

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.49/2014

SHRI RATNAKAR RAMA PARAB

major, resident of Sarvesh Niwas,
House No.685, Marcel, Goa.

...APPELLANT

Versus

The Managing Director,
Goa State Infrastructure
Development Corporation
Limited, EDC House,
7th Floor, Panaji, Goa.

...RESPONDENTS

**Mr. S. D. Lotlikar, Senior Advocate with Mr. Sarvesh Samant,
Advocate for the Appellant.**

**Mr. S. P. Munj, Additional Government Advocate for the
Respondent-State.**

CORAM: M. S. SONAK, J.

Reserved on: 10th February 2022

Pronounced on: 16th February 2022

JUDGMENT:

1. Heard Mr. S. D. Lotlikar, learned Senior Advocate who appears along with Mr. Sarvesh Samant for the Appellant, and Mr. S. P. Munj learned Additional Government Advocate for the respondent-State.

2. This appeal challenges the Judgment and Award dated 25.09.2013 made by the Reference Court in Land Acquisition Case No.12/2012 dismissing the reference under Section 18 of the Land Acquisition Act, 1894 (said Act) seeking enhancement of compensation.

3. By notification under Section 4 of the said Act dated 31.10.2006, the State proposed to acquire the appellant's land admeasuring 1192 sq. mtrs. surveyed under Nos.29/12 (Part), 29/11, 29/10, 29/9 (Part), and 29/8 (Part) situated in the village Orgao, Ponda, Goa for the public purpose of construction of approaches to Gaundalim - Kumbharjua bridge. The Land Acquisition Officer (LAO) by his Award dated 02.08.2010 determined the market rate of the acquired land at ₹8.75/- per sq.mtr. holding *inter alia* that the acquired land was tenanted under the provisions of the Goa Agricultural Tenancy Act, 1976 (Tenancy Act).

4. The appellant, dissatisfied with the compensation awarded, applied for reference under Section 18 of the said Act and claimed the rate of ₹300/- per sq.mtr. The Reference Court vide the impugned Award dismissed the reference. Hence this appeal.

5. Mr. S. D. Lotlikar, learned Senior Advocate for the appellant, at the outset submitted that there was no legal evidence about the acquired property being tenanted. He submitted that there was no declaration of tenancy and the mere entry in Form I & XIV (survey records) does not establish tenancy. He submitted that the alleged tenant had made no claim for compensation and if the acquired land was indeed tenanted, it would be inconceivable that the tenant would not claim compensation. He, therefore, submitted that the Reference Court erred in holding that the acquired lands were tenanted. He also submitted that the Reference Court had no jurisdiction to hold that the acquired lands were tenanted because such an issue can only be decided by a Mamlatdar. Based on all this Mr. Lotlikar submitted that the acquired land ought to have been held as freehold land and the compensation determined on the said basis.

6. Without prejudice, Mr. Lotlikar submitted that the decision of this Court in First Appeal Nos.28 and 31 of 2011 is an authority for the proposition that the market value of tenanted lands, wherever they are situated in the State of Goa is ₹150/- per sq.mtr. because this was the offer made by the Land Acquisition Officer in an earlier Award dated 06.03.1996 in respect of lands in the village of Navelim for constructing a tourism reception centre. He submitted that therefore, even if the acquired land is

held as tenanted land, the Reference Court was bound to determine the market rate at ₹150/- per sq.mtr.

7. Mr. Munj learned Additional Government Advocate defended the impugned award based on the reasoning reflected therein. He pointed out that in this case, the appellant had himself produced on record the affidavit of Kashi Vasu Gawade, the tenant (Exh.19). He pointed out that from this affidavit it is quite clear that the acquired property was indeed tenanted and the attempt on the part of Kashi Gawade to urge that such tenancy was surrendered, long after the property had already vested in him, was quite rightly turned down by the Reference Court. Mr. Munj submitted that the Appellants, based on subterfuge, seek to bypass the provisions of the Tenancy Act or the Goa Land Use (Regulation) Act, 1991, and claim compensation that is not due.

8. Mr. Munj submitted that the contention based on the decision in First Appeal Nos.28 and 31 of 2011 was never raised before the Reference Court. He submitted that there is no evidence whatsoever to compare the lands that were the subject matter of acquisition in now referred Award dated 06.03.1996 located in the village of Navelim, Bicholim, Goa and the acquired land i.e. located in Ponda Goa. In the absence of any such

evidence, Mr. Munj submitted that such a contention cannot be raised for the first time in this appeal. Without prejudice, he submitted that the appellant seeks to misinterpret the Judgment because the same does not lay down any blanket proposition that the tenanted lands wherever situated in the State of Goa will have to be awarded compensation at the market rate of ₹150/- per sq.mtr. He submitted that there are areas in the State of Goa where even untenanted lands will not command such a price. He pointed out that in this case there is no evidence whatsoever about any agricultural yield and not even an attempt was made to urge the determination of compensation by capitalization method.

9. Mr. Munj, for all the aforesaid reasons, submits that this appeal may be dismissed.

10. The rival contentions now fall for my determination.

11. In this case, there is no dispute whatsoever that the survey records indicate that Kashi Vasu Gawade was the tenant of the acquired property. At least *prima facie* therefore, there was nothing wrong in the LAO or the Reference Court proceeding on this basis.

12. The proof that the acquired land was indeed tenanted land was provided by the appellant Ratnakar Parab who examined himself as AW1. In his examination-in-chief, he produced on record the affidavit of Kashi Vasu Gawade that was taken on record and marked as Exh.C-19.

13. This affidavit of Kashi Vasu Gawade is most relevant and therefore transcribed below for the convenience of reference:-

"I, the undersigned, Smt. Kashi Vasu Gawade, widow of late Shri. Vasu Pandu Gawade, aged about 50 years, resident of MadaPai, Marcel, Ponda-Goa, do hereby solemnly affirm on oath as under.

1) I say that the field known "Morie Khadi" or "Morie Khali" situated Orgao at Marcela P. O. Ponda, which is surveyed under numbers 26/4, 26/8, 26/15, 26/22, 29/5, 29/12, 33/2, 33/9, 33/16, 33/23 was under my possession under Tenancy basis and I was cultivating the same. I say that after occurring breaches to the protective bunds of the said field I gave up cultivating task since 10 years, as the repair attending to the aforesaid field was beyond my limit in both i.e. economically as well as physically.

2) I say that the aforesaid field is fully recorded for titleship in the name of Rama Datta Parab of Orgao, Marcela except portion surveyed under number 26/1 of Orgao village.

3) I say that the portion of the aforesaid field which is Surveyed under No.26/1, is entitling for rights and interests to:

1) Rama Datta Parab Sirsaikar.

2) Nilkant Rajaram Naik.

3) Arvind Vishnu Karande.

4) Gajanan Mahadev Fulari.

4) I say that whatever rights and interests I were conferred in me and which I were enjoying in past, pertaining to aforesaid field surveyed under Nos. as stated hereinabove Para 1, are being surrendered hereby in favour of Shri. Ratnakar Rama Parab of Orgao, Marcel, and that with effect from to-day I have no any right, title or interest over and pertaining to aforesaid field and that aforesaid Shri. Ratnakar Rama Parab is fully entitled to possess, enjoy the aforesaid field hereafter, provided that said Ratnakar Rama Parab, or his heirs or agents should not ask any account or amount for arrears shares of paddy or its value from me, and that I am in no debt to said Ratnakar Rama Parab or his heirs or agents w.e.f. this date.

5) I say that my children also consented to my declaration/statement herein and to that effect they have put also their signatures herebelow.”

(Emphasis supplied)

14. Now in terms of the Tenancy Act, once the property is tenanted the same vests in a tenant on the tillers day and consequently, the landlord is divested of any rights or title therein, except perhaps the right to receive compensation at the

fixed rate under the Tenancy Act itself. The vesting, in this case, has taken place much before the date of the Section 4 notification i.e. 31.10.2006.

15. Further, Section 10 of the Tenancy Act, in terms provides for the surrender of a tenancy before the vesting, and the same reads as follows:

“10. Surrender by tenant.— (1) Any tenant may surrender his right of tenancy in respect of any land to the landlord and thereupon the tenancy in respect of that land shall stand terminated if the following conditions are satisfied:

(i) the surrender is made at least one month before the commencement of the year;

(ii) it is made by the tenant in writing and is admitted by him before the Mamlatdar;

(iii) it is made voluntarily and in good faith to the satisfaction of the Mamlatdar;

(iv) it is approved by the Mamlatdar; and

(v) the conditions in clauses (a) to (d) of sub-section (4) of section 20 are satisfied.

(2) Where the land is cultivated jointly by joint tenants or members of joint family, the surrender, unless it is made by all of them shall be ineffective in respect of such joint tenants or members, as the case may be, as have not joined in the application for surrender.

(3) Where the Mamlatdar is of opinion that the conditions mentioned in sub-section (1) are not satisfied, he may, after giving a reasonable opportunity to the landlord to show cause against taking action under this sub-section, and holding such enquiry as he may;

(i) refuse to approve the surrender, or

(ii) submit the case to the Government for orders under the next sub-section.

(4) Where a case is submitted under the preceding sub-section, the Government may, by order, transfer the tenancy right to any other person, including a Comunidade, a Co-operative Society or a Panchayat, who, in its opinion, is a fit and proper person to be a tenant, and thereupon such other person shall be deemed to be a tenant for the purposes of this Act.”

16. Dealing with similar provisions contained in the Bombay Tenancy and Agricultural Lands Act, 1948, the Hon'ble Supreme Court in ***Ramchandra Keshav Adke (Dead) by LRs & Ors. v/s. Govind Joti Chavare & Ors. - (1975) 1 SCC 559*** has held that a surrender of tenancy by a tenant to be valid and effective must fulfill these requirements: Firstly it must be in writing; secondly, it must be verified before the mamlatdar; thirdly, while making such verification the mamlatdar must satisfy himself in regard to two things, namely, (a) that the tenant understands the nature and consequences of the surrender and (b) that it is voluntary, and fourthly, the mamlatdar must endorse his

finding as to such satisfaction upon the document of surrender. The Hon'ble Supreme Court made it clear that these provisions are designed to protect a tenant on two fronts against two types of dangers - one against possible coercion, undue influence, and trickery proceeding from the landlord, and the other against the tenant's own ignorance, improvidence and attitude of helpless self-resignation stemming from his weaker position in the tenant-landlord relationship.

17. Based on the aforesaid reasoning the Hon'ble Supreme Court held that the imperative language of the statute, the beneficent purpose, and the importance of these provisions for the efficacious implementation of the general scheme of the Act, all unerringly lead to the conclusion that they were intended to be mandatory. Neglect of any of these statutory requisites would be fatal. Disobedience of even one of these mandates would render the surrender invalid and ineffectual. The Hon'ble Supreme Court also held that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all, and other methods of performance are necessarily forbidden. The intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed is implied in these provisions. Failure to comply with

these mandatory provisions will vitiate the surrender and render it *non est*.

18. Therefore, having regard to the provisions of the Tenancy Act and the above decision of the Hon'ble Supreme Court, the so-called surrender of tenancy rights by Kashi Vasu Gawade was quite correctly not taken cognizance of by the Reference Court. Mr. Munj learned Additional Government Advocate is quite right in his submissions that this was nothing but a subterfuge to defeat not only the provisions of the Tenancy Act but also the provisions of the Goa Land Use (Regulation) Act, 1991 and then inflate the market value. The evidence produced on record by the Appellants is sufficient to sustain the finding that the acquired land had no building potential and the same could have been used for no purpose other than agriculture. The market value was quite correctly determined on the said basis.

19. The Reference Court has quite correctly referred to the decision in *Smt. Janaki N. Morajkar and Special Land Acquisition Officer and Konkon Railway Corporation Ltd. - First Appeal No.221/2003* decided on *09.02.2005* where the Division Bench of this Court, in the precise context of determination of the market value of the tenanted lands observed

that the provisions of the Goa Land Use (Regulation) Act, 1991 will apply. The relevant observations read as follows:

“In the present case the applicant is admittedly an agricultural tenant. It is also an admitted fact that the acquired land is tenanted and agricultural. That being the position, Section 2 of the Act will squarely apply in the present case and in view of Section 2, there is a clear bar for the applicant to use the said property for any other purpose other than agriculture. In this view of the matter, in our view, in order to find out what is the compensation payable in respect of the acquired land, we will only have to assess the compensation on the footing that the property is agricultural and in order to find out what is the compensation payable in respect of the acquired land we will have to see whether any evidence has been led by the applicant in respect of the agricultural income.”

20. The Reference Court has also quite correctly referred to the decision in the case of ***Confraria v/s. Deputy Collector — 2009 (4) Bom. CR. 817*** wherein it was held that insofar as the State of Goa is concerned, there is an Act called “Goa Land use Act” and as per the provisions of the said Act, an agricultural tenanted land cannot be used for any other purpose and such land has to be used only for the agricultural purpose and that the user of such a land, therefore, cannot be changed and it has to be restricted only for agricultural purpose and no development permission can be granted. The Reference Court also quite correctly referred to ***Damaian C. Menezes vs. Spl. Land***

Acquisition Officer, Konkon Railway Corporation Ltd. Goa - 2010 (4) AIR Bom. R 273, in which the same position was reiterated.

21. In this case, the appellant, besides himself, examined Shivram Dhuri (AW2) as an expert. This expert admitted that there are names of tenants in the survey records. He also admitted that there are details of crop area mentioned in the survey records. He admitted that the properties which are tenanted or names of tenants are reflected in Form I & XIV have restrictions insofar as development is concerned. He however added that *“I was informed that the tenancy rights in respect of the acquired property had ceased. I say that I have accepted the said statement of my client i.e. the applicant herein and I have not checked any document indicating whether tenancy rights were extinguished or otherwise. I say that I have valued the said property on the basis of said information as a free hold.”*

22. The expert AW2 refused to answer the question as to whether there is any difference in valuing a freehold property and a tenanted/leasehold property by simply responding *“I cannot say anything to the said question”*. The expert AW2 admitted having inspected the properties on 27.01.2013 and from the record, it is

clear that Section 4 notification was issued almost seven years earlier i.e. 31.10.2006.

23. On the evaluation of the evidence of AW1 and AW2, it is quite apparent that the acquired property was indeed tenanted. AW2 deposed based on the information given to him by AW1. He admits that he has not verified the position. He also admits that not only the names but also the detailed crop area statement is to be found in the survey records. He admits having visited the property almost seven years after the issuance of Section 4 notification.

24. Furthermore, even AW2 speaks of “*cessation*” and “*extinguishment*” of the tenancy. This is altogether distinct from saying that there was no tenancy at all in the first place. On the evaluation of the evidence on record, it does appear that the case of the appellant was not that there was any tenancy affecting the acquired land but that such tenancy had ceased or has been extinguished on account of some surrender of tenancy rights by the tenant. As noted earlier, such a case of cessation, extinguishment, or surrender has not been established by the appellant on facts as well as in law. In this state of evidence, the appellant is not justified in urging that the finding recorded is

either without jurisdiction or otherwise not supported by the evidence on record.

25. The second contention on behalf of the appellant also cannot be accepted in the present case. Firstly, as was correctly pointed out by Mr. Munj, not only was the decision in First Appeal Nos.28 and 34 of 2011 not cited before the Reference Court but further, there is not even any shred of evidence to compare the land which was the subject matter of earlier Award dated 06.03.1996 situated in Bicholim or the land which was the subject matter of the two First Appeals situated in Navelim, with the land with which we are concerned in the present appeal i.e. the acquired land. Secondly, the circumstances in which the State had offered the rate of ₹150/- per sq.mtr. to the lands which were the subject matter of the Award dated 06.03.1996 are also not quite clear. Thirdly, there is no general proposition laid down in the said decision that agricultural tenanted lands wherever they may be situated in the State of Goa are to be valued at ₹150/- per sq.mtr.

26. Mr. Munj is quite right in submitting that several untenanted lands in the State of Goa itself will not fetch ₹150/- per sq.mtr. or would not fetch ₹150/- per sq.mtr. in the year 1996 or in the year 2006 when Section 4 notification was issued

in the present case. Therefore based upon some stray observations which are sought to be torn from the context, no case is made out for determination of the market rate of the acquired tenanted land at ₹150/- per sq.mtr.

27. AW1 in his affidavit in evidence has himself admitted that there is no cultivation of paddy and that such cultivation was not carried out for the last about 27 years. He also deposed that there are some jungle trees and bushes that have grown all over the acquired land. In this case, no submissions were advanced concerning the value of trees. Thus there is no evidence of any yield from agricultural operations.

28. For all the aforesaid reasons, this appeal is required to be dismissed and is hereby dismissed. There shall be no order for cost.

M. S. SONAK, J.