

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NOS.198 & 218 OF 2009

FIRST APPEAL NO.198 OF 2009

1. The Goa Housing Board
Alto Porvorim, Bardez-Goa.

2. Executive Engineer (N),
North Division,
Alto Porvorim, Bardez, Goa.

.... Appellants

Versus

Shri Madan Waman Chodankar
(deceased, represented by legal
representatives)

1(a) Smt. Medha Madan
Chodankar (widow)

1(b) Miss Monali Madan
Chodankar, Major of age,
daughter

1(c) Shri Jatin Madan Chodankar,
Major of age, son

1(d) Master Jaimeen Madan
Chodankar, son aged 12 years,
All residing at Betim,
Bardez-Goa.

2. Deputy Collector (Revenue)
& Land Acquisition Officer,
Panaji, Goa.

.... Respondents

Shri H.D. Naik, Advocate for the Appellants.

Shri Vilas P. Thali, Advocate for Respondents No.1(a) to 1(d).

**AND
FIRST APPEAL NO. 218 OF 2009**

1. The Goa Housing Board
Alto Porvorim, Bardez-Goa.
2. Executive Engineer (N),
North Division,
Alto Porvorim, Bardez, Goa.Appellants

Versus

Shri Vishnu Narayan Naik,
House No.171, Coelho Waddo,
Penha de Franca, Bardez, Goa.
Deceased, represented by legal heirs,
1(a) Smt. Taramati Naik (wife)

1(b) Shri Narayan Vishnu Naik
(son)

1(c) Smt. Sangeeta Bhaskar Bhonsle
(Daughter, married)

1(d) Shri Bhaskar Bhonsle
(son in law)

1(e) Kum. Lalani V. Naik
(daughter)

1(f) Kum. Shevanti Vishnu Naik
(daughter)

2. Deputy Collector (Revenue)
& Land Acquisition Officer,
Panaji, Goa. Respondents

Mr. Hanumant D. Naik, Advocate for the Appellants.
Mr. M.B. Da Costa, Senior Advocate with Ms. K. Betquecar,
Advocate for Respondent Nos.1(a) to 1(f).

CORAM : M. S. SONAK, J.

DATE : 6th MAY 2022

ORAL JUDGMENT :

1. In both these appeals, heard Mr. Hanumant D. Naik for the appellant – Goa Housing Board. Mr. Vilas P. Thali, the learned Counsel, appears for respondents/claimants in First Appeal No.198/2009, and Mr. M.B. Da Costa, learned Senior Counsel appears along with Ms. Karishma Betquecar for the respondents/claimants in First appeal No.218/2009.

2. The learned Counsel for the parties agrees that both these appeals can be disposed of by a common judgment and order because they pertain to the exact property acquired by the Board vide Notification under Section 4 of the Land Acquisition Act, 1894 (the said Act) dated 17.05.1990. Therefore, even according to me, both these appeals must be considered together and disposed of by a common judgment and order.

3. By Notification dated 17.05.1990, under Section 4 of the said Act, the Board proposed acquiring properties bearing Survey

No.132/1, ensuring 18,415 sq.mtrs. and property bearing Survey No.132/2 admeasuring 6050 sq.mtrs. of village Penha de Franca for the activities of the Board. Thus, the total area proposed for the acquisition was 24,465 sq.mtrs. (acquired property).

4. The Land Acquisition Officer (LAO), by his award dated 03.03.1993, determined the rate at ₹125/- per sq.mtr. But this amount was not paid to the claimants because there were some disputes about apportionment. The LAO, accordingly, made a reference under Section 30 of the said Act on the issue of apportionment. Since the claimants were not satisfied with the rate determined by the LAO, reference was also made under Section 18 of the said Act on the issue of enhancement. These references under Section 18 were registered as LAC No.54/1994 and LAC No.55/1994 by the Reference Court.

5. The Reference Court disposed of LAC No.54/1994 vide judgment and award dated 02.05.1998, determining the rate at ₹150/- per sq.mtr. for 15,465 sq.mtrs. from Survey No.132/1 and maintaining the rate of ₹125/- per sq.mtr. for the balance. However, LAC No.55/1994 was dismissed by the Reference Court.

6. In First Appeal No.68/1998 instituted by the Board and First appeal No.237/2003 instituted by the respondents in First Appeal No.218/2009, this Court set aside the judgment and awards made by the Reference Court in LAC No.54/1994 and LAC No.55/1994 and remanded the matter to the Reference Court for determining the rate at which compensation could be paid to the claimants for the acquired lands.

7. On remand, by a common judgment and award dated 06.12.2008, the Reference Court has held that the claimants in LAC No.54/1994 (respondents in First Appeal No.198/2009) should be paid compensation at the rate of ₹179/- per sq.mtr. for 15,465 sq.mtr. from Survey No.132/1 but maintained the rate of ₹125/- per sq.mtr. for the balance. The Reference Court has also held that the claimant in LAC No.55/1994 (respondents in First Appeal No.218/2009) should be paid compensation at the rate of ₹147/- per sq.mtr. for the same property that is 15,465 sq.mtrs. from Survey No.132/1 and maintained the rate of ₹125/- per sq.mtr. for the balance. Aggrieved by this common judgment and award dated 06.12.2008, the Board has instituted these two appeals.

8. Mr. H.D. Naik, firstly, submitted that the common judgment and award direct double payment to the two sets of

claimants for the same land. He submits that this is clearly impermissible and to that extent the common judgment and award warrants interference or at least a clarification. Next, Mr. H.D. Naik submits that the claimants in LAC No.54/1994 had set up a case that they were "tenants" of the acquired land through some landlord (not being the claimants in LAC No.54/1994). He submits that if the acquired land was affected by tenancy, there was no justification for granting any enhancement of compensation. He relies on *Goa Housing Board V/s. Rameshchandra Govind Pawaskar & Ors.*¹ in support of this contention.

9. Mr. H.D. Naik, without prejudice to the above, also submits that there was no legal evidence on record to sustain any enhancement over and above the rate awarded by the LAO. Accordingly, he submits that this is an additional reason for allowing these appeals.

10. Mr. V.P. Thali, learned Counsel for the respondents in First Appeal No.198/2009, and Mr. M.B. Da Costa learned Senior Counsel for the respondents in First Appeal No.218/2009, at the very outset, made it clear that they were not claiming any double compensation. They submitted that the disputes over

1 AIR 2012 SC 193

apportionment have already been settled, and even the First Appeals questioning the apportionment awards were disposed of based on the consent terms filed by the parties. They referred to this Court's judgment and order dated 18.12.2019 to be read with the order dated 31.07.2020, by which consent terms were taken on record, and the apportionment disputes were settled. They pointed out that in terms of the settlement, parties agreed that the claim of tenancy was not proper, but some compensation was agreed to be shared in terms of the ratio set out in the consent terms.

11. Mr. Costa Frias and Mr. Thali further submitted the rate of ₹179/- per sq.mtr. determined by the Reference Court for 15,465 sq.mtrs. was based on the evidence on record, and the same called for no interference.

12. The rival contentions now fall for my determination.

13. Mr. H.D. Naik is justified in his first objection that the Reference Court should not have awarded double compensation to the claimants in LAC No.54/1994 and LAC No.55/1994 regarding the exact property that is the acquired property. Even according to me, the Reference Court, when dealing with a reference under Section 18 of the said Act and when aware about

a separate reference under Section 30 of the said Act for apportionment is pending, should only determine the market rate as on the date of Section 4 Notification. Once this rate is determined, total compensation will have to be calculated based on this rate. This total compensation will then have to be apportioned based on the determination in the apportionment reference under Section 30 of the said Act. Therefore, there is no question of the parties getting double compensation or more than one set of compensation for the same acquired land.

14. The impugned awards are not entirely clear whether double compensation was indeed awarded or not; however, since there is some ambiguity on this subject, it is made quite clear that parties will not get any double compensation for the acquisition of the acquired property. Mr. Costa and Mr. Thali, learned Counsel for the claimants, quite fairly accepted this position. Accordingly, they submitted that it was not even their case that the respondents were entitled to double compensation.

15. Accordingly, the impugned awards are modified by clarifying that there shall be no double compensation to any of the claimants regarding the acquired property. The compensation as determined will have to be apportioned between the claimants in terms of this Court's judgment and order dated 18.12.2019

read with the order dated 31.07.2020 by which the consent terms arrived at between three sets of claimants came to be approved. These orders are made in First Appeal Nos.288 and 289 of 2004 and First Appeal Nos.71 and 72 of 2005.

16. Thus, the total compensation that will now be determined will have to be apportioned between the parties *inter se* based on the judgment and order dated 18.12.2019 read with the order dated 31.07.2020 accepting the consent terms arrived at amongst three sets of claimants. This addresses Mr. Naik's first contention about the payment of double compensation.

17. The second and third contention of Mr. H.D. Naik, in the peculiar facts of the present case and considering the evidence on record, warrants no acceptance. The record indicates that it was only a claim of tenancy made by one of the tenants, and this claim was ultimately never pressed. The claimants settled the matter, and such settlement was accepted by this Court as reflected in the above judgments and orders. Therefore, the law laid down in *Rameshchandra Govind Pawaskar & Ors.* (supra) will not apply in such peculiar facts. But I agree with Mr. Naik that cases where parties raise and conveniently give up tenancy claims, have to be closely scrutinized. Such scrutiny is unnecessary

because the Court accepted the settlement between the parties, and even the enhancement is not much.

18. The enhancement is not substantial, and further, the same is backed by the evidence on record. The Reference Court has justified this marginal enhancement, and no significant ground has been pointed out to reverse the Reference Court on this point. The Reference Court erred in determining two different rates regarding the same acquired property in LAC No.54/1994 and LAC No.55/1994.

19. Both these references were taken up together for consideration. Though no common evidence was led, the Reference Court should not have determined two different rates. The rate of ₹179/- per sq. mtr. is supported by the evidence on record and, therefore, that is the rate that should now be taken into account for determining the total compensation and not the rate of ₹147/- per sq.mtr. Moreover, this rate will apply only to the area of 15,465 sq. mtrs. since the rate for the balance area has been maintained at ₹125/- per sq.mtr.

20. The respondents/claimants will be entitled to all statutory benefits, interest, etc., but even all such benefits shall be in one set only. First, the total compensation is must be determined by

taking the market rate at ₹179/- per sq.mtr. and, after that, this total compensation must be apportioned between the three sets of claimants in terms of the judgment and order and the consent terms referred to above in First Appeal Nos.288 and 289 of 2004 and First Appeal Nos.71 and 72 of 2005.

21. The appellants and the respondents are permitted to withdraw their respective shares out of the amount deposited by the Board in this Court in these appeals. After that, the parties should exchange the calculations and jointly or separately apply to the Registrar (Judicial), who shall facilitate the withdrawal upon verification of the calculations. The parties will also have to furnish their identification documents and their bank details so that the amounts can be transferred/deposited in their respective bank accounts.

22. Both these appeals are disposed of in the above terms. Accordingly, there shall be no orders for costs.

M. S. SONAK, J.

NITI K
HALDANKAR

Digitally signed by NITI K
HALDANKAR
Date: 2022.05.09 10:40:39
+05'30'