
(2013) 08 BOM CK 0056

In the Bombay High Court

Case No : First Appeal No's. 28 and 34 of 2011

State of Goa and Others

APPELLANT

Vs

Ramchandra Soma Gawas

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 5 ABR 1265 : (2013) 6 ALLMR 676 : (2014) 2 MhLj 69

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : E. Afonso, Government Advocate and Ms. Sapana Mordekar, for the Appellant; A.D. Bhobe, for the Respondent

Judgement

R.C. Chavan, J.—These two appeals by the State question the judgments delivered by the learned Ad hoc District Judge, Panaji on References u/s 18 of the Land Acquisition Act ("the Act" for short) made by the occupants of tenanted agricultural lands in village Navelim in respect of which the acquisition proceedings were taken by notification No. 22-21-2005-Rt) dated 07/10/2005. The Land Acquisition Officer awarded compensation at the rate of Rs. 5/- per square metre for the said property. The claimants sought a reference to be made claiming that they should be awarded compensation at the rate of Rs. 150/- per square metre. After considering the evidence, the Reference Court awarded compensation at the rate of Rs. 175/- per square metre. Aggrieved thereby the State has preferred these two appeals.

2. I have heard the learned Government Advocates in two appeals as well as the learned Counsel for the occupants.

3. There is no dispute that the lands acquired are the tenanted agricultural lands situated at village Navelim, Taluka Bicholim situated about 35 to 40 kilometres away from the city of Panaji. The Reference Court seems to have relied on the award in respect of lands acquired by proceedings commenced by Notification u/s 4 of the Act dated 12-11 -2002, where for tenanted paddy field lands, the

compensation of Rs. 150/- per square metre was awarded. The learned Judge, thereafter, granted increase of 5% per annum on compounding basis and then fixed the compensation at the rate of 175/- per square metre. After deducting the compensation at the rate of Rs. 5/- per square metre awarded by the Land Acquisition Officer, the learned Judge directed payment of balance at the rate of 170/- per square metre.

4. The learned Government Advocates submitted that the tenanted land can be used only for the purpose of cultivation and no change in the use of the land was permissible in view of the provisions of Goa Land Use Regulation Act, 1991. Section 2 of that Act provides that no land which is vested in a tenant shall be used or allowed to be used for any purpose other than agriculture. Therefore, they submitted that the only way to assess the compensation in respect of the said tenanted lands would be to tender evidence about the income from the land and no evidence about the income was tendered by the claimants. Further, the learned Government Advocates submit that the compensation would have to be decided on the basis of the value of the neighbouring lands. In both the cases, the claimants had specifically admitted that the adjacent pieces of lands had been acquired for playground and the Government had awarded compensation at the rate of 25/- per square metre during earlier acquisitions by award dated 22/10/2003. Therefore, according to the learned Government Advocates, the compensation for the lands, which are subject-matter of these two appeals, should not exceed Rs. 25/- per square metre which could at worst be increased by 5% p.a., since Section 4 notification in the cases at hand was issued on 20/10/2005. The learned Government Advocates relied on the judgment of the Supreme Court in *Goa Housing Board Vs. Rameshchandra Govind Pawaskar and Another*, where the Supreme Court observed in paragraph 13 (Para 12 of AIR) as under:

13. The question is whether such prohibition will affect the market value of the land. The respondent submitted that this Court had repeatedly held that all lands situated in the same area and acquired by the same notification, should be awarded the same compensation. He relied upon the judgment in *K. Periasami Vs. Sub-Tehsildar (Land Acquisition)*, and *Delhi Development Authority Vs. Bali Ram Sharma and Others*. There can be no doubt that similarly situated land in the same area, having the same advantages and acquired under the same notification should be awarded the same compensation. But the question is when one land is a freehold land not subject to any restrictions in regard to user and the adjoining land though similarly situated is subject to a permanent restriction regarding user requiring it to be used only for agricultural purposes, the question is whether the two lands can be termed as comparable lands which should be subjected to the same compensation.

In that case, the compensation awarded had been reduced from Rs. 100/- per square metre to Rs. 55/- per square metre.

5. The observations in this paragraph may not be helpful to the appellants

because the question is not only whether the lands acquired, which are the subject-matter of these proceedings, having a different character than those acquired for playground at the rate of Rs. 25/- per square metre earlier. The question is why the acquired lands should not be valued on par with tenanted paddy lands acquired by notification dated 12/11/2002.

6. The learned Government Advocates also submitted that there is absolutely no evidence tendered by the occupants to show that then-lands had any similarity with the lands acquired by notification dated 12/11/2002 from village Morombi O Pequeno for the purpose of constructing bypass on National Highway No. 4A. They submitted that these lands stretch from the outskirts of city of Panaji till the village Old Goa and, therefore, cannot at all be compared with the acquired lands. The learned Government Advocate also submitted that in several cases, this Court has awarded compensation by taking the amount awarded for adjacent land after allowing increase of 5% per annum and, therefore, they assailed the judgment of the learned Additional District Judge awarding the compensation at the rate of Rs. 175/- per square metre.

7. The learned Counsel for the respondents-occupants of the lands submitted that a very restriction on the use of land imposed by Section 2 of the Goa Land Use Regulation Act, 1991 would imply that the location of the lands is thoroughly irrelevant for the purpose of fixing the compensation. He submitted that the tenanted agricultural lands, whether situated in the heart of Panaji city or in far away Taluka like Bicholim, can be put to only agricultural use and, therefore, would have the same value. The learned counsel for the occupants pointed out that the award in respect of the lands acquired for bypass road which is at Exhibit 13 shows that in paragraph 16, the Land Acquisition Officer had referred to earlier award dated 06/03/1996 acquiring land from the same revenue village for the purpose of constructing Tourism Reception Centre wherein the rate for tenanted paddy field was fixed at the rate of 150/- per square metre. He pointed out that in this award dated 06/03/1996 and the award at Exhibit 13 which is, possibly, given some time after 2003, the compensation for the tenanted agricultural lands where paddy was grown, remained the same i.e. Rs. 150/- per square metre. He submitted that thus the Government of Goa had taken a stand that the value of the tenanted paddy lands would be Rs. 150/- per square metre irrespective of time when such land was acquired. He submitted that since the land wherever situated could be put only to agricultural use, its location is irrelevant and, therefore, the learned Judge was justified in holding that the lands in question could be valued at Rs. 150/- per square metre.

8. The learned Government Advocate for the appellants submitted that the awards relied on are mere offers and, therefore, the claimant would have to prove his entitlement to rights, after leading proper evidence and since in this case, no proper evidence is led, the learned trial Judge could not have relied on the award in respect of the lands acquired for bypass road. Again, this very argument would help the applicants since the Government had offered price of

Rs. 150/- per square metre for tenanted paddy lands, there is no warrant for treating the tenants in the village Naveli differently, since they are also paddy cultivators. The learned Government Advocate sought to suggest that the lands, which have been acquired for bypass road had, apart from the income from paddy cultivation, income from extraction of salt. However, there is no evidence for this. Therefore, this potential of I these lands cannot be taken into consideration."

9. The only fault that can be found with the judgment is that the learned Judge was not justified in increasing the price from Rs. 150/- per square metre to Rs. 175/- per square metre, since the occupants themselves had claimed compensation at the rate of Rs. 150/- per square metre only. Apart from this, if the learned Judge wanted to rely on the award in respect of the lands acquired for bypass, that award itself would show that right from 1996 till 2003, the price was held to be Rs. 150/- per square metre only and there was no question of granting any enhancement. In view of this, both the appeals are partly allowed. The value of the acquired land is held to be Rs. 150/- per square metre and not Rs. 175/- per square metre, as held by the Reference Court. The Reference Court shall re-calculate the compensation by fixing the compensation at the rate of Rs. 150/- per square metre with all statutory benefits on it, which the appellants shall pay to the occupants.