

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 132 OF 2007

Mr. Sazu R. S. Nadkarni, Residing at House
No. 848, Benawada, Sanguem, Goa. (Since
deceased represented by legal
representatives)

A) Shri Raghoba Sazu S. Nadkarni,

B) Smt. Kalpana Raghoba S. Nadkarni

C) Shri Arun Sagu S. Nadkarni,

D) Smt. Krupa Arun S. Nadkarni,

E) Shri Prashant Sagun Nadkarni

F) Smt. Neela Prashant S. Nadkarni

All residents of 'Chandraprabha', behind
Water Supply Division, 9, Murida, Fatorda- ... Appellant
Goa.

Versus

(1) Special Land Acquisition Officer, Salaulim
Irrigation Project, Gogal, Margao, Goa.

(2) The Executive Engineer Works Division
X, Irrigation Department Pajimol, Sanguem- ... Respondents
Goa.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Sailee Kenny
and Mr. T. Sequeira, Advocates for the Appellant.

Mr. Pravin Faldessai, Additional Government Advocate
for the Respondents.

CORAM: M. S. KARNIK, J
DATED: 5th JULY 2023

ORAL JUDGMENT

1. Heard learned Senior Advocate Shri Lotlikar for the appellant and Shri Faldessai, learned counsel appearing for the respondents.
2. The reference under section 28-A (3) of the Land Acquisition Act, 1894, (herein after referred to as the 'said Act' for short) before the District and Sessions Judge, South Goa, Margao, was numbered Land Acquisition Case No.7/1997. The appellant had submitted an application on 07.05.1996 to the Special Land Acquisition Officer of the Selaulim Irrigation Project seeking a reference section 28-A(3) of the said Act.
3. By a notification no. RD/LQN/176/1971 dated 17.11.1971, under section 4 of the said Act, published in the Government Gazette dated 02.12.1971, several pieces of land at Curpem of Sanguem Taluka were acquired for the purpose of Selaulim Irrigation Project, including the plot no. 137 (part 2) of 16.950 square metres at Village Xelpem. The award dated 24.03.1975 was passed under section 11 of the Act.
4. In terms of provisions of section 28-A, an application was made to the Special Land Acquisition Officer by the Appellant for re-determination of the compensation awarded to him. By the

impugned award dated 22.01.1996, his application was partly allowed with regard to the portions of his property.

5. According to the appellant, he is entitled for compensation of Rs.1/- per square metre for the land acquired as the same was the rate which was given by the District Judge while passing the final order dated 12.10.1990.

6. The trial Court framed the following issues with the findings as under :

<u>ISSUES</u>	<u>FINDINGS</u>
1. Whether the applicant proves that he is entitled to the compensation at the rate of Re.1/- per sq.mt. for the acquired land admeasuring 16,950 sq.mts.	Not proved
2. What relief ? What order ?	As per the Award

7. By the impugned judgment and award dated 28.02.2003, the reference court rejected the reference.

8. In an earlier round of litigation, the award of the reference Court was challenged by the appellants before this Court being First Appeal no. 133 of 2003. This court by the judgment and order dated 06.10.2006, remanded the matter to the reference court for fresh decision in view of the observations made therein.

9. The reference court pursuant to the remand, framed the following issues, rendering the findings as under :

<u>ISSUES</u>	<u>FINDINGS</u>
1. Whether the applicant proves that he is entitled to the compensation at the rate of Re.1/- per sq.mt. for the acquired land admeasuring 36,700 sq.mts.	In the negative
2. What relief ? What order ?	As per Award below

10. The reference court by the judgment and award dated 16.03.2007, which is subject matter of challenge in this appeal, rejected the reference under section 28-A(3) of the said Act.

11. Shri Lotlikar, learned Senior Advocate, submitted that the reference court completely misconstrued the observations dated 06.10.2006 of this Court in First Appeal No. 133 of 2003. Shri Lotlikar submitted that there was no dispute about the appellants possession over the acquired land. According to him, the appellant was granted compensation for the trees that were standing on the land which indicates that the interest of the appellant in the land was recognised by the Government. It is further submitted that this Court while remanding the matter had made a reference to the decision of the Apex Court in **Civil Appeal No. 2558 of 1989** in the case of **Shri Piedade Fernandes vs. Union of India** wherein it was observed that despite the restrictive covenant, the lessee is entitled to

the compensation to the extent of his interest, in the acquired lands, since the Government, by necessary implication, had recognised the interest in the lease hold property held by the lessee. Learned Senior Advocate submitted that the remand was ordered by this Court only because this aspect was not taken into consideration by the reference court. It is submitted that, the reference court committed an error in dismissing the application by proceeding on a completely erroneous footing that the nature of interest which the appellant had in the acquired land is not comparable with that of the holder of the land in respect of which acquisition award was passed. My attention is invited to the evidence on record and the documents to demonstrate that the appellant was in settled possession of the land which was sought to be acquired.

12. Learned counsel Shri Faldessai, on the other hand, invited my attention to the findings of the reference court. He submits that there is no error in the view taken by the reference court. According to Shri Faldessai, the appellant having accepted the award and compensation in respect of the trees, then the appellant was not justified in filing an application under section 28-A(3) of the Act and, in such circumstances, the only remedy for the appellants was to have challenged the award claiming enhanced compensation in those proceedings. Shri Faldessai therefore submitted that the view of the reference court cannot be faulted and the application under section

28-A(3) of the said Act itself was not maintainable. It is further submitted that the reference court has correctly come to a conclusion that there is nothing on record to show that the lands belonging to the appellants are comparable with the lands of Mr. Narendra Sinai Nadkarni in respect of which award formed the basis of the appellants' claim under section 28-A(3) of the said Act. It is further submitted that there is nothing on record to indicate that the appellant was aforamento holder. Learned counsel for the respondent, therefore, submitted that no interference with the award passed by the reference court is warranted.

13. Heard learned counsel for the parties. Perused the paper book and the relevant record. As indicated earlier, the reference court framed the following issues :

ISSUES

1. Whether the applicant proves that he is entitled to the compensation at the rate of Re.1/- per sq.mt. for the acquired land admeasuring 36,700 sq.mts.
2. What relief ? What order ?

14. Before the reference court, the appellant examined himself as Aw.1 and produced documents in support of his case. Respondent did not lead any evidence.

15. Before considering the rival contentions, it is necessary to quote the relevant portion of the order passed by this Court in First Appeal No. 133 of 2006 on 06.10.2006 remanding the proceedings to the reference court on an earlier occasion. The order reads thus :

"2. The appellant has preferred this appeal against the judgment and order passed by Additional District Judge, Margao, rejecting the reference under Section 28 A(3) of the Land Acquisition Act. After hearing both the parties for sometime, it is obvious that the lower Court rejected the reference observing that in the said case no value was determined for plot no. 137 held on aforamento by the applicant and, therefore, he was held to be not entitled to be succeeded in the said reference.

3. Learned Counsel for the appellant brought to my notice unreported order of the Apex Court in Civil Appeal No. 2558 of 1989 in the case of Sri Piedade Fernandes versus Union of India, wherein it was observed that despite the restrictive covenant, the lessee is entitled to the compensation to the extent of his interest in the acquired lands, since the Government, by necessary implication, had recognised the interest in the lease hold property held by the lessee. In my considered view, therefore, this aspect which is not taken into account by the lower Court has to be properly considered for which purpose the only remedy would be to remand the matter for hearing afresh, in the light of said ruling of the Apex Court. In the result, the appeal is allowed. The order dated 28/02/2003 rejecting the reference under Section 28 A(3) of the Land Acquisition Act is hereby set aside and the matter is remanded to the District Court, Margao for hearing afresh, after giving both the parties sufficient opportunity to put up their cases and further directed that

the District Court shall decide the reference within a period of 6 months from the date of receipt of writ of this Court. With these directions, the appeal stands disposed of with no orders as to costs.”

16. The reference court proceeded on the footing that as the appellant has not filed reference under section 18 of the said Act pursuant to the award passed by the Land Acquisition Officer on 26.03.1973, it cannot be said that the appellant is aggrieved by the findings of the Land Acquisition Officer in the order dated 26.03.1973. The reference court took note that this award of 1973 was pursuant to the notification issued under section 4(1) of the Act dated 17.11.1971. The reference court further noted that the appellant herein was awarded compensation only for the trees and no compensation was awarded for the plot no. 137 (part 2) as it was a Government land held on aforamento basis by the appellant.

17. At this stage, it would be necessary to refer to the provisions of Section 28-A(3) of the Land Acquisition Act which reads thus :

“28-A. - Re-determination of the amount of compenstion on the basis of the award of the Court.- (1) (2)
(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be

referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.”

18. It is pertinent to note that under the very same notification, the land of Mr. Narendra Atmaram Sinai Nadkarni, the applicant in Land Acquisition Case no. 387 of 1981 was acquired. In the reference made under section 18 of the Act, the reference court enhanced the value of the land and trees therein in respect of plot nos. 11, 94, 121 and 144. Thus, the compensation that was given to Mr. Nadkarni was on the basis that the lands were free hold lands of Mr. Narendra Atmaram Sinai Nadkarni. According to the reference court, the lands held by Atmaram Nadkarni were on free hold basis and not an aforamento land and therefore the land of the appellants is not comparable.

19. In my opinion, the reference Court was not justified in holding that merely because the appellant failed to challenge the award dated 26.03.1973, it is not open for him to approach the reference court for re-determination of the amount of compensation on the basis of the award at exhibit Aw.1/A (Mr. Narendra Atmaram Sinai Nadkarni). The reference court erred in proceeding on the footing that the appellant failed in showing any similarity in the acquired land with the land of Shri Nadkarni and hence not entitled to relief. This is not

a correct view taken by the reference court. The reference court has not properly appreciated the purport of the observations in the order passed by this court while remanding the matter to the reference court. This court had made a reference to the decision of the Apex court in Civil Appeal No. 2885 of 1989 in the case of **Sri Piedade Fernandes vs. Union of India** (supra), wherein it was observed that despite the restrictive covenant, the lessee is entitled to the compensation to the extent of his interest in the acquired lands, since the Government, by necessary implication, had recognised the interest in the lease hold property held by the lessee.

20. Pursuant to the Supreme Court order, the award of the reference court in the case of **Government of Goa vs. Piedade Fernandes**, needs to be referred to and which reads thus :

“ This is a reference under section 30 of Land Acquisition Act in respect of compensation awarded for the land of 63875 sq.mts. from plot no.3 for Salaulim Irrigation Project Dam and submergence area of Xelpem Village, against the award passed by Special Land Acquisition Officer, Panaji.

This case is coming on this day for final disposal before Shri R. K. Batta, District Judge, Margao, in the presence of Shri F. Reis Advocate for Respondent, nobody present for applicant. It is ordered that ..

ORDER

The respondent is awarded 75% compensation and the applicant 25% compensation. The amount of compensation was deposited by the Land Acquisition Officer, on 05.07.1973, in the Court and the same was deposited in the Treasure under challan.

Necessary refund orders will be issued as per the proportions above, after the appeal period is over.

Costs shall be paid by the applicant.

Advocate's fee are fixed at Rs.500/-”

21. It is thus seen that the claimant **Piedade Fernandes** (supra) in the above referred case of **Government of Goa vs. Piedade Fernandes**, who was an aforamento holder of the land was awarded 75% compensation and the Government was awarded 25% compensation. Thus, in view of the decision of the Supreme Court even the aforamento holders are entitled to compensation to the extent of their interest in the acquired lands.

22. The question is, whether in the present case, the appellant can be said to be an aforamento holder. It is pertinent to note that the reference court in paragraph 10 of its judgment recognised the appellants' holding on aforamento basis. It is not in dispute that the Land Acquisition Officer by his award of 1973, granted compensation to the appellants in respect of the trees but did not grant compensation in respect of the land. Apart from this finding of the

reference court, learned senior Advocate for the appellant relied upon documents brought on record before the reference court to establish his claim that he is an aforamento holder. One such document produced is a true translation of a Portuguese document in English dated 27.07.1917. The said document indicates that the property was purchased by Jose Caetano Dos Milagres Albuquerque, who was emphetheusis of the Government. Moreover, the evidence on record in the form of the examination of the appellant, would reveal that the property was registered in his name. The appellant's deposition is supported by land registration document along with the translation produced at exhibit Aw.1/B. It is further in evidence that the nature of the acquired land is the same as that of Shri Narendra Nadkarni. These materials are reasonably sufficient to indicate that the appellant was an aforamento holder. In Civil Appeal no. 2558 of 1989 in the case of **Shri Piedade Fernandes** (supra), Their Lordships observed that the terms “lessee under emphetheusis”, means a perpetual lease in the landed estate granted to a tenant in perpetuity or for a long term of years, upon the reservation of an annual rent or canon, and upon the condition that the lessee should improve the property or otherwise.

23. In the present case, there is no dispute that the appellant was in possession of the said land and even compensation for the trees standing on the said land was paid to the appellant. The appellant

was duly cross examined. The claim made by the appellant has not been dislodged in any manner by the respondent in the cross examination. The respondent did not lead any evidence. I am therefore inclined to hold that the appellant was an aforamento holder of the land.

24. Having held thus, the question now is whether the reference court was justified in coming to a conclusion that there could be no comparison between the land belonging to Shri Narendra Nadkarni only because Shri Narendra Nadkarni's land was a free hold land. Nadkarni was awarded compensation at the rate of ₹ 1/- per square metre since his land was a free hold land. It may be mentioned here that the Land Acquisition Officer had awarded 'Nadkarni' a compensation of ₹0.20 paise per square metre which was enhanced by the reference court in a reference under section 18 of the said Act. It was on the basis of such enhancement given to 'Nadkarni' that the appellant made an application under section 28-A(3) of the said Act. The reference court only proceeded on the footing that as the nature of the holding of the appellant is not free hold and therefore the award made in the case of Shri Narendra Nadkarni can be of no assistance to the appellant. The nature of holding of Shri Narendra Nadkarni being free hold, was awarded compensation at Rs.1/- per square metre. The appellant is entitled to compensation as an aforamento holder proportionately.

25. In my opinion, the reference court not only misconstrued the observations of this court while remitting the matter, but the reference court was also in error in denying the benefit of section 28-A(3) of the said Act to the appellant. It is material to note that it is under the very same section 4 notification that Shri Narendra Nadkarni was awarded compensation of Rs. 1/- per square metre in respect of a land he was holding on a free hold basis. So far as the appellant is concerned, he was holding the land on a restrictive covenant i.e. the appellant's interest in the acquired land was that of an aforamento holder.

26. It may be that the appellant is not entitled to compensation as a free hold land, but that does not mean that the appellant is not entitled to any compensation. The reference court should have considered the claim of the appellant as an aforamento holder. Having paid compensation to the appellant for the trees, it is apparent that the Government by necessary implication, had recognised the interest of the appellant in the said land. As discussed earlier, the materials on record and the evidence would go to show that the appellant was an aforamento holder in which case the compensation payable to the appellant will have to be determined in the proportion of the interest held by the appellant.

27. In the light of the decision of the Supreme Court in the case of **Shri Piedade Fernandes** (supra) and the consequent award of the reference court, the proportion of the compensation to which the appellant is entitled would be ₹ 0.75 paise per square metre being an 'aforamento holder'.

28. Accordingly, the appeal succeeds. The appellant is held entitled to compensation at the rate of ₹ 0.75 paise per square metre.

29. The compensation be determined on the aforesaid basis along with all statutory benefits as a result of such determination and interest at the rate of 9% per annum for the first year thereafter at the rate of 15% per annum till actual payment. Award accordingly.

30. First Appeal is accordingly allowed in the afore terms. No costs.

M. S. KARNIK, J

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