

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 181 OF 2008

1. Spl. Land Acquisition Officer
(North), Karaswada, Colvale;

2. Executive Engineer,
WD VII, Goa Tillari Irrigation
Development Corporation,
Dhargalim, Pernem - Goa

..... Appellants.

Versus

Rajendra V. Deshprabhu, (Through
his legal heirs)

1. Smt. Aparna Rajendra
Deshprabhu;
2. Dr. Vasudeo Rajendra
Deshprabhu;
3. Dr. (Mrs.) Pavitra Vasudeo
Deshprabhu;
4. Miss Nayantara Rajendra
Deshprabhu;

All represented by their Attorney at
No.2. All r/o Nanerwada, Pernem -
Goa, 403512

.... Respondents.

Ms. Maria Correia, Addl. Government Advocate for
the Appellants.

Mr. Shivan Desai, with Ms. M. Viegas, Advocates
for Respondents

WITH

FIRST APPEAL NO.167/2008

Late Rajendra V. Deshprabhu,
represented by his legal heirs.

1. Smt. Aparna Rajendra
Deshprabhu;
2. Dr. Vasudeo Rajendra
Deshprabhu;
3. Dr. (Mrs.) Pavitra Vasudeo
Deshprabhu;
4. Miss Nayantara Rajendra
Deshprabhu;

All r/o Nanerwada, Pernem - Goa, Appellants.
403512

Versus

1. Spl. Land Acquisition Officer
(North), Karaswada, Colvale;
2. Executive Engineer,
WD VII, Goa Tillari Irrigation
Development Corporation,
Dhargalim, Pernem - Goa Respondents.

Mr. Shivan Desai, with Ms. M. Viegas, Advocates
for Appellants.

Ms. Maria Correia, Addl. Government Advocate for
the Respondents.

CORAM: VALMIKI SA MENEZES, J.

DATED: 6th November 2023

ORAL JUDGMENT:

1. Since both these appeals arise from the Judgment and Award dated 31/3/2008 passed by the Ad-hoc District Judge-I, they are disposed of by this common judgment. Both the appeals arise from Land Acquisition Case No.8/2007 before the District Judge, Panaji, which, in turn, decides a reference made under Section 18 of the Land Acquisition Act, 1894 (the Act) in which Shri Dr. Vasudeo Rajendra Deshprabhu, claiming to be the owner and interested party in relation to the acquired land under Survey No.356/0 (part) sought enhancement of the rate at ₹5/- per sq. metre granted by the Land Acquisition Officer to ₹250/- per sq. metre.

2. The District Court, by its Award has enhanced the market rate set down for the acquired land from ₹5/- per sq. metre to ₹29/- per sq. metre, as on the date of issuance of the Notification under Section 4 of the Act on 20/6/2006, with entitlement to 30% solatium on the value of the land and interest at the rate of 12% per annum from 20/6/2006 to the date of the award and further interest on the excess amount of compensation at the rate of 12% for the first year from

the date of acquisition and thereafter, at the rate of 15% in terms of Section 28 of the Act.

This award has been challenged both, by the heirs of late Rajendra Deshp Prabhu ("Claimant") in First Appeal No.167/2008, seeking further enhancement, and by the Special Land Acquisition Officer ("SLAO") and the Executive Engineer, Tillari Irrigation Project, in First Appeal No.181/2008, seeking a reduction in the awarded amount to the compensation granted by the Land Acquisition Officer.

3. During the hearing of the Appeals, it was the submission of Ms. Maria Correia, learned Addl. Govt. Advocate for the SLAO that the acquired lands, in the present case, were subject to claims of tenancy by two sets of parties, under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 and as such, since they were encumbered, the Claimant would not be entitled to any compensation, and in the alternate, if entitled to compensation, the market value of the land would be grossly diminished due to the encumbrance and claim of the tenants over the same.

It was further the submission of the learned Advocate that this Court has committed an error of law, in granting enhancement when the claim of the tenants

over the acquired lands, in view of the Fifth Amendment to the Agricultural Tenancy Act, would disentitle the Claimant to any compensation, or at the most, the compensation equivalent to the statutory price to be paid by the tenant to the landlord under the Tenancy Act. She further submitted that there were two references for apportionment made to the Reference Court under Section 30 of the Act, at the behest of the said tenants, which were referred to the Mamlatdar for adjudication of the issue of tenancy, which aspect of the matter was not considered by the District Court whilst enhancing the compensation.

4. In reply to the submissions, the learned Advocate Shri Shivan Desai for the Claimants in First Appeal No.167/2008 has submitted that subsequent to the Reference Court passing the impugned Award on 31/3/2008, the references made by the District Court, in terms of Section 7 of the Tenancy Act to the Mamlatdar in the two apportionment reference cases under Section 30 of the Act, were in fact decided by consent of the parties on 20/3/2012, whereby the claims of tenancy were restricted to the remaining parts of Survey No.356/0 of Village Dhargal, whilst the area under acquisition was held to be free from any claims

of tenancy, thus, declaring the Claimant to be a free-hold owner of the acquired lands.

5. Since the rival contentions revolve around determination of the correct market value of the land, after considering the claim of tenancy and its negative impact on the enhancement and claim of Deshprabhu, it was felt necessary to call for the records of the reference made by the District Court in the aforementioned two tenancy claims. In normal course, the two tenancy claims in which an apportionment reference was made under Section 30, ought to have been heard along with or after consolidating trials therein, with Land Acquisition Case No.8/2007 as they were interconnected and the market value of the land fully dependant upon the decision on the claim of tenancy. Unfortunately, this was not the course taken by the Reference Court in the matter, and instead the two references under Section 30 were disposed of separately and independent of the present controversy.

By this Court's order dated 23/10/2023, the records of case Nos. JM-III/TNC/24/2010 and JM-II/TNC/3/2010, which were before the Mamlatdar of Pernem Taluka, were called for to determine the

outcome of the two claims referred under Section 30 of the Act, to determine the claims of agricultural tenancy of the said two sets of tenants.

6. On receiving the aforementioned records, and on further hearing of the matter on 31/10/2023, a perusal of the records in case Nos. JM-III/TNC/24/2010 and JM-II/TNC/3/2010, reveals the following facts:

(A) A reference was made by the SLAO under the provision of Section 30 of the Act to the District Court for apportionment claims of two sets of parties, both claiming to be tenants of different parts of the acquired land under Survey No.356/0; the first claim of tenancy was by one Kamlakar Damodar Shevde, and the second claim was by one Vishnu Mahadev Shirodkar. Both these claims against the Claimant Deshprabhu, were taken up under Land Acquisition Case No.9/2007 before the District Judge-1, North Goa at Panaji.

(B) The District Court, framed two issues, the first being whether the said Kamlakar Shevde proves that he was an agricultural tenant of the acquired land and second whether Vishnu Shirodkar

proves that he was an agricultural tenant in possession of the acquired land. These issues were referred under letter dated 29th March 2008 bearing No. ADSC/I/2008/2718, in view of the bar to a Civil Court deciding the same under the Tenancy Act, to the Mamlatdar of Pernem for decision in terms of the provisions of Section 7 of the Goa Agricultural Tenancy Act, 1964.

(C) On receipt of the Reference, the Mamlatdar of Pernem registered the claim of Kamlakar Shevde under Case No.JM-II/TNC/24/2008 while the claim of Vishnu Shirodkar was registered under Case No. JM-II/TNC/03/2010.

In both these claims, consent terms came to be filed by these two sets of parties on 9th August 2011, under which the Claimant admitted the claim of tenancy in so far as certain area of Survey No.356/0 was concerned, while the Claimants Kamlakar Shevde and Vishnu Shirodkar, through their heirs, admitted that they had no tenancy claim against the Claimant in so far as the acquired portion of land was concerned. The Mamlatdar has then, by two Judgments both dated 28th March 2002, decided both references in terms of the consent terms, declaring Kamlakar

Shevde and Vishnu Shirodkar to be agricultural tenants in respect of the areas admitted by the Claimant to be under tenancy in terms of a plan annexed to the consent terms, whilst declaring that Kamlakar and Vishnu had no subsisting tenancy claim over the acquired land.

(D) The orders dated 28th March 2002 deciding the tenancy claim were sent to the District Court, who then disposed of Reference No. LAC No. 9/2007 in terms of the orders of the Mamlatdar vide Award dated 30/9/2013.

7. From these subsequent events, the situation that now arises in these appeals, is that, the Claimants submit that the acquired land was a free-hold land with no tenancy claims thereon and further submit that they would be entitled to the market value of the land sans any tenancy claim or deductions towards such claims. Opposing this contention, the SLAO submits that the tenancy references could not be disposed of by consent of the parties and that such orders obtained from the Mamlatdar are contrary to the spirit of the Tenancy Act and the law laid down by this Court in its various judgments on that subject.

8. Be that as it may, it becomes quite clear that these subsequent events and orders passed by various Courts subsequent to the passing of the award would have a direct bearing and impact on a decision to determine the correct market price and compensation for the land under acquisition.

Under these circumstances, this would be a fit case for setting aside the impugned Award dated 31/3/2008 passed by the District Court in case No.LAC-8/2007 enhancing compensation from ₹ 5/- per sq. metre to ₹29/- per sq. metre, without considering the impact of the orders in tenancy reference. Consequently, the impugned award is quashed and set aside and the matter is remanded back to the file of the Principal District Court, North Goa, who shall now decide the reference afresh by considering the evidence already led by the parties earlier, and any additional evidence that they may choose to now lead in view of the subsequent events stated above, and after considering the record of Case No.JM-II/TNC/24/2008 and Case No. JM-II/TNC/03/2010, along with the consent terms/order dated 9th August 2011 therein, of the Mamlatdar of Pernem.

Considering that the reference dates back to the year 2007, it would be appropriate, in the

circumstances of the case, to request the Principal District Judge or any other District Court to whom the case is made over, to dispose of the reference by 30th June 2024. Parties to appear before the Principal District Judge, North Goa, at Panaji on 28th November 2023 at 10 a.m. Appeals are disposed of in the above terms.

The record and proceedings in LAC No.8/2007 shall be returned to the Court of Principal District Judge, North Goa, at Panaji. The two files in Case No.JM-II/TNC/24/2008 and Case No. JM-II/TNC/03/2010 be sent back to the Office of the Joint Mamlatdar-II, Pernem.

VALMIKI SA MENEZES, J.

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