

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.2 OF 2015

Pandurang Daji Naik,
major of age,
Son of Daji Naik,
r/o H.No.
Naikawada, Torcem,
Pernem Goa.

... Appellant

Versus

The Executive Engineer,
Works Division VII,
G.T.I.D.C., Dhargal,
Pernem Goa.

...Respondent

Mr. A. D. Bhobe, Advocate for the appellant.

Mr. Arun A. S. Talaulikar, Additional Government Advocate for the respondent.

WITH

FIRST APPEAL NO.3 OF 2015

Pandurang Daji Naik,
major of age,
Son of Daji Naik,
r/o H.No.
Naikawada, Torcem,
Pernem Goa.

...Appellant

Versus

The Executive Engineer,
Works Division VII,
G.T.I.D.C., Dhargal,
Pernem Goa.

...Respondent

Mr. A. D. Bhobe, Advocate for the appellant.

Ms. Priyanka Kamat, Additional Government Advocate for the respondent.

CORAM: M. S. SONAK, J

DATE : 11th February 2022

ORAL JUDGMENT

1. Heard Mr. Bhobe, learned counsel for the appellant in both these appeals. Mr. Talaulikar appears for the respondent – State in First Appeal No. 2 of 2015 and Ms. Priyanka Kamat for the respondent – State in First Appeal No.3 of 2015.

2. The learned counsel for the parties agree that both these appeals can be disposed of by a common judgment and order.

3. In both these appeals, the appellant (claimant) challenges the impugned awards made by the reference Court, dismissing the claim for enhancement in respect of the acquired lands.

4. By notification dated 06.12.2006 issued under Section 4 of the Land Acquisition Act, 1894 (the said Act), the State proposed to acquire lands admeasuring a total area of 10271 sq. mtrs. at Torcem, Pernem Goa, for the public purpose for the construction of B/6 distributaries of RBMC of Tillari Irrigation Project. Both the appeals have been instituted by the same appellant. However, First Appeal No.2 of 2015 pertains to a portion admeasuring 3831 sq. mtrs., where both the Land Acquisition Officer and the Reference Court have held that the land was tenanted and awarded compensation only at the rate of ₹5/- per sq. mtrs. First Appeal No.3 of 2015 pertains to a portion of

5534 sq. mtrs. that is accepted as an untenanted land and for which the Land Acquisition Officer awarded ₹40/- per sq. mtrs. and the reference Court refused to make any further enhancement. Hence, there can be no difficulty in disposing of both these appeals by a common judgment and order.

5. In First Appeal No.2 of 2015, Mr. Bhobe submits that there was documentary evidence produced on record in the form of orders made by the prescribed authorities under the Tenancy Act which establishes that Pandurang Mote whose name appears in the survey records was not a tenant of the appellant. He pointed out that such orders were tested right up to this Court and have attained finality. He submitted that based on the continuance of entry in the survey records, there was no warrant for concluding that the property was tenanted or that Pandurang Mote was the tenant of the appellant. He, therefore, submitted that the finding to this effect is clearly without jurisdiction and warrants interference.

6. Mr. Bhobe submitted that even the determination of compensation at the rate of only ₹40/- per sq. mtrs. in respect of the untenanted portion warrants interference. He pointed out that the comparable sale instances were produced on record and based on the same the higher compensation was due and payable to the appellant. He pointed out that there was no bar for consideration of post Section 4 notification sale deeds as was held by this Court in judgment and order dated 04.02.2022 in First Appeal Nos. 77 and 78 of 2015.

7. Now, in this case, there is no dispute that the acquired lands admeasuring 10271 sq. mtrs. bear survey No.154/0 of Village Torcem, Pernem Goa. In the survey records i.e. Form I & XIV of Survey No.154/0 of Torcem Pernem Goa, the name of Gurunath Pandurang Mote does appear in the tenants' column and the names of Daji Pandu Naik (appellant), Dr. Vassudev Deshprabhu, and Vishnu Deshprabhu appear in the occupants or the owners' column. Based on such survey records, both the Land Acquisition Officer and the reference Court have concluded that the acquired lands which form the subject matter of First Appeal No.2 of 2015 is tenanted land and therefore, are not entitled to the compensation above ₹5/- per sq. mtrs.

8. In First Appeal No.3 of 2015, the acquisition is from property surveyed under No.165/0 of Torcem, Pernem Goa which Mr. Bhobe submits is virtually adjacent property. Here both the Land Acquisition Officer and the reference Court have proceeded based on the premise that this acquired property was the untenanted and determined rate at ₹40/- per sq. mtrs.

9. The appellant has produced on record the judgment and order dated 30.07.1997 passed by the Joint Mamaltdar at Pernem in Case No. JM/TNC/8/97 instituted by Gurunath Pandurang Mote against Daji Pandu Naik (appellant), Dr. Vassudeo Deshprabhu, and Vishnu Deshprabhu who were impleaded as opponent Nos. 1, 2, and 3 in the said case. Mr. Gurunath Mote applied for an injunction in terms of

Section 8-A of the Goa Agricultural Tenancy Act, 1964 (Tenancy Act).

10. The judgment and order dated 30.07.1997 (Exhibit 53-C) records that by another judgment and order dated 25.03.1982 passed in Case No. TNC/AK/7/81, the Mamlatdar has already held that Gurunath P. Mote was the tenant of only Vishnu G. Deshpabhu and consequently not a tenant of Daji Naik (appellant) and Dr. Vassudeo Deshpabhu. There is a record that in the year 1982's case as well, Daji Naik (appellant), Dr. Vassudeo Deshpabhu, and Vishnu Deshpabhu had been impleaded as parties and the declaration of tenancy has been sought qua all the three persons but such declaration was granted only qua Vishnu G. Deshpabhu.

11. The evidence on record in this case further bears out that Gurunath P. Mote instituted proceedings for his declaration as tenant bearing No. JM-I/TNC/10/2006 again against Daji P. Naik (appellant), Dr. Vassudeo Deshpabhu, and Vishnu Deshpabhu who were styled as opponent Nos. 1, 2, and 3. This matter was disposed of on a preliminary objection raised on behalf of Pandurang Daji Naik (appellant) and Dr. Vassudeo Deshpabhu pleading to invoke the principle of *res-judicata* given in the earlier judgment and order dated 25.03.1982 made by Mamlatdar in Case No. TNC/AK/7/81. The above preliminary objection was upheld and by judgment and order dated 12.03.2007, the Joint Mamlatdar of Pernem Taluka, dismissed case No. JM-I/TNC/10/2006 instituted by the said Gurunath P. Mote

claiming declaration of tenancy, *inter alia* qua Daji P. Naik (appellant) herein in respect of property surveyed under No.154/0 of Torcem, Pernem Goa.

12. Mr. Gurunath P. Mote challenged the aforesaid judgment and order dated 12.03.2007 before the Deputy Collector and SDO, Pernem who, by judgment and order dated 20.04.2009 dismissed the appeal. The matter was carried further by instituting Tenancy Revision Application No.10/2009 before the Administrative Tribunal, Goa. But the said Revision Application was also dismissed by the Tribunal vide judgment and order dated 22.12.2009. This order of the Tribunal was questioned before this Court by instituting Writ Petition No.410 of 2010 and this Court also upheld the concurrent orders made by the Mamlatdar, Deputy Collector, and the Tribunal.

13. Based on the aforesaid evidence, it is apparent that Gurunath P. Mote was not the tenant of Daji P. Naik (appellant) in respect of the property surveyed under No.154/0 of Torcem, Pernem Goa. The Land Acquisition Officer and the Reference Court were therefore not justified in virtually ignoring the aforesaid judgments and orders or refusing to take cognizance of the legal effect of the aforesaid judgments and orders and insisting that the acquired property was a tenanted land. To that extent, the contention of Mr. Bhobe about the reference Court falling into error will have to be accepted.

14. Mr. Talaulikar however submitted that the Mamlatdar's orders holding that Gurunath P. Mote was a tenant only to Vishnu Deshprabhu was ex-facie erroneous. He submitted that in the survey records, Mote is indicated as the tenant of Daji P. Naik (appellant), Dr. Vassudeo Deshprabhu, and Vishnu Deshprabhu. There is no evidence of any partition and therefore, the Mamlatdar's orders implicitly holding that the portion held by Daji P. Naik (appellant) and Dr. Vassudeo Deshprabhu was not tenanted is ex facie erroneous.

15. In the first place, I am not quite sure whether the State can collaterally attack the orders of the Mamlatdar which incidentally, were confirmed by the Deputy Collector and the Administrative Tribunal, and even this Court. At the highest, these orders could have been challenged by Gurunath P. Mote which option was in fact exercised by Mote but without much success up to this Court. There is nothing to indicate that Mote carried the matter further before the Hon'ble Supreme Court or that the decision of this Court in Writ Petition No.410 of 2010 was otherwise set aside or varied in any competent proceedings. The LAO, in this case, has virtually ignored the documentary evidence on record including *inter alia* the decision of this Court in Writ Petition No.410 of 2010. The reference Court has also fallen into a similar error.

16. Secondly, the aspect of partition also cannot be raised by the State Government because the State Government has itself identified the appellants' share as 3831 sq. mtrs., from out of the total acquired

area of 10271 sq. mtrs., from survey No.154/0 of village Torcem, Pernem. Thirdly, mere entries in the survey records are never determinative but the entries have to yield to judicial determination by the competent authorities. For all these reasons, the contention of Mr. Talaulikar cannot be accepted.

17. Thus, in this case, the acquired property admeasuring 3831 sq. mtrs. from out of survey No.154/0 of Torcem, Pernem Goa would have to be regarded as untenanted property and the compensation will have to be determined on the said basis.

18. In First Appeal No.3 of 2015, the appellant challenges the impugned judgment and award to the extent it declines enhancement over and above the rate of ₹40/- per sq. mtrs. determined for untenanted acquired properties admeasuring 5534 sq. mtrs from out of survey No.165/0 of village Torcem. There is no serious dispute that the property surveyed under No.165/0 and the property surveyed under No.154/0 are in the same vicinity and are comparable to one another. Both the properties have been acquired for the same public purpose under the same notification. Therefore, the rate to be determined in First Appeal No.3 of 2015 will have to be applied as the rate in First Appeal No.2 of 2015 as well. Now it is held that the property which is the subject matter of the said appeal is untenanted.

19. The appellants have produced the following sale instances in support of the plea of enhancement.

- (i) Sale deed dated 10.07.1992 at Rajvel Wado, Torxem (Exhibit 53-C);
- (ii) Sale deed dated 16.12.2005 at Torxem (Exhibit 54-C);
- (iii) Sale deed dated 23.05.2007 at Torxem (Exhibit 55-C);
- (iv) Sale deed dated 24.04.2008 at Torxem (Exhibit 56-C).

20. Out of the aforesaid sale instances, at Exhibits, 55-C and 56-C are required to be discarded because the same are post Section 4 notification sale instances. Although Mr. Bhobe is right in submitting that there is no bar to consider post Section 4 notification sale deeds, in this case, since the pre Section 4 notification sale deeds have been placed on record, there is no warrant to consider the post Section 4 notification sale deeds. Further, having regard to the nature of public purpose, it is apparent that the same will impact future sales in the locality and thereby increase the rates at which such sales take place. For both these reasons, the sale deeds at Exhibits 55-C and 56-C cannot be considered.

21. This means that the sale deeds that can be taken for consideration are sale deeds at Exhibits 53-C and 54-C. Now the sale deed at Exhibit 53-C was executed on 10.07.1992 i.e. almost 14 years before Section 4 notification was issued in the present case. This sale instance relates only to a small plot admeasuring 150 sq. mtrs where the acquired land admeasures 5534 sq. mtrs. This plot is stated to be at a distance of two kilometres away from the acquired land. Thus, this

can hardly be regarded as a comparable instance based on which the market rate of the acquired land can be determined.

22. The sale instance at Exhibit 54-C is dated 16.12.2005 and in that sense the same is proximate. However, even this sale deed pertains to a small plot of 210 sq. mtrs situated almost one kilometre away from the acquired land. This plot of land is hardly 250 metres from HP Service Station along NH 17 and it is on account of these factors the same could command rate of ₹210/- per sq. mtrs. Neither the claimant nor his experts have led any cogent evidence on the aspect of comparability. The expert had admitted visiting the site almost a decade after Section 4 notification. Thus, based on the evidence on record, no case is made out to warrant any enhancement beyond ₹40/- per sq. mtrs as determined by the Land Acquisition Officer. Ms. Kamat learned Additional Government Advocate is quite right in her submission that the burden proving the market rate is on the claimant and in this case, the appellant (claimant) has failed to discharge this burden. Accordingly, First Appeal No.3 of 2015 warrants dismissal.

23. The rate of ₹40/- per sq. mtrs in respect of comparable untenanted land offered by the Land Acquisition Officer himself under the same notification will now have to be determined in First Appeal No.2 of 2015 since the land which is the subject matter of the said appeal is also found to be untenanted.

24. Both the appeals are disposed of by making the following order:

(a) First Appeal No.2 of 2015 is partly allowed and the compensation therein is now to be determined at the market rate of ₹40/- per sq. mtrs instead of ₹5/- per sq. mtrs. The appellant will be entitled to all the statutory benefits corresponding to this rate;

(b) The respondent will have to deposit this enhanced compensation amount together with all statutory benefits in this Court within two months from today. Upon such deposit, the appellant will be entitled to withdraw the same by furnishing bank details so that the amount can be directly transferred in the bank accounts;

(c) First Appeal No.3 of 2015 is hereby dismissed.

(d) There shall be no orders for costs in both these appeals.

M. S. SONAK, J