

(2014) 06 BOM CK 0012

Bombay High Court (Goa Bench)

Case No: First Appeals Nos. 243, 244, 245, 246 and 247 of 2003

Thomas Rodrigues

APPELLANT

Vs

The Comunidade of
Cotombi

RESPONDENT

Date of Decision: June 20, 2014

Hon'ble Judges: A.R. Joshi, J

Bench: Single Bench

Advocate: Sudesh Usgaonkar, Advocate for the Appellant; M. Amonkar, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

A.R. Joshi, J.

All the five appeals are preferred by the appellant one Thomas Rodrigues, original party no. 3 in Land Acquisition Cases No. 332 & 333 of 1991 and original party no. 4 in Land Acquisition Case No. 331/1991. The appellant is also the respondent in other two Land Acquisition Cases No. 76/1990 & 79/1990. The Land Acquisition Cases No. 76/1990 & 79/1990 were decided by the District Judge, South Goa, Margao by common judgment dated 28/02/2008 on the land acquisition reference made to the Court. Other three Land Acquisition Cases No. 331, 332 & 333 of 1991 were also disposed of by common judgment dated 7/03/2003 by the same District Judge. In all the said five land acquisition cases, the parties now litigating in the present appeals were the same and the present respondent no. 1 was held as entitled for the compensation which was awarded for acquisition of the lands, respectively mentioned in the acquisition orders. Without going much into the details of such respective properties, which were acquired, suffice it to say that the present respondent no. 1 was held as beneficiary for the compensation and this has been challenged by the present appellant, who was then one of the respondents in all the Land Acquisition Cases.

2. The arguments on behalf of rival contesting parties were heard at length on earlier dates. Initially, three appeals bearing First Appeals no. 243, 244 & 245 of 2003 were heard and, thereafter, First Appeals no. 246 & 247 of 2003 were heard. It is the factual position that in earlier three appeals, challenging the judgment and order of the District Court, at the time of the hearing of the land acquisition cases evidence was led before the Court. However, so far as appeals preferred challenging the judgments and awards of Land Acquisition Cases No. 76 & 79 of 1990, no such evidence was led except the evidence of present respondent no. 1. In those matters an application was preferred on behalf of the present appellant for the appointment of the Court Commissioner for inspection as to the factual position of the lands vis-a-vis their boundaries. Said report was accordingly filed, but was strongly objected by the present appellant and appellant prayed for not accepting the said report and also prayed for allowing him to lead evidence. However, it is a factual position that this request was not accepted and the District Court proceeded further to decide his two land acquisition cases only on the basis of the Commissioner's report.

3. The factual position has been ascertained by this Court and also fairly conceded by Counsel of rival parties that the question involved in all the five appeals as to the title over the property which was acquired by the Government, is same and, as such, on similar set of circumstances and the evidence, all the five matters can be very well decided. In view of this position emerging from the arguments heard by this Court on earlier dates, when a question arose in the last two appeals i.e. First Appeals No. 246 & 247 of 2003 as to whether these two matters can be remanded back to the District Court for allowing the parties to lead evidence and then to decide the issue in controversy, it is found fit by this Court that if such course is adopted then even the matters in the earlier three appeals i.e. First Appeals No. 242, 243 & 245 of 2003 are also required to be remanded back to the District Court for reappreciating the already led evidence before it by the rival parties. Definitely, it is an unfortunate situation that the circumstances warrant that all these five appeals are required to be remanded back to the District Court after lapse of about 11 years of passing the initial orders in the land acquisition cases, but the circumstances are such that in the interest of justice all the five appeals are required to be remanded back for reappraisal and specifically in the matters of Land Acquisition Cases No. 76 & 79 of 1990. Both the parties are required to be given an opportunity to lead evidence. At this juncture, it must be mentioned that the present appellant can exercise a choice to adopt the evidence led in the Land Acquisition Case No. 331, 332 and 333 of 1991 to be read as an evidence in Land Acquisition Case No. 76/1990 and 79/1990 and also to lead any further evidence if needed. The similar choice can be exercised by the present respondent no. 1. By this way, the time for recording of the evidence can be curtailed and all the five appeals can be disposed of by such common evidence. This mode of action is apparently agreeable to the Counsel of both the parties. However, an anxiety is expressed by the learned Counsel for the

appellant that as much time has lapsed, more than about 11 years after passing of the orders against appellant, then again further more time may result in denying him the substantial justice.

4. Considering the above specific factual position, all the five appeals can be disposed of by remanding the matters to the concerned District Court for reappreciating the evidence already on record in three Land Acquisition Cases no. 331, 332 & 333 of 1991 and allowing the appellant and respondent no. 1 herein to either adopt the evidence recorded in these earlier mentioned three matters and/or to lead further evidence in all the cases. Needless to mention that in these appeals the contesting parties now remaining are only the appellant and respondent no. 1 and it is not necessary that other parties to the original land acquisition matters shall be issued notice and heard. As such, judgments and awards in all the five Land Acquisitions Cases bearing no. 331, 332 & 333 of 1991 and 76 & 79 of 1990 are hereby set aside and the matters are remanded back to the concerned District Court for passing fresh orders in terms of the above directions after giving appropriate opportunity to the rival parties. Under the specific circumstances as to the delay in this matter, directions are given to the concerned District Court to expeditiously deal with the matters and to dispose them of within the period of four months from receipt of the Records & Proceedings of the said Court. Both the contesting parties are directed to appear before the concerned District Court on 21/07/2014 at 10.00 a.m. Office to send the Records & Proceedings at the earliest for compliance of the above order. In view of these directions, all the five appeals are accordingly disposed of.