RAJENDRA VASSUDEV DESHPRABHU (DEAD) THROUGH LRS. & ORS. A

v.

DEPUTY COLLECTOR (RETD.) & LAND ACQUISITION OFFICER, PANAJI

(Civil Appeal No. 8539 of 2011) B

OCTOBER 11, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Goa, Daman and Diu Agricultural Tenancy Act, 1964 – ss. 18A, 18K and 3 – Enhancement of compensation for the acquired land – Land subjected to tenancy – Land Acquisition Officer apportioned compensation at the rate of 50 % for landlord and 50 % for tenant – Award passed by Land Acquisition Officer at the rate of Rs. 17 per sq. m. enhanced to Rs. 175 per sq. m. by the Reference Court – High Court restored the award of Rs. 17/- per sq.m. – On appeal held: When the Notification was issued for land acquisition, the Land Use Act whereby land vest in tenant could be valued only as an agricultural land, was not in force – Thus, market value of the land could be determined with reference to the development potential for non-agricultural purposes – Mere fact of obtaining of sanction from Mamlatdar for sale of such land would not depress the price of the land nor affect its potential for being developed as residential or industrial use – Inspite of s. 3 which prohibits conversion of agricultural land for non-agricultural use in public interest, compensation was determined as Rs. 78 per sq. m. for neighboring agricultural land acquired under the same Notification which has attained finality and there is no reason why the said rate should not apply to the instant case – Order of High Court holding that compensation for the land should be less than compensation for the land which is not subjected to tenancy, is not correct – Thus, order of High Court is modified by increasing the C D E F G

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A *compensation for the acquired land from Rs. 17 per sq. m. to Rs. 78 per sq. m. – Goa Land Use (Regulations) Act, 1991 – s. 2.*

Appellants are the legal heirs of the co-owners of land. Notification was issued for acquisition of certain land including the land of the co-owners. The said land was tenanted and is in occupation of tenants and vested in them on the Tiller's Day in terms of Section 18A of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. The Land Acquisition Officer awarded compensation for the acquired land at the rate of Rs. 17 per sq. m. As the co-owners admitted their tenancy rights, the Land Acquisition Officer directed that the compensation to be divided between the owners and the tenants at the rate of 50% each. The Reference Court increased the compensation from Rs. 17 per sq. m. to Rs. 75 per sq. m. The High Court set aside the judgment and award of the Reference Court and restored the award of Rs. 17/- per sq. m. by the Land Acquisition officer.

Appellants contended before this Court that in regard to the remaining extent of land acquired under the same Notification, the High Court by judgment dated 14.11.2008 in FA No. 123/2003 (*The Deputy Collector (Dev.) & LAO, Panaji vs. Smt. Sita Devi*) determined the compensation as Rs.78 per sq.m. and therefore, the compensation should have been the same in regard to the land of the appellants also.

Allowing the appeal, the Court

HELD: 1.1. Section 2 of the Goa Land Use (Regulations) Act, 1991 provides that no land which is vested in a tenant under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 shall be used or allowed to be used for any purpose other than agriculture. If the Land Use Act was applicable to the land

at the time of acquisition, then the land could be used only as agricultural land and could be valued only as an agricultural land. But the Land Use Act, came into force with effect from 2.11.1990. The relevant date for the purpose of determination of compensation is the date of publication of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 which is 1.2.1990. On that day the Land Use Act was not in force and consequently there was no restriction that the use land vested in the tenant should be used only for agricultural purposes. Therefore, the market value of the land could be determined with reference to the development potential for non-agricultural purposes. [Para 7] [825-E-H]

1.2. Under Section 18K of the Tenancy Act, the mere fact that the sanction has to be obtained from Mamlatdar for sale of such land would not depress the price of the land, nor affect its potential for being developed as residential or industrial use. [Para 8] [826-A-B]

1.3. Section 3 of the Tenancy Act provides that if any owner of agricultural land applies for conversion thereof for non-agricultural use, the Government may, instead of granting conversion, prohibit such conversion in public interest. The risk not being permitted to convert the land should also be taken note of while assessing the market value with reference to development potential of the land. Such a contingency exists in regard to all agricultural lands and is not specific to the appellants. Inspite of Section 3 of Tenancy Act, compensation has been determined as Rs.78/- per sq.m. for neighbouring agricultural lands and there is no reason why the said rate should not apply to the land in question also. [Para 9] [826-C-E]

1.4. The High Court committed an error in holding that the compensation for the land in question should be

A lesser than the compensation for a land which is not subject to tenancy. It relied upon the principle that a free hold land normally commands higher compensation while the land burdened with encumbrances secures lesser price and the fact of a tenant in occupation would B be an encumbrance and no willing purchaser would willingly offer the same price as would be offered for a freehold land. The said principle would apply only where a property subject to encumbrances is to be sold to a private purchaser or is acquired subject to the tenancy. C In the instant case, the landlords were awarded only 50% of the compensation amount and remaining 50% was awarded to the tenants. The High Court mixed up a sale subject to encumbrances with an acquisition free from encumbrances under the Land Acquisition Act, 1894. The D two are conceptually different. If a property subject to a lease and in the possession of a lessee is offered for sale by the owner to a prospective private purchaser, the purchaser being aware that on purchase he would get only title, but not possession and that the sale in his favour would be subject to an encumbrance, namely the E lease, would offer a price taking note of the encumbrances. Naturally such a price would be less than the price of a property without any encumbrances. But when a land is acquired free from encumbrances, what is acquired is not only the landlord's right, but also the F lessee's rights. In such a case compensation awarded is for the property free from encumbrances, which includes the lessee's rights also. [Para 10] [826-F-H; 827-A-E]

1.6. As the High Court has already determined Rs.78 G per sq.m. as the compensation in regard to the adjoining lands acquired under the same notification vide its judgment dated 14.10.2008 *(Dy.Collector (Development) and Land Acquisition Officer, Panaji v. Smt. Sitadevi & Ors. in FA No.123/2003)* and the said judgment has attained H finality, there is no reason why the same compensation

should not be awarded for the land in the instant case also. Thus, the order of the High Court is modified by increasing the compensation for the acquired land from Rs.17 per sq.m. to Rs.78 per sq.m. [Paras 11 and 12] [828-D-G]

M.B. Gopala Krishna and Ors. v. Special Deputy Collector, LandAcquisition **(1996) 3 SCC 594: 1996 (2) SCR 248;** *Dy.Collector(Development) and Land Acquisition Officer, Panaji v. Smt. Sitadeviand Ors.* **in FA No.123/2003 – referred to.**

Case Law Reference:

1996 (2) SCR 248 Referred to. Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8539 of 2011.

From the Judgment & Order dated 14.10.2008 of the High Court of Bombay at Goa in First Appeal No. 138 of 2003.

L. Nageswara Rao, A. Raghunath for the Appellants.

Siddharth Bhatnagar, Pawan Kumar Bansal, T. Mahipal for the Respondents.

The Judgment of the Court was delivered by

R.V.RAVEENDRAN, J. 1. Leave granted.

2. An extent of 1,06,864 sq.m. of land including 5070 sq.m. of land in Survey No. 284 (Part) in Pernem village of which the appellants are co-owners was acquired in pursuance of preliminary notification dated 12.1.1990 (Gazetted on 1.2.1990). By award dated 27.3.1991, the Land Acquisition Officer awarded compensation for the acquired land at the rate of Rs.17 per sq.m. As there were three tenants, namely, Krishna Arjun Kauthankar, Keshav Bhikaji Kauthankar and Harischandra Bhikaji Kauthankar and as the co-owners had admitted their tenancy rights, the Land Acquisition Officer

A directed that the compensation to be divided between the owners and the tenants at the rate of 50% each. The reference court, by judgment daed 22.11.2002, increased the compensation from Rs.17 per sq.m. to Rs.175 per sq.m. The appeal by the State was allowed by a division bench of the B Bombay High Court, by the impugned judgment dated 14.11.2008. The High Court set aside the judgment and award of the reference court, thereby restoring the award of Rs.17/- per sq.m. by the Land Acquisition Officer, on the following reasoning:

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> "..... the Applicants' acquired portion was garden land but tenanted and the tenants had become deemed purchasers of the same and the only interest which the applicants had in the said land was to receive the purchase price, and in such a case no willing purchaser would have ventured to D purchase such a land for building purposes or for that matter for any other purpose from the applicants. The said Krishna Arjun Kauthankar and others were in possession of the land and had become deemed owners of the same. The learned reference court was not right in assessing the E value of the acquired land as having building potential based on several awards/sale instances which were of land dissimilar to the acquired land."

3. The said judgment is challenged in this appeal by F special leave. At the outset the appellants submitted that Late Rajinder Vasdev Deshprabhu (of whom appellants are the LRs.) and his brother late Raghuraj Vasdev Deshprabhu were the co-owners of the property, and on their death their respective legal heirs have become the owners thereof; that the land was G tenanted and is in occupation of Krishan Arjun Kauthankar and two others and vested in the tenants on the Tiller's day in terms of section 18A of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 ('Tenancy Act' for short). They submitted that they do not dispute the award of the Land Acquisition Officer apportioning 50% of the compensation to the landlords and H

50% to the tenants; and that out of 50% payable to landlords, the appellants are entitled to one half as the LRs. of Rajendra V.Deshprabhu and the remaining half is payable to the legal heirs of Raghuraj V.Deshprabhu. In other words the appellants restrict their claim to 25% of the award amount and submitted that even in regard to any increase in compensation, they are entitled to only 25%.

4. The appellants contend that in regard to the remaining extent of land acquired under the same notification, the High Court by judgment dated 14.11.2008 in FA No. 123/2003 (*The Deputy Collector (Dev.) & LAO, Panaji vs. Smt. Sita Devi*) had determined the compensation as Rs.78 per sq.m. and therefore the compensation should have been the same in regard to their land also. Therefore question for consideration is whether the compensation for the acquired land should be increased to Rs.78/- per sq.m.

5. Respondents do not dispute that in regard to the adjoining lands compensation has been determined by the High Court at Rs. 78/- per sq.m. in *Deputy Collector vs. Sita Devi* (FA No.123/2003 decided on 14.11.2008) and that order not having been challenged, has attained finality. They also do not dispute the position that if the acquired land had not been subject to any tenancy right, the land owners would have been entitled to compensation at the said rate of Rs.78 per sq.m. They however contend that the land in question was different from the other acquired lands for which Rs.78/- per sq.m. has been awarded as compensation. They supported the judgment of the High Court on the following grounds:

(i) As the land was in the occupation of tenants, the appellants as owners would not have been able to sell the said land to any willing purchaser and obtain the market value. Even the tenants had obtained a purchase certificate under section 18H, they could not have sold the property, as there was a restriction on transfer of the land purchased by the

A tenant in section 18K of the Tenancy Act which required previous sanction of the Mamlatdar for sale.

(ii) Section 3 of the Tenancy Act provided that when a request is made by the owner of an agricultural land to convert it to non agricultural purpose, the authority concerned can grant conversion, or in public interest prohibit the conversion. There was thus no absolute right to get the land converted to non agricultural use and develop it for other non-agricultural purposes.

(iii) Section 2 of the Goa Land Use (Regulations) Act, 1991 ('Land Use Act' for short) provides that no land which vested in the tenant under the provisions of the Tenancy Act shall be used or allowed to be used for any purpose other than agriculture. As the land in question had vested in the tenants on the Tiller's Day (8.10.1976), the land had to be used only for agricultural purposes. The land therefore did not have the potential for development for any non-agricultural purpose and therefore will have to be valued only as an agricultural land. Even as agricultural land, the market value will not be the normal market value as it was tenanted.

6. We are not required to decide in this appeal, either the entitlement of the landlords/owners for compensation or the extent of share in the compensation. It is an admitted position that the land is tenanted and vested in the tenants under section 18A of the Tenancy Act on the Tiller's Day (that is, 8.10.1976) and the tenants are deemed to have purchased the land. The purchase price under section 18D of the Tenancy Act was not however paid to the landlords and no purchase certificate had been issued to the tenants under section 18H of the Tenancy Act. According to the appellants, where land is acquired under the Land Acquisition Act, 1894, before payment of the purchase

price to the landlords under section 18D of Tenancy Act and before the issue of purchase certificate to the tenants under section 18H of the Tenancy Act, inspite of the vesting under section 18A of the Tenancy Act, the compensation will be divided equally between the landlord and tenant as per standing instructions of the government. The appellants contend that the said procedure had been followed by the Land Acquisition Officer in making the award by holding that 50% of the compensation was payable to the landlords and 50% of compensation was payable to the tenants. The appellants submitted that neither the landlords, nor the tenants, have disputed the said apportionment and therefore this appeal does not involve any issue relating to entitlement to compensation or apportionment thereof. It was further submitted that the only issue in this appeal relates to the quantum of compensation. In view of the said submission, we have only considered the question of quantum in this appeal, and have not examined the rights of the landlord vis-à-vis the tenants.

7. We may first deal with the contention of the respondents with reference to the regulation of land use under the Land Use Act. Section 2 of the said Act provides that no land which is vested in a tenant under the provisions of the Tenancy Act shall be used or allowed to be used for any purpose other than agriculture. If the Land Use Act was applicable to the land at the time of acquisition, then the land could be used only as agricultural land and could be valued only as an agricultural land. But the Land Use Act, came into force with effect from 2.11.1990. The relevant date for the purpose of determination of compensation is the date of publication of preliminary notification under section 4(1) of the Land Acquisition Act, 1894 which is 1.2.1990. On that day the Land Use Act was not in force and consequently there was no restriction that the use land vested in the tenant should be used only for agricultural purposes. Therefore the market value of the land could be determined with reference to the development potential for non agricultural purposes.

A 8. The next contention of the respondents is that a land purchased by a tenant under Chapter IIA of the Tenancy Act, could not be sold without the previous sanction of Mamlatdar, under section 18K of the Tenancy Act. The mere fact that the sanction has to be obtained from Mamlatdar for sale of such B land would not depress the price of the land, nor affect its potential for being developed as residential or industrial use.

9. The next contention of the respondents was based on Section 3 of the Tenancy Act. Section 3 provides that if any owner of agricultural land applies for conversion thereof for non- C agricultural use, the Government may, instead of granting conversion, prohibit such conversion in public interest. The risk not being permitted to convert the land should also be taken note of while assessing the market value with reference to development potential of the land. Such a contingency exists D in regard to all agricultural lands and is not specific to the appellants. Inspite of section 3 of Tenancy Act, compensation has been determined as Rs.78/- per sq.m. for neighbouring agricultural lands and we see no reason why the said rate should not apply to the land in question also.

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10. The High Court committed an error in holding that the compensation for the land in question should be lesser than the compensation for a land which is not subject to tenancy. It relied upon the decision of this Court in *M.B. Gopala Krishna & Ors.* F *v. Special Deputy Collector, Land Acquisition* (1996) 3 SCC 594 wherein this Court observed :

> "A freehold land and one burdened with encumbrances do make a big difference in attracting willing buyers. A free hold land normally commands higher compensation while G the land burdened with encumbrances secures lesser price. The fact of a tenant in occupation would be an encumbrance and no willing purchaser would willingly offer the same price as would be offered for a freehold land."

H The said principle will apply only where a property subject

to encumbrances is to be sold to a private purchaser or is acquired subject to the tenancy. The decision of this Court made those observations when upholding the compensation that was payable to the landlord, without reference to the tenant's rights, where the tenant did not claim any compensation. But in this case, the landlords have been awarded only 50% of the compensation amount and remaining 50% has been awarded to the tenants. The High Court has mixed up a sale subject to encumbrances with an acquisition free from encumbrances under the Land Acquisition Act, 1894. The two are conceptually different. If a property subject to a lease and in the possession of a lessee is offered for sale by the owner to a prospective private purchaser, the purchaser being aware that on purchase he will get only title, but not possession and that the sale in his favour will be subject to an encumbrance, namely the lease, will offer a price taking note of the encumbrances. Naturally such a price would be less than the price of a property without any encumbrances. But when a land is acquired free from encumbrances, what is acquired is not only the landlord's right, but also the lessee's rights. In such a case compensation awarded is for the property free from encumbrances, which includes the lessee's rights also. We may illustrate by the following example:

> Let us assume the value of a property which is not subject to any lease is Rs.Ten lakhs. If that property was subject to a lease and if the possession was with the lessee, a purchaser will offer only Rs.Five lakhs as he will be purchasing a property with an encumbrance and will not be getting physical possession. But when the property subject to a lease is acquired, under the Land Acquisition Act, 1894, what is acquired is not only the landlord's right, title and interest, but also the lessee's right and interest. In other words the property with all rights, free from encumbrances is acquired and the compensation is determined and paid for the property as one free from encumbrances. The rights of lessor as well as lessee are

A extinguished. Therefore compensation payable will be the entire market value that is Rs.Ten lakhs which may be shared by the lessors and lessee at the rate of Rs.Five lakhs each or such other ratio as may be determined with reference to the extent of their respective rights. The Land B Acquisition Officer issue notice to all persons interested and hears them before making the apportionment of the compensation among the persons interested. The 'market value' of the property free from encumbrances acquired by the State will not therefore be the same as the price a C purchaser may pay to buy the property subject to a lease (encumbrances).

11. As the High Court has already determined Rs.78 per sq.m. as the compensation in regard to the adjoining lands acquired under the same notification vide its judgment dated D 14.10.2008 (*Dy.Collector (Development) and Land Acquisition Officer, Panaji v. Smt. Sitadevi & Ors. in FA No.123/2003*) and the said judgment has attained finality, there is no reason why the same compensation should not be awarded for this land also. The appellants have no grievance E in regard to the apportionment made by the Land Acquisition Officer at the rate of 50% for the landlords and 50% for the tenants. The tenants apparently have not raised any dispute in regard to the apportionment. It is made clear that if any dispute regarding apportionment is pending, this decision shall not be F construed as determining the percentage of entitlement of appellants or other co-owners (not before us) or the tenants (not before us).

12. In view of the above, this appeal is allowed and the G order of the High Court is modified by increasing the compensation for the acquired land from Rs.17 per sq.m. to Rs.78 per sq.m. All statutory benefits are also granted.

N.J. Appeal allowed.

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