

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 39 OF 1998

Maria Rita Martins,
widow of late Mariano Martins,
r/o H. No. 305, Moloca,
Merces, Ilhas, Goa.
since deceased through legal heirs:

(a) Mrs. Ana Doroteia Leopoldina Martins
and her husband;

(b) Mr. Joaquim Santana Gomes,
since deceased through legal heirs:

1(b)(i) Mrs. Flory Fernandes;

1(b)(ii) Mr. Mathew Fernandes;

1(b)(iii) Mrs. Priscilia Gomes;

1(b)(iv) Mr. Carmo Gomes;

All residents of Murda Grande,
Nuvem, Salcete, Goa.

(c) Mr. Roque Sabastiao Bombparte Martins,
and his wife;

(d) Mrs. Judith Rita Dias,
Both residing at H. No. 456/1,
Voilem Bhatt, Merces, Ilhas, Goa.

(e) Mrs. Exaltacao Piedade Martins
and her husband;

(f) Mr. Damian Peter B. Fernandes,
Both residing at Navelim, Salcete, Goa.

(g) Mr. Francisco Martins
and his wife;

(h) Mrs. Emy Martins,
Both residing at H. No. 212,
Moloca, Merces, Ilhas, Goa.

(i) Mr. Xavier Martins
and his wife;

(j) Mrs. Fatima Martins,
Both residing at Mercedes, Ilhas, Goa.

... Appellants

V e r s u s

1. Dy. Collector and Land Acquisition Officer,
Collectorate, Panaji, Goa.

2. Director of Social Welfare,
Panaji, Goa.

3. Comunidade of Murda, } *Dismissed as per Order*
Murda, Ilhas, Goa. } *dated 10.12.1999.*

... Respondents

Mr. M. B. D' Costa, Senior Advocate with Ms. S. Chodankar, Advocate for the Appellants.

Ms. Neha Kholkar, Additional Government Advocate for the Respondents.

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

Date : **5th January, 2015**

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

The above Appeal challenges the Judgment dated 29.12.1997 passed in Land Acquisition Case no. 75 of 1990, whereby the reference filed by the Appellant came to be rejected.

2. Shri M. B. D' Costa, learned Senior Counsel appearing for the Appellant, has pointed out that the learned Reference Court has erroneously dismissed the reference on the ground that the tenanted lands has no potentiality of being used for non agricultural purpose and, according to him, there was enough material on record to establish the agricultural land value irrespective of the restrictions of the Goa Land Use Act. The learned Senior Counsel has further

pointed out that the acquisition itself was much prior to the coming into force of the Goa Land Use Act and, as such, such restrictions would not be applicable to the Appellant. The learned Senior Counsel further submit that the Reference Court has misconstrued the evidence on record as well as the valuation report on extraneous grounds whilst passing the impugned Judgment. The learned Senior Counsel has taken us through the impugned Award and pointed out that the learned Reference Court has erroneously dismissed the reference.

3. On the other hand, Ms. Kholkar, learned Addl. Government Advocate appearing for the Respondents, has pointed out that the tenancy claim of the Applicants itself has not been established as, according to her, the claim of tenancy has been rejected by the Administrative Tribunal. Learned Addl. Government Advocate further pointed out that though a Writ Petition is pending challenging the Order passed by the Tribunal, nevertheless, as the claim of the Appellant itself has been rejected, the question of granting any enhancement of compensation at the instance of the Appellant would not arise. Learned Addl. Government Advocate further pointed out that the learned Judge has rightly appreciated the material on record and discarded the valuation report whilst coming to the conclusion that the Appellant has failed to discharge the burden to establish that the compensation offered by the Land Acquisition Officer was inadequate. Learned Counsel as such submits that the Appeal be rejected.

4. On the basis of the contentions of the learned Counsel and on perusal of the records, the following point for determination arises in the present Appeal :

POINT FOR DETERMINATION

- (I) Whether the Reference Court was justified to reject the reference filed by the Appellant ?

5. During the course of the hearing of the above Appeal on the previous occasions, this Court by an Order dated 08.06.2010, had deferred the hearing of the above Appeal to await the final outcome of the Writ Petition challenging the dismissal of the claim of tenancy of the Appellant over the disputed property. It is not disputed that the proceedings are still pending before this Court but, however, taking note of the view we propose to take, we find that it is not required to await the final outcome of the tenancy dispute raised by the Appellants herein.

6. The Apex Court in a Judgment reported in **(2011) 10 S.C.C. 371** in the case of **Goa Housing Board vs. Rameshchandra Govind Pawaskar & Anr.**, has, observed at Paras 19, 20 and 22 thus :

“19. 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 landowner 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.

20. 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.

21. ...

22. On the facts and circumstances, having regard to the prohibition regarding use of land for any purpose other than agricultural, the land will have to be treated and valued as agricultural 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 deducted 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 the neighbouring land (which is not subject to the prohibition under the Land Use Act) as Rs 110 per square metre, we are of the view that an appropriate compensation for the acquired land should be 50% thereof, that is, Rs 55 per square metre.”

7. Shri M. B. D' Costa, learned Senior Counsel appearing for the Appellant, in the present case has in fact has relied on Sale instance which had potentiality of being used for non agricultural purpose. Apart from that, the contention of Shri M. B. D' Costa, learned Senior Counsel, that the restrictions under the Goa Land Use Act, 1991, are not applicable to the facts of the present case are also a matter to be re-examined by the Reference Court in accordance with law.

8. Without going into the rival contentions and taking note of the fact that the issue of tenancy has not been finally decided, we find it appropriate, in the interest of justice, to quash and set aside the impugned Award dated 29.12.1997 and remand the matter to the Reference Court to decide the matter afresh after awaiting the final outcome of the result of the tenancy proceedings initiated by the Appellant herein. The locus of the Appellant to maintain the reference shall also depend on the outcome of such tenancy proceedings.

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

ORDER

(i) The impugned Judgment and Award dated 29.12.1997 is quashed and set aside.

(ii) The Land Acquisition Case no. 75 of 1990 is restored to the file of the Reference Court. The Reference Court is directed to decide the said reference in the light of the observations made herein above after hearing the parties in accordance with law.

(iii) All the contentions of both the parties on merits are left.

(iv) The parties are directed to appear before the Reference Court on 16.03.2015 at 10.00 a.m.

(v) Appeal stands disposed of accordingly.

K. L. WADANE, J.

F. M. REIS, J.

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