. Mr. Bandodkar further submitted that the appellants will have no objection to enhance the compensation to Rs. 62/-per sq. metre in respect of the lands of the respondents, since in respect of identical lands acquired under the same notification the appellants have agreed to pay compensation at the rate of Rs. 62/-per sq. metre.

5. Mr. Godinho, appearing for the respondents in First Appeals No. 87/2002 and 101/2002, submitted that his clients would be agreeable to receive compensation at the rate of Rs. 62/-per sq. metre. In respect of First Appeal Nos. 80/2002, 97/2002, 98/2002, 100/2002 and 102/2002, it is therefore necessary to decide what should be the market rate in respect of the lands belonging to the respondents in those appeals who have chosen not to put in appearance despite service.

6. In respect of the lands involved in these appeals, there is no serious dispute that the lands acquired were also agricultural tenanted lands. In my considered opinion, therefore, the respondents in these appeals are also entitled to the compensation at the rate of Rs. 62/-sq. metre, more particularly having regard to the fact that the appellants have challenged the judgment passed by this Court, in First Appeal No. 39/2001, confirming the award passed by the Reference Court, fixing the compensation at the rate of Rs. 100/-per sq. metre. Obviously therefore, the judgment passed by this Court is under challenge before the Apex Court and has not attained finality, more particularly in view of the interim order passed by the Apex Court.

7. As stated above, the lands involved in these appeals were also agricultural tenanted lands. This being the position, the judgment in the case of Smt. Janaki N. Morajkar's case [2005(3) ALL MR 824] (supra) is squarely applicable. In the said case, the Division Bench of this Court (to which I was a party), after considering the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 and the Goa Land Use (Regulation) Act, 1991, has held that the compensation in respect of agricultural tenanted land cannot be fixed on the basis of building potential, having regard to the provisions of the two Acts. It is pertinent to note that SLP against the said judgment has been dismissed. Therefore, the position as it stands today is that the compensation in respect of agricultural tenanted lands cannot be fixed on the basis of building potential of such lands and it can only be valued on the basis of the yield. Therefore, going by the said judgment, in the ordinary course, the lands of the respondents in these appeals would have to be valued on the basis of agricultural yield. However, as fairly submitted by Mr. Bandodkar, the appellants have agreed to pay the compensation at the rate of Rs. 62/-per sq. metre in respect of similar land i.e. agricultural tenanted land in First Appeal No. 99/02. I, therefore, see no justification to deprive the respondents of the benefits which have been given to

one of the parties to the acquisition by paying higher compensation. In my considered opinion, the respondents in these appeals are also entitled to the compensation at the rate of Rs. 62/-per sq. metre. For the reasons aforesaid, the appeals are partly allowed. The judgments and awards in Land Acquisition Case Nos. 5/98, 6/98, 7/98, 8/98, 9/98 and 10/98, are set aside and the compensation in respect of the acquired lands is fixed at Rs. 62/-per sq. metre. Needless to mention that the respondents are also entitled to all other statutory benefits under the Act. There shall be no order as to costs.