

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL APPLICATION (REVIEW) NO.16 OF 2019
IN
WRIT PETITION NO.608 of 2014**

REAL ESTATE AGENCIES,
REP. BY ITS PARTNER,
KEDAR R. KAKODKAR

... PETITIONER

VERSUS

CORPORATION OF THE
CITY OF PANAJI, THR. ITS
COMMISSIONER & ORS.

... RESPONDENTS

Shri Rajendra Pai, Senior Advocate with Shri Nikhil Vaze, Advocate for the Petitioner.

Shri P.A. Kamat, Advocate for the Respondent No.1.

Shri S.P. Munj, Additional Government Advocate for the Respondents No.2 & 3.

Shri Raunaq Rao, Advocate for the Respondents No.3 to 6.

Ms. Andrea Fernandes, Advocate for the Respondent No.7.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 17 MARCH 2021

ORAL ORDER :

A piece of property was sought to be acquired, and that generated a few rounds of litigation, including one under the Land Acquisition Act, 1894. We need not address all those rounds of litigation.

2. The fact remains that I am called upon to decide a Review Petition which is filed against this Court's judgment, dated 05.03.2019, in Writ Petition No.608 of 2014.

3. The Corporation of the City of Panaji (Corporation), for whose benefit the property was acquired, filed the Writ Petition questioning the quantum of "compensation". I used the word "compensation" in quotes for the reason that it is not an acquisition *per se*. Indeed, initially, the

Government wanted to acquire the property for the Corporation's benefit and went through the procedure. But later, it reckoned that after using the property a while, it could return it to the owner. There arose a problem.

4. So, the compensation is not under Section 11 but under Section 48 of the Land Acquisition Act. When that was determined, the Corporation came before this court and filed Writ Petition No.608 of 2014.

5. If I briefly touch upon the earlier round of litigation, the facts are disputed. Without prejudice to either party, I may note that respondents 3 to 5 owned a tract of property which they handed over to the 6th respondent for development. Then, the land was plotted out. As respondents 3 to 6 contend, from the plotted area, a few plots were sold to various people. Those people formed an Association; that Association is the 7th respondent.

6. Now, the Association lays a rival claim to the property. It contends that once the property has been plotted out and a particular portion of the land was shown as common area, then for all purposes, all the plot owners—that is, the Association—become the joint owners. Of course, respondents 3 to 6 hotly contest the Association's claim. And, indeed, it is not within my purview to decide that controversy in this Review Petition. While disposing of the Writ Petition No.608 of 2014, this Court, in paragraph 31 (vii) of the judgment, has held that the Reference Court will decide the matter on its own merits and in accordance with law. In fact, as it is germane, paragraph 31 of the judgment reads thus:

“31. In the result, the following order is passed :

O R D E R

- (i) The petition is partly allowed.
- (ii) The impugned award is hereby modified, granting compensation of Rs.15,000/- payable to the respondent nos.3 to 5 together and Rs.15,000/- to the respondent no.6.
- (iii) This shall be subject to the outcome of the reference under Section 18 of the Act.

- (iv) The respondent no.6 shall deposit the amount withdrawn by him after deducting Rs.15,000/-, before the Reference Court, within six weeks from today.
- (v) The respondent no.1 is directed to make reference of the dispute to the competent Civil Court, within six weeks from today.
- (vi) Liberty to the respondent nos.3 to 5 to file reference under Section 18, if so advised, subject to the limitation as may be applicable.
- (vii) *Needless to mention that the Reference Court shall decide the matter on its own merits and in accordance with law.*
- (viii) Rival contentions of the parties in the reference are kept open.
- (ix) In the circumstances, there shall be no order as to costs.”

(italics supplied)

7. To have the above directions reviewed, the 6th respondent, that is the developer of the property, has come to this Court. It wants this Court to clarify that its observation in paragraph 30 of the judgment shall not affect the Reference Court's decisional freedom. According to it, the remand is complete, and that gives total decisional freedom to the Reference Court. Shri Raunaq Rao, the learned counsel for respondents no.3 to 5, supports the arguments advanced by Shri R. Pai, the learned Senior Counsel for the applicant.

8. On the other hand, Shri P.A. Kamat, the learned counsel for the Corporation, contends that this Court has correctly held in paragraph 30 that section 23 of the LA Act will have no application to the proceedings under section 48 of the same Act. Even if this Court observes that this Court's findings on that count will not bind the Reference Court, still it must preserve the Corporation's liberty to raise the same issue before the Reference Court.

9. On the other hand, Ms. A. Fernandes, representing the Association, has vehemently argued that respondents no.3 to 6 have been trying to loot public money, though they possess no title to the property. According to her, in the earlier round of litigation, the Corporation has

already arrived at settlement with the Association. Later, in tune with that settlement, it used the property for the intended purpose—that is, as a land-fill—and returned it to the Association. This handing over of possession was through a deed of delivery. At any rate, she submits that respondents no.3 to 6 are not entitled to any compensation.

10. Heard Shri Rajendra Pai, Senior Advocate with Shri Nikhil Vaze, Advocate for the Petitioner; Shri P.A. Kamat, Advocate for the Respondent No.1; Shri S.P. Munj, Additional Government Advocate for the Respondents No.2 & 3; Shri Raunaq Rao, Advocate for the Respondents No.3 to 6; and Ms. Andrea Fernandes, Advocate for the Respondent No.7.

11. There may be a dispute among the parties about the apportionment of the compensation. There may even be a dispute about the title and entitlement. But I only need to focus on the issue in the Review Petition. In fact, this Court wanted the Reference Court to decide the matter after hearing all parties including the Association. But that must be subject to this Court's findings in paragraph 30 of the judgment.

12. In paragraph 30, this Court has considered “whether the solatium or the component interest can be granted on the compensation determined under Section 48 of the Act”. In that process, it has examined section 23 of the Act. It has, then, held that section 23 of the Act would apply only for determination of the amount of compensation to be awarded for the “land acquired” and not otherwise. On the contrary, section 48 of the Act, this Court held, pertains to the determination of compensation for the land, which is not acquired on account of withdrawal from the acquisition. Eventually, it has concluded that “the solatium under Section 23(2) and the component interest under Section 23(1) of the Act would not be admissible on the compensation awarded under Section 48 of the Act.”

13. Indeed, as I have already extracted, clause (vii) of paragraph 31 remands the matter to the Reference Court with no strings attached. This Court wanted the Reference Court to decide the matter evidently under

section 48 of the LA Act, “on its own merits and in accordance with law”. In paragraph 30, this Court has noted that section 23 of the Act will apply only to lands acquired, as is evident from section 48.

14. I reckon, in entertaining the Review Petition, this Court's decisional purview is very much limited. Unless there is any error apparent on the face of the record or any perversity injuring the interest of justice, this Court will not revisit the matter on merits.

15. I, therefore, hold that this Court's observations in para 30 will not restrict the Reference Court's decisional freedom in any manner. That said, I hasten to add that any interested party may raise, among others, the plea concerning the application of section 23, which, I reckon, is a pure question of law.

Thus, I allow the Review Petition to the extent indicated above.

DAMA SESHADRI NAIDU, J.

NH

NITI K
HALDANKAR

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NITI K HALDANKAR
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