

IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NOS. 293, 294, 317, 318, 319 &
320 OF 2005**

WITH

**MISC. CIVIL APPLICATION NOS.142, 143, 144, 145, 146 &
147 OF 2011**

Comunidade of Colvale,
having its office at Colvale,
Bardez Goa.

By its Attorney,

Shri Wynne Cajetan Paul

... Appellant

V e r s u s

1. Deputy Collector (Rev) &
Land Acquisition Officer,
Collectorate,
Panaji Goa.

2. The Administrative Officer,
Goa Daman and Diu, I.D.C.,
Saraswati Mandir Building,
18th June Road,
Panaji.

3. M/s Binani Zine Ltd.,
Colvale, Bardez Goa.

... Respondents

Mr. S. D. Padiyar, Advocate for the appellant.

Ms. P. Kamat, Addl. Government Advocate for respondent nos. 1
and 2 in First Appeal No. 320 of 2005.

**Coram:- F. M. REIS &
K. L. WADANE, JJ**

Date :- 7th April, 2015

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. S. D. Padiyar, learned counsel appearing for the appellant and Ms. P. Kamat, learned Addl. Government Advocate for respondent nos. 1 and 2 in First Appeal No. 320 of 2005.

2. The learned counsel appearing for the appellant has pointed out that all the above appeals be taken up together for hearing as the issues involved in all such proceedings for determination of the compensation are identical.

3. The above appeals challenge the judgments and award dated 19.07.2005 passed in Land Acquisition Case Nos. 20, 21, 22, 23, 24 & 26/1997 whereby the references under Section 18 of the Land Acquisition Act, 1894 (herein after referred to as "the said Act") came to be rejected.

FACTS IN FIRST APPEAL NO. 293 OF 2005

The subject matter of the acquisition in the above appeal is the land acquired pursuant to the Notification dated 16.08.1984 surveyed under No. 218/7 situated at Colvale Village, admeasuring an area of 725 square metres. In the said proceedings, a claim of tenancy was raised by the heirs of

Atmaram Sawlo Mandrekar which is under adjudication before the learned Mamlatdar.

FACTS IN FIRST APPEAL NO. 294 OF 2005

The subject matter of the acquisition is the land acquired pursuant to the Notification dated 16.08.1984 surveyed under No. 218/8 situated at Colvale Village, admeasuring an area of 750 square metres. In the said proceedings, a claim of tenancy has been raised by the heirs of Nana Vishnu Govekar which is under adjudication before the learned Mamlatdar.

FACTS IN FIRST APPEAL NO. 317 OF 2005

The subject matter of the acquisition is the land acquired pursuant to the Notification dated 16.08.1984 surveyed under No. 220/1 admeasuring an area of 1,09,090 square metres as well as the land surveyed under No. 218/3 admeasuring an area of 525 square metres totally aggregating to an area of 109615 square metres situated at Colvale Village. In the said proceedings, a claim of tenancy has been raised by one Benjamin Pereira which is under adjudication before the learned Mamlatdar.

FACTS IN FIRST APPEAL NO. 318 OF 2005

The subject matters of the acquisition are the lands acquired pursuant to the Notification dated 16.08.1984 surveyed under No. 218/2 admeasuring an area of 1175 square metres, survey No. 218/4 admeasuring an area of 1425 square metres, survey No. 218/6 admeasuring an area of 650 square metres and survey No. 218/9 admeasuring an area of 1925 square metres totally aggregating an area of 5175 square metres situated at Colvale Village. In the said proceedings, a claim of tenancy has been raised by one Ramkrishna Govekar which is under adjudication before the learned Mamlatdar.

FACTS IN FIRST APPEAL NO. 319 OF 2005

The subject matter of the acquisition is the land acquired pursuant to the Notification dated 16.08.1984 surveyed under No. 218/5 admeasuring an area of 800 square metres situated at Colvale Village. In the said proceedings, a claim of tenancy has been raised by the heirs of Nana Vishnu Govekar and Benjamin Pereira which is under adjudication before the learned Mamlatdar.

FACTS IN FIRST APPEAL NO. 320 OF 2005

The subject matter of the acquisition is the land acquired pursuant to the Notification dated 16.08.1984 surveyed under No. 218/1 admeasuring an area of 1625 square metres situated at Colvale Village. In the said proceedings, a claim of tenancy has been raised by one Vinayak Chodankar which is under adjudication before the learned Mamlatdar.

4. Mr. S. D. Padiyar, learned counsel appearing for the appellant has pointed out that there was also a claim raised in the references under Section 18 of the said Act that the Comunidade lands have no potential of being used for non agricultural purpose as they were tenanted and have restrictions in transfers. The learned counsel further pointed out that as far as the claim of the tenancy is concerned, such claim has been seriously disputed by the appellant. The learned counsel further submits that in fact the purchase proceedings initiated by the said alleged tenants have been set aside by the competent authority. The learned counsel has brought to our notice that as there were disputes between the appellant and the alleged tenants in the apportionment of the compensation, references under Section 30 of the said Act were preferred to the learned Reference Court. An

appeal preferred before this Court against the award passed in such reference proceedings came to be disposed of whereby the matter has been remanded to the Reference Court to decide the reference afresh after awaiting the final decision on the issue of tenancy pending before the learned Mamlatdar. The learned counsel further pointed out that the decision on the alleged claim of tenancy would be material in deciding the compensation payable to the appellant for the acquired land.

5. On the basis of such submission, the only point for determination is whether the compensation payable to the appellant in terms of the provisions of the said Act can be determined without ascertaining whether the subject land is tenanted or not. It is not disputed that the fact as to whether the land is tenanted or not would have a material bearing for determining the market value of the land acquired. As already pointed out herein above, the dispute raised by the alleged tenants in the proceedings under Section 30 of the said Act has been referred to the learned Mamlatdar for appropriate decision. In case the claim of tenancy is upheld, the land acquired would have to be valued on the basis of its agricultural value by following the well settled principle of law and Goa Land Use Act. In cases where the acquisition has taken place before the Goa Land Use Act came

into force the restrictions referred to therein would not be applicable. This clearly shows that the market value of the land has a direct bearing on the decision by the learned Mamlatdar on the alleged claim of tenancy over the subject property in dispute.

6. In such circumstances, we find that in the interest of justice as the issue of tenancy would have a material effect in determining the compensation and for the reasons stated herein above, it would be appropriate to quash and set aside the impugned judgments and award passed by the learned Reference Court and remand the matters to the Reference Court to decide the references under Section 18 of the said Act filed by the appellant afresh after awaiting the decision on the claim of tenancy over the subject properties by the persons referred to herein above which matters are stated to be pending before the learned Mamlatdar.

7. The appellant has also filed an application under Order 41 Rule 27 of the Civil Procedure Code for additional evidence. The purpose of filing such application is that the appellant desires to produce additional evidence in support of their claim for enhancement of compensation. Considering the view we have taken in the above appeals, we find it appropriate to give liberty to

them to file such application before the Reference Court to rely on such document. In case any such application is filed, the learned Reference Court shall examine such application after hearing the parties in accordance with law.

8. In view of the above, we pass the following :

O R D E R

- (i) The appeal is partly allowed.
- (ii) The impugned judgments and award dated 19.07.2005 are quashed and set aside.
- (iii) Land Acquisition Case Nos. 20, 21, 22, 23, 24 & 26/1997 are restored to the files of the Reference Court.
- (iv) The Reference Court shall proceed to decide the references afresh in the light of the observations made herein above in accordance with law.
- (v) All contentions of both the parties on merits are left open.
- (vi) The parties are directed to appear before the Reference Court on 30.06.2015 at 10.00 a.m. and abide by its further directions.

(vii) The appeals and M.C.As stand disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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