(2011) 01 BOM CK 0145

Bombay High Court (Goa Bench)

Case No: First Appeal No. 282 of 2004

Ana Maria Fernandes and Anicete Fernandes Both		APPELLANT
	Vs	
Epitacio Pais Goankarwado		RESPONDENT

Date of Decision: Jan. 14, 2011

Acts Referred:

- Land Acquisition Act, 1894 - Section 11, 30

Hon'ble Judges: F.M. Reis, J

Bench: Single Bench

Advocate: S.S. Kantak and P. Talaulikar, for the Appellant; J. Godinho, for the Respondent

Final Decision: Dismissed

Judgement

F.M. Reis, J.

The above appeal challenges the judgment and award dated 31/08/2004 passed by the learned Additional District Judge at Mapusa in Land Acquisition Case No. 118/1995.

2. An area of 800 square metres was acquired from the property surveyed under Survey No. 12/3 from the village Goa-Velha, Tiswadi Taluka by the Government for the purpose of road widening. By an award u/s 11 of the Land Acquisition Act, 1894 (herein after referred to as "the said Act"), an amount of Rs. 26,080/-was awarded as compensation for the said land acquired. In view of a dispute raised by the respective parties, the same came to be referred u/s 30 of the said Act to the learned District Judge. By judgment and award dated 31/08/2004 passed in Land Acquisition Case No. 118/1995, the Reference Court directed that the 50% of the compensation be awarded to the Respondent and that the Appellants are not entitled to any compensation. Being aggrieved by the said judgment, the Appellants have preferred the present appeal.

3. Shri S.S. Kantak, the learned Counsel appearing for the Appellants has assailed the impugned judgment and submitted that the learned Judge has erroneously come to the conclusion that the amount of compensation is to be paid to the Respondent. The learned Counsel further submitted that the learned Judge has come to the conclusion that the acquired land belonged to the son of the Respondent and, as such, the question of awarding any compensation in favour of the Respondent would not arise. The learned Counsel further submitted that the son of the Respondent has not come forward to put up any claim to the compensation and, as such, the question of awarding any compensation in favour of the Appellants would not arise. The learned Counsel further submitted that the Appellants are entitled to claim the compensation as the Respondent has failed to establish that he had any right to the compensation awarded. The learned Counsel further submitted that the judgment passed in Civil Suit No. 98/1975 an Exhibit 34 and the judgment at Exhibit 35 passed in the appeal have no bearing to the dispute in the present proceedings. The learned Counsel, as such, submitted that the impugned judgment deserves to be quashed and set aside.

4. On the other hand, Shri Godinho, the learned Counsel appearing for the Respondent has supported the impugned judgment. He pointed out that the reference was made by the Respondent as authorised representative on behalf of his son. He further submitted that the son himself has deposed in the proceedings and stated that he has a right to the compensation awarded by the Land Acquisition Officer. The learned Counsel further submitted that the Reference Court has rightly awarded the compensation in favour of the Respondent. The learned Counsel took me through the judgment passed in the earlier proceedings and pointed out that the Appellants have no right at all to any portion of the acquired land. The learned Counsel, as such, 4 submitted that the appeal deserves to be dismissed.

5. Having heard the learned Counsel and on perusal of the record, the following point for determination arises in the appeal.

POINT FOR DETERMINATION

(1) Whether the Reference Court was justified to come to the conclusion that 50% of the amount awarded is to be apportioned in favour of the Respondent.

6. On perusal of the evidence on record, the claim put forward by the Respondent is that the land which has been acquired is passing through the property surveyed under No. 12/3 which is a distinct property. It is further his case that half of the property belongs to the heirs of the late Alvaro Furtado represented by Rozendo Furtado and the other half belongs to Epitacio Pais and at present to his the son of Alcino Francisco Cyd Pais. It is further their case that the claim of the Appellants cannot be accepted as they have been permanently restrained from interfering in the property surveyed under No. 12/3 in the earlier proceedings which were finally disposed of in Regular Civil Appeal No. 16/1995 by judgment dated 24/06/1988. It is

further his contention that only his son Alcino Francisco Cyd Pais represented by the Respondent is entitled to half of the said property and the remaining half to the heirs of Alvaro Furtado. In the written statements filed by the Appellants it has been admitted that there was a civil suit pending before the Civil Court between the Appellants and the Respondent. It is further their case that the said suit was only for injunction simpliciter and not for declaration of title. It is further their contention that the issue of ownership and possession has not been adjudicated in the said proceedings. In their written statement it is further stated that the acquired land is surveyed under No. 12/3 and that by deed of sale dated 29/09/1926 Mrs. Filomena Monica Da Silva e Braganza sold the said property to Gabriel de Braganza and that the said Gabriel de Braganza had only son and upon his death his wife became the sole owner and proprietor of the said property. It is further their case that by deed of sale dated 3/03/1975 the said Elesbao Cipriano Geraldo Antonio de Braganza sold the said property to the Appellant No. 1. It is further their case that the Respondent had absolutely no right, title or interest of whatsoever nature over the acquired land and, as such, the amount of compensation is to be apportioned in their favour.

7. In support of their claim for compensation, the Respondent examined Alcino Francisco Cyd Pais who is the son of the Respondent. He stated that the acquired land belongs to him and, as such, the amount of compensation is to be apportioned in his favour. He has further stated that the Respondent is his father and that the acquired land belongs to him as well as to his father and that his grandfather had gifted this property to him. In support of his claim he has produced documents including the survey records which are at Exhibit 31, the judgment passed in Civil Suit No. 98/1975 which is at Exhibit 34 as well as in the appeal which is at Exhibit 35. The Deed of Gift is at Exhibit 36. In the cross-examination he has stated that the said property exclusively belongs to him by virtue of the Deed of Gift. He has further stated that in the old cadastral survey plan the area is shown as 12346 square metres and the area shown in the new survey records is 12,800 square metres. He denied the suggestion that by sale deed dated 3/05/1975 Elesbao Braganza sold the property to the Appellants. He denied the suggestion that the Respondent has no right to the property surveyed under No. 12/3. The next witness examined is Salvador Fernandes, who has stated in his affidavit that he knows both the parties and that the Respondent is landlord and that the property where he is staying since his childhood belongs to the Respondent and Alvaro Furtado. He has stated that the property is surveyed in the name of the Respondent as well as the said Alvaro Furtado. He has further stated that part of the said property has been acquired by the Government. In his cross-examination he has stated that he is residing in the said property as a mundkar. He has denied the suggestion that the landlord of the said property is the Appellant No. 1 and Appellant No. 2. The next witness examined is Jose Gonsalves, who has stated that the Respondent is the owner of the property where he is staying and the property is surveyed in the name of the said Respondent. In the cross-examination, he has stated that there are 16 to 17 houses

in the entire property and the houses of Appellants Nos. 1 & 2 are also situated therein. He denied the suggestion that Respondent is not the owner of the said property.

8. In support of their claim for compensation the Appellants have examined Ana Maria Fernandes. She has stated that the property originally belonged to Mrs. Filomena Monica D''Silva e Braganza, widow of Elvino da Alcantara Braganza and that the same devolved upon Gabriel Braganza, who had only one son Elesbao Cipriano Geraldo Antonio da Braganza and on his death, the said Elesbao inherited the property and that by deed of sale dated 3/03/1975, the said Elesbao Braganza sold the said property to her. She has further stated that her husband is the only surviving relative of Elesbao Braganza and that she is in possession of the property since the execution of sale deed dated 3/03/1975. In her cross-examination, she has admitted that neither her name nor that of her husband is recorded in the survey records in respect of the said property. She has further stated that she had no document to show that said Mrs. Filomena Monica D''Silva e Braganza was the widow of Elvinoda Alcantara Braganza. She denied the suggestion that she was never in possession of the acquired land. She denied the suggestion that the son of the Respondent, Cyd Pais and Alvaro Furtado are the only owners of the said property. The next witness examined is Sabastiao Souza, who has stated that he has visited the property Firguembhat surveyed under Survey No. 12/3, wherein he has found many fruit bearing trees. He has further stated that to his knowledge the Appellants are in possession and enjoyment of the said property. In the cross-examination he has stated that he is not aware of the contents of his affidavit in chief. The next witness examined is Ubelina Fernandes. She has stated that she knows the Appellants who are residing in their own property and that she is also residing in the said property since her birth. She has further stated that in the said property there are many fruit bearing trees which were being enjoyed by the said Elesbao Braganza and for the last 40 years the same are being plucked by the Appellants. In the cross-examination she has admitted that she is doing illegal construction of the house wherein she is personally staying. She further stated that she is not aware whether her name is recorded in the survey records. She further stated that she is not aware about any litigation between the Appellants and the son of the Respondent. The next witness examined is Alcantara Rodrigues who has stated that he is a plucker by profession and has been plucking the tress in the suit property, at the instance of the Appellants. In the cross-examination, he has stated that he is not aware who was plucking the trees prior to 30 years. The next witness examined is Sebastiao Vaz, who has stated that he is residing in the property adjoining to the acquired land wherein there are many fruit bearing trees which for last 40 years are being enjoyed by the Appellants. In the cross-examination he has stated that he has not seen the document in respect of the ownership of the said property. He stated that there are many mango trees in the property. He denied the suggestion that for last more than 30 years the Respondent and his son Cyd Paes

and Alvaro Furtado were enjoying the said property.

9. The learned Judge while passing the impugned judgment has found that the Respondent is claiming half of the property and the remaining half belongs to Alvaro Furtado. The learned Judge has found that on comparison between the old cadastral survey plan Exhibit 30 with the new survey plan, the same compare favourably with the new survey records. The learned Judge has also considered the judgment passed in Civil Suit No. 98/1975 wherein a permanent injunction was granted restraining the Appellants from interfering with the property. The appeal preferred by the Appellants also came to be dismissed. The learned Judge further held that the property surveyed under 136 in the cadastral plan corresponds to the property surveyed under No. 12/3 in the new survey plan. The learned Judge on perusing the sale deed dated 3/03/1975 at Exhibit 34 produced by the Appellants came to the conclusion that the portion purchased therein corresponds to the said Survey No. 136 as shown in the cadastral plan. The learned Judge in view of the judgment passed in the said suit came to the conclusion that the Respondent was in possession of the acquired land and that the Appellants were restrained from interfering with the said property. The learned Judge further held that the Appellants had filed proceedings to delete the name of the Respondent from the survey records which was subsequently withdrawn. The learned Judge, as such, held that the Respondent was entitled to 50% of the compensation.

10. After perusing the material on record, no infirmity can be found in the findings of the learned Judge to the fact that the property surveyed under Survey No. 12/3 corresponds to the property surveyed in the cadastral plan under Survey No. 136. There is no dispute that in the earlier suit between the son of the Respondent and the Appellants, a permanent injunction was granted restraining the Appellants from interfering with the said property. Claim of the Appellants to the said property came to be rejected. The evidence on record conclusively establishes that the land acquired does not belong to the Appellants. The learned Counsel of the Appellants was unable to show an error committed by the Reference Court on that count. In fact, the evidence adduced by the Appellants that they are in possession of the acquired portion of the land cannot be accepted on the face of the documentary evidence on record.

11. Dealing with the contention of the learned Counsel appearing for the Appellants that the acquired land belongs to the son of the Respondent and, as such, the question of awarding the compensation in favour of the Respondent would not arise, I find that on perusal of the claim put forward by the Respondent it has been categorically stated therein that the land belonged to the son in view of the deed of gift executed in his favour by his grandfather. Apart from that, survey record also stands in the name of the Respondent. The son of the Respondent himself has deposed and put forward his claim for compensation. u/s 11 of the said Act, the amount can be apportioned to any person who has put forward his claim

irrespective of the fact as to whether he has appeared before the Collector or not. The claim put forward by the Respondent is on behalf of his son. The son himself has accepted that his father was authorised to put forward his said claim. As such, the contention of the learned Counsel appearing for the Appellants that the compensation cannot be apportioned in favour of the Respondent cannot be accepted. In fact, on perusal of the impugned judgment, I find that no ground to that effect was raised by the Appellants before the Reference Court. As such, I find that there is no infirmity committed by the Reference Court in directing that 50% of the compensation be apportioned in favour of the Respondent and that the Appellants are not entitled to any compensation awarded. The point for determination is answered accordingly.

12. In view of the above, I find there is no merit in the above appeal and, accordingly, the same stands dismissed with no order as to costs.