

(2012) 02 BOM CK 0055

Bombay High Court (Goa Bench)

Case No: First Appeal No. 215 of 2003

Shri Ulhas Bhiku
Dessai

APPELLANT

Vs

The Government of
Goa and Others

RESPONDENT

Date of Decision: Feb. 10, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 12(2), 3, 31(2), 4(1), 6

Citation: (2012) 4 ALLMR 426 : (2012) 3 BomCR 93

Hon'ble Judges: U.V. Bakre, J

Bench: Single Bench

Advocate: Parag Rao, for the Appellant; V. Rodrigues, Additional Government Advocate for respondents No. 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

U.V. Bakre, J.

This is plaintiff's appeal from judgment, order and decree dated 30-04-2003 passed by the First Additional Civil Judge, Senior Division, Margao ("The Trial Judge") in Special Civil Suit No. 111/1989/I.

2. The parties shall be referred to in the manner in which they appear in the cause title of the said suit.

3. The plaintiff had filed the said suit for a direction to the defendants to pay compensation of Rs. 1,50,000/- to the plaintiff and to restrain the defendants, their agents, servants etc. by way of perpetual injunction from evicting the plaintiff from the suit premises till the compensation is paid.

4. The case of the plaintiff, in short, is as follows :

Late father of the plaintiff namely Shri Bhiku Dessai was running a grocery shop at Panzorcone in the premises belonging to defendant No. 5 for the last more than 35 years. The plaintiff's father died on 06-01-1989 and the plaintiff inherited the said business and has been running the said business, which is conducted in two different shops in the said premises of defendant No. 5, consisting of ground floor and first floor. The two shops in possession of the plaintiff are on the ground floor. On 09-02-1989, some officials of the Public Works Department came near the shop of the plaintiff and called upon him to vacate the premises stating that the same was acquired by the Government for extension of National Highway 17 together with the building, where the said shops are situated. Thereafter, the plaintiff verified the records kept by his late father and found that his father had moved an application dated 23-01-1986 addressed to defendant No. 3, who is also the Land Acquisition Officer, for paying the compensation to him, but the same was rejected by defendant No. 3 by his letter dated 20/05/1989, without conducting any inquiry. The building in which the shops are situated bears Survey No. 84/14. The father's name is shown as tenant occupying the said shops. In spite of the said fact, no compensation was paid to the plaintiff's father. Unless and until the compensation is paid to the plaintiff, he cannot be evicted therefrom. On 09-02-1989, when the plaintiff went to the office of defendant No. 4, he was informed that the compensation of the entire building was paid to defendant No. 5 and as regards the loss of business, premises, etc., the same is not paid so far. The plaintiff was further told by the defendant No. 4 that the compensation has to be fixed by defendant No. 3 and unless the same is fixed, no compensation can be paid to the plaintiff. Therefore, the plaintiff served a notice dated 14-02-1989 to the defendants No. 1 to 4 requiring to pay to him the compensation of Rs. 1,50,000/-towards loss of business and premises, etc. On 03-04-1989, the plaintiff received a letter from the Assistant Government Pleader stating that the report has been called for from defendant No. 4 within 8 days and soon after the same is received, the reply will be sent to the plaintiff. However, no reply was received by the plaintiff. In case, the plaintiff has to hand over the possession of the suit premises to the Government, he has to be paid compensation in the sum of Rs. 75,000/-for loss of business and recovery of credit sale; Rs. 50,000/-for loss of premises; and Rs. 25,000/-for securing new premises and other costs etc, all in the sum of Rs. 1,50,000/-. Hence, the suit.

5. Defendants No. 1 to 4, in their written statement, have alleged as follows :

The suit is misconceived in law and facts and is liable to be dismissed. The plaintiff was not a party to the Land Acquisition Proceedings before the Land Acquisition Officer and the plaintiff had also not filed any claim and/ or objections before the Land Acquisition Officer and hence, he cannot claim any relief against them. The said defendants have been, therefore, unnecessarily impleaded as parties. The plaintiff has no locus standi to file the suit and reliefs prayed for are infructuous as against the said defendants. The eviction notice is issued by the Land Acquisition Officer and not by P.W.D. Officers and

the suit premises are acquired by the Government for extension of National Highway 17 together with the building, where the said shops are situated. In the award, the Land Acquisition Officer has recorded that there was no other claimant in respect of the suit premises and has passed the award. The Land Acquisition Officer has paid the compensation to defendant No. 5 since there were no claims from anybody else. The names of the interested parties were obtained from the Mamlatdar of Record of Rights, but the name of the plaintiff nor of his father figured or was included in the said record sent by the Mamlatdar. The plaintiff should have agitated his claim regarding loss of business, premises etc. before the Land Acquisition Officer and subsequently, before the District Court. Even otherwise, the compensation claimed by the plaintiff is exorbitant, arbitrary and without any basis.

6. Defendant No. 5, in her written statement, alleged as follows:

The Government took the possession of the said building on 27-05-1988 pursuant to the award dated 29-03-1988 passed in the Land Acquisition File No. 99/32/LA/1986. The plaintiff had no right whatsoever to any compensation in respect of the said building as the building exclusively belonged to defendant No. 5 and now to the Government. The defendant No. 5 is not liable for any loss of business and recovery of credit sales, loss of premises and for securing of new premises.

7. In support of his case, the plaintiff examined himself as PW-1 and he produced various documents. The plaintiff also examined one witness by name Shri Sada Molu Gaonkar as PW-2. The defendants did not examine any witness.

8. Upon consideration of the entire evidence on record, the learned Trial Judge came to the conclusion that he had no jurisdiction to grant reliefs claimed by the plaintiff except the relief of compensation. He further held that on merits, the plaintiff has failed to show that he is entitled for compensation from the Government and if at all he has any grievances in respect of compensation, he is entitled to proceed against defendant No. 5 only, who has received the full compensation towards the property under acquisition. Since the plaintiff has admitted that he is still running the business, the learned Trial Judge held that he is not entitled to any compensation. Consequently, the suit came to be dismissed.

9. Mr. Parag Rao, learned Advocate, argued on behalf of the plaintiff whereas Mr. V. Rodrigues, learned Additional Government Advocate, argued on behalf of defendants No. 1 to 4. None remained present for defendant No. 5.

10. Shri Parag Rao, learned Counsel for the plaintiff urged that in terms of Section 3(b) of the Land Acquisition Act ("L. A. Act" for short), the plaintiff was an interested person. He argued that the plaintiff was a statutory tenant of the defendant No. 5, running business in the said premises for the last 35 years. He further argued that the plaintiff was not notified u/s 9 of the L. A. Act. He contended that in terms of third proviso to Section 31(2)

of the L. A. Act, the plaintiff is entitled to the portion of compensation received by defendant No. 5. He argued that there was loss of business and question of relocating the interest of the plaintiff in the said shops. According to Shri Rao, though the learned Trial Judge has held that the plaintiff is entitled to proceed against defendant No. 5, who has received the full compensation, however, no compensation from that awarded to defendant No. 5, has been granted to the plaintiff. Therefore, learned Counsel for the plaintiff urged that the case be remanded to the learned Trial Judge for determination of the entitlement of the plaintiff to the portion of compensation received by defendant No. 5.

11. Learned Counsel for the plaintiff has relied upon the following citations :

(i) [Lakshmi Chand Sood Vs. Shankar Lal Pal](#), .

(ii) *Comunidade of Bambolim Versus Manguesh Betu Kankonkar* [2000(2) Goa L. T. 374].

(iii) *Special Land Acquisition Officer (I), Bombay and Bombay Municipal Corporation and another* [1993 (1) Bom C.R. 671].

(iv) [Union of India Vs. Ajit Singh and Others](#), .

12. Per contra, Shri V. Rodrigues, learned Additional Government Advocate, argued that the suit was filed after the making of the award by the Land Acquisition Officer which award was not challenged. Relying upon the same judgments, which have been relied upon by the learned Trial Judge, he argued that the reliefs of restraining the defendants, their agents etc. from evicting the plaintiff from the suit premises till the compensation is paid and of claiming any compensation from defendants No. 1 to 4, does not arise. He, therefore, contended that the suit has been rightly dismissed as against defendants No. 1 to 4 and that he has nothing to say about defendant No. 5, who has received the entire compensation pertaining to the land and the building.

13. I have gone through the entire material on record in the light of the arguments advanced by the parties and the citations relied upon.

14. The first point that arises for determination is whether the plaintiff is entitled to the prayer to restrain the defendants from evicting him from the suit premises, till the compensation is paid.

15. The grievance of the plaintiff is that he has not received any notice in respect of the said acquisition. However, PW1 has himself produced a letter sent by his father to the Additional Deputy Collector (III), South Goa, Quepem, which is dated 23-01-1986 at exhibit 23 by which his father has informed that he was running grocery shop in the said premises belonging to defendant No. 5 and that the said building has been acquired by the Government and that he shall be deprived of his income. In this letter, the plaintiff's father has prayed to instruct the owner of the building to give him compensation or some

other alternate place to carry out the business activities. Thus, by the said letter, the father of the plaintiff had not claimed any relief of compensation or otherwise directly from defendants No. 1 to 4. He had claimed relief as against defendant No. 5. The plaintiff's father was, therefore, very well aware of the acquisition. The plaintiff's father had also sent another letter dated 17-03-1988 which is at exhibit 24 to the Hon"ble Chief Minister of Goa regarding the same facts. The award of the Land Acquisition Officer is dated 29-03-1988. As has been rightly held by the learned Trial Judge, the plaintiff had ample opportunities to raise his grievances before the Land Acquisition Officer. PW1, plaintiff has himself produced letter dated 20-05-1988 which is at exhibit 27 issued by the Land Acquisition Officer to the father of the plaintiff informing him that the compensation in respect of the shop in the building surveyed under No. 84/14 has been awarded to defendant No. 5 as there was no claim/ objection from him over the said structure at the time of framing of award. The suit has been filed after making of the award. The acquisition of the said building, containing the shops occupied by the plaintiff and belonging to defendant No. 5, had become final. There is no dispute about the fact that the notifications u/s 4(1) and Section 6 of the L. A. Act were duly issued and all the procedural steps were taken. Constructive possession was taken on 27-5-1988.

16. It is the contention of the learned Counsel for the plaintiff that no personal notice, as required by Section 9(3) of the L. A. Act, was served on the plaintiff. Section 9(3) of the L. A. Act provides that the Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within a revenue district in which the land is situated. The said notice pertains to the filing of claim and the quantum of the compensation, after it is already known as to who are the persons known or believed to be interested in the acquired land. However, if the interest of the persons are not known to the Collector, then, it cannot be said that the Collector has deliberately not issued the notice. Omission to issue notice has to be willful or fraudulent on the part of the Collector. In any case, failure on the part of the Collector to serve notice u/s 9(3) of the L. A. Act gives cause of action to challenge the award. Here the award was not challenged.

17. The learned Trial Judge has relied upon the judgment in the case of "S. P. Subramanya Shetty and others Versus Karnataka State Road Transport Corporation and others" [1997 (4) Supreme 5,], wherein it has been held that Civil Suit relating to acquisition proceedings under the Land Acquisition Act is not maintainable and by implication, cognizance u/s 9, C.P.C. is barred. The learned Trial Judge has further relied upon [State of Bihar Vs. Dharendra Kumar and others](#), wherein the Apex Court has held thus :

The provisions of the Land Acquisition Act are designed to acquire the land by the State exercising the powers of eminent domain to serve the public purpose. The State is enjoined to comply with the statutory requirements contained in Section 4 and Section 6 of the Act by proper publication of notification and declaration within limitation and

procedural steps of publication in papers and local publications envisaged under the Act as amended by the Act 68 of 1984. The Land Acquisition Act is a complete Code in itself and is meant to serve public purpose. By necessary implication the power of the civil court to take cognizance of the case u/s 9 of C.P.C. stands excluded, and a Civil Court has no jurisdiction to go into the question of the validity or legality of the notification u/s 4, and declaration u/s 6 except by the High Court in a proceeding under Article 226 of the Constitution.

18. Therefore, as has been rightly held by the learned Trial Judge, the relief sought by the plaintiff in prayer clause 18(b) to restrain the defendants, their agents, servants etc. by way of perpetual injunction from evicting the plaintiff from the suit premises till the compensation is paid, is not available to the plaintiff, to be claimed from the Civil Court as the Civil Court has no jurisdiction to grant the same.

19. The next point for determination is whether the plaintiff is entitled to receive compensation as prayed for, and from whom.

20. In the case of "Comunidade of Bambolim" (supra), it has been held that if the person is not served with notice u/s 9 of the L. A. Act or notice of the award u/s 12(2) of the L. A. Act and is not before the Land Acquisition Officer, but has certain interest or share in the property acquired, he is not precluded from filing civil suit to get compensation in respect of his share against the person, who has received compensation amount, by invoking the remedy u/s 9 of C.P.C. This right is recognized by the third proviso to sub-section (2) of Section 31 of the L. A. Act. In the case supra, the respondent was agricultural tenant of the landed property belonging to the petitioner and, therefore, the respondent had interest in the land. In the case of "Special Land Acquisition Officer (I), Bombay" (supra), the claimant No. 2 was in constructive possession of a plot of land, as lessee, and he was held to be the person interested entitled for apportionment of compensation. In the case of "Ajit Singh"(supra), the land acquired was on lease in perpetuity with Ajit Singh and, therefore, it was held that the learned Addl. District Judge was justified in apportioning 75% of compensation in favour of the lessee and 25% in favour of the lessor. The above cases are in respect of land, which was acquired. These cases cannot help the plaintiff to claim part of the compensation received by the defendant No. 5 towards the value of the land and building thereon, as the plaintiff did not have interest in the said building and the land underneath.

21. It is the contention of the plaintiff that admittedly, he was the tenant of the said shops. First of all, nowhere in the plaint, the plaintiff has claimed to be a statutory tenant of the said shops, which belonged to defendant No. 5, for the defendant No. 5 either to admit or to deny the same. What is pleaded by the plaintiff is that his late father was running a grocery shop in the premises belonging to defendant No. 5 and that after the death of his father, he has inherited the business. The plaintiff has nowhere averred that his late father was the tenant of the said shops and had any interest in the shops and that he has inherited such interest in the Shops/building. The plaintiff has made a wrong averment in

paragraph 8 of the plaint to the effect that his father's name has been shown as tenant occupying the shops in the survey records of Survey No. 84/14. The defendant No. 5 has denied the contents of paragraph 8 of the plaint. PW1, the plaintiff has produced on record the Form No. I and XIV of Survey No. 84/14 as exhibit 22. The name of defendant No. 5 figures in the occupant's column. There is no name entered in the tenant's column. The name of Bhiku Babu Dessai and of two others have been recorded in the other right's column and as far as said Bhiku Babu Dessai is concerned, it is stated that the shops are occupied by him. Therefore, the plaintiff's father was only occupying the shops and conducting business therein and after the death of his father, the plaintiff continued to do so. The licensee does not have judicial possession. He does not have any interest in the land or in the building standing thereon. The plaintiff has only inherited the business, which was previously conducted by his late father. The question of claiming share in the value of the building and land underneath, along with defendant No. 5, by the plaintiff does not arise in the present case.

22. In the case of ""Puran"" (supra), the petitioner was in occupation of the premises and it was the contention of the respondents that the petitioner was a licensee and not a tenant. However, it was a fact that the petitioner was in occupation of the building. It has been held that he is a person interested within the meaning of Section 3(b) of the L. A. Act. Section 3(b) of the L. A. Act defines the expression "person interested" to include all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act and that a person shall be deemed to be interested in land even he is interested in easement affecting the land. In the present case, the plaintiff is a person interested in claiming interest in the compensation since he is in occupation of the shops and carrying on business therein. The third proviso to section 31(2) of the L. A. Act, provides that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled. The plaintiff cannot, however, be interested in any easement affecting the said land or share in the said land or in the building existing in that land and that being so, the question of plaintiff claiming any share in the compensation towards the value of the land or towards the value of the structure of the building, does not arise. The plaintiff was also not entitled to any relief of relocation at any other place, since he had no interest in the building. The interest of the plaintiff was only in the business that was conducted in the said building. The plaintiff was entitled for compensation only in so far as the loss of business is concerned. In this regard, the evidence of PW1, the plaintiff, reveals that his business in the suit premises still continues even if the land has been acquired. The learned Trial Judge has rightly held that since the plaintiff has admitted that he is still running the business, he cannot say that he has incurred any loss of business as yet. The plaintiff is, therefore, not entitled to any compensation on the ground of loss of business. It is not the case of the plaintiff that defendant No. 5 has been paid compensation towards the loss of business or towards expenses incidental to change of his place of business, etc., with which the plaintiff is concerned. In terms of third proviso to Section 31(2) of the L. A. Act, the plaintiff, being a

person interested, was entitled to claim compensation from defendant No. 5, provided he was lawfully entitled to the compensation received by the defendant No. 5 or any part of it. However, in the present case, the plaintiff is not entitled to do so because defendant No. 5 has not received any compensation, which lawfully had to be paid to the plaintiff.

23. The suit has been rightly dismissed by the learned Trial Judge. The impugned judgment and decree is in accordance with the settled principles of law, based on correct appreciation of the entire evidence on record. No interference with the same is called for.

24. In the result, the appeal is dismissed. No order as to costs.