Goa Housing Board Vs. Rameshchandra Govind Pawaskar and anr.

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Court : Supreme Court of India

Decided On : Oct-11-2011

Judge : R V Raveendran; A K Patnaik; P. Sathasivam, JJ.

Acts : Goa, Daman and Diu Agricultural Tenancy Act, 1964 - Sections 18C, 18D, 18H, 18K; Goa Land Use (Regulation) Act, 1991; Goa, Daman and Diu Town & Country Planning Act, 1974 - Section 13; Land Acquisition Act - Sections 23(1A), 23(2), 28

Appeal No. : CIVIL APPEAL NO. 8540 OF 2011

Appellant : Goa Housing Board

Respondent : Rameshchandra Govind Pawaskar and anr.

Judgement :

1. Leave granted.

CA Nos. 8540 and 8541 of 2011 [@ SLP(c) Nos.149 and 9591 of 2009]

2. These two appeals arise out of the judgment dated 26.9.2008 in FA No.216/2003, the first by the Goa Housing Board and the second by the land owner. As the ranks of the parties differ, the Goa Housing Board (appellant in the first matter and second respondent in the second matter) for whose benefit the acquisition was made will be referred to as the `Board' or the appellant. Rameshchandra Govind Pawaskar (first respondent in the first matter and

appellant in the second matter) whose land was acquired will be referred to as the `respondent'. The Land Acquisition Officer (second respondent in the first matter and first respondent in the second matter) will be referred to as `the LAO'.

3. By an order dated 31.1.1977 passed by the Mamlatdar, Bardez, the respondent was declared as the tenant of Survey No.102/1, Colvale village, Bardez, Goa measuring 374,000 sq. mts. under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (`Tenancy Act' for short). On payment of the purchase price of Rs.59,980 determined under sections 18C and 18D of the Tenancy Act, a purchase certificate dated 6.5.1993 was issued to him under section 18H of the Tenancy Act confirming that he was deemed to be the purchaser of the said land under the provisions of the Tenancy Act, subject to the condition that the said land shall not be transferred without the previous sanction of the Mamlatdar under section 18K of the Tenancy Act. An extent of 358730 sq.m. of land in the said Survey No.102/1 belonging to the respondent was acquired in pursuance of the preliminary notification dated 9.6.1994 (gazetted on 16.6.1994) corrected by corrigendum dated 26.9.1994 (gazetted on 27.9.1994).

4. The LAO made an award dated 28.2.2003 determining the compensation payable as Rs.18 per sq.m. The respondent sought reference to the civil court for claiming a higher compensation. The Reference court by its judgment and award dated 28.2.2003 declared the compensation awarded at Rs.18 per sq.m. to be proper and reasonable and affirmed the award of the LAO. Feeling aggrieved, the respondent filed an appeal before the High Court seeking increase in compensation.

5. Before the High Court, the Board contended that having regard to the provisions of the Goa Land Use (Regulation) Act, 1991 (`Land Use Act' for short), a tenant in whom the land had vested under the Tenancy Act could not use it or allow it to be used for any purpose other than agriculture; and therefore the valuation of such land could not be with reference to its potential for use for non-agricultural building purposes, but should be only as agricultural land. In support of its contention, the Board relied upon a decision of a division bench of the High Court in Janaki N. Morajkar vs. Special Land Acquisition Officer (First Appeal No.221/2003 decided

on 9.2.2005). It was therefore submitted that the market value of agricultural land determined by the reference court at Rs.18/- per sq.m. affirming the determination by the LAO was correct and there was no need to increase the compensation.

6. The High Court found that in regard to the adjoining land (Survey No.102/1A of Colvale) acquired under the same notification, compensation was awarded at the rate of Rs.136.50 per sq.m. As the land in Survey No.102/1 belonging to the landholder was much larger, the High Court deducted Rs.36.50 per sq.m. and awarded Rs.100 per sq.m. as the compensation. Though the High Court noticed the contention of the Board with reference to the prohibition under the Land Use Act, and the decision in Janaki N. Morajkar, it did not choose to follow the said decision. Nor did it hold that the decision in Janaki N. Morajkar was wrongly decided or inapplicable. The High Court avoided the issue by observing that it was not necessary to go into the larger controversy as to whether Janaki N.Morajkar was rightly decided. The High Court held that the Board cannot pick and choose only some of the acquired lands for applying the provisions of the Land Use Act; that the contention based on the Land Use Act was not taken in regard to other lands acquired under the same notification, was evident from the decision in Goa Housing Board vs. Pandurang V.Sawant - (FA NO.204/2003 dated 16.4.2008); that compensation should be on the same lines in regard to all lands acquired under the same notification and therefore it was not necessary to examine the contention based on Land Use Act, that the valuation should be only as the agricultural land.

7. Feeling aggrieved the Board has filed an appeal contending as follows:

(a) In view of the bar contained in the Land Use Act in regard to use of land vested in a tenant under the provisions of the Tenancy Act for any purpose other than agriculture, compensation could not be determined with reference to the sales statistics relating to residential plots on the assumption that the agricultural land in question had development potential for residential use.

(b) Having regard to clause 8 of section 24 of the Land Acquisition Act which provides that “the court shall not take into consideration any increase to the value of the land on account of it being put to any use which is forbidden by

any law or opposed to public policy" and the bar contained in the Land Use Act in regard to any use other than agriculture, the High Court could not have taken note of the development and building potential of the acquired land for the purpose of determining compensation.

(c) The High Court ought to have followed the decision of another division bench of the High Court in Janaki N. Morajkar, on an identical issue. If the High Court was not in agreement with the view in Janaki N. Morajkar, it ought to have either referred it to a larger bench, or distinguished it or held that it was inapplicable. It could not have ignored the decision.

8. The respondent has also filed an appeal contending that compensation at Rs.110 per sq.m. was very low and claiming higher compensation. On the contentions urged, the following questions arise :

(i) Having regard to section 2 of the Land Use Act, whether the acquired land should be valued only as agricultural land or whether it could be valued as land with development potential for being used as building sites?

(ii) Whether the compensation awarded by the High Court is excessive as contended by the Board or inadequate as contended by the respondent and what should be the compensation?

9. At the outset we may notice two subsequent events. The first is that the special leave petition against the decision in Janaki N. Morajkar was dismissed by this Court (Janaki N. Morajkar v. Spl. LAO - SLP(C) No.13195/2003 decided on 19.7.2005). The second is that the appeal against the decision in Pandurang V.Sawant was allowed by this Court. The market value of the acquired land, if it was not subject to any prohibition regarding use under the Land Use Act, is now settled by the decision of this court in regard to the neighbouring land, in Goa Housing Board v. Pandurang V.Sawant [CA Nos.1992-93/2010 decided on 19.2.2010). The said decision relates to the adjoining land (Sy. No.102/1A) which was the subject matter of First Appeal No.204/2003 before the High Court. In that case also the Land Acquisition Officer had awarded Rs.18 per sq.m. The reference court had increased the compensation to Rs.150 per sq.m. and on

appeal the High Court by judgment dated 16.4.2008 had reduced it to Rs.136.50. But subsequently by order dated 29.1.2009 the judgment dated 16.4.2008 reducing the compensation to Rs.136.50 was corrected and the compensation was determined as Rs.147 per sq.m. This court reduced the compensation to Rs.110 per sq.m. instead of Rs.147 per sq.m. Thus the market value of freehold land which is not subject to any restriction regarding use or otherwise as on 16.6.1994 was Rs.110/- per sq.m. This would mean that if the contention of the respondent is accepted and the Land Use Act is found to be inapplicable the compensation will have to be increased from Rs.100 to Rs.110 per sq.m. However if the contention of the Board that the prohibition in regard to the land use applied to the land in question having regard to the provisions of the Land Use Act is accepted, then the market value will have to be determined taking note of such provision.

10. We may at this juncture refer to the provisions of the Goa Land Use Regulation Act, 1991. As it is a short Act and every provision thereof is relevant, we extract below the said Act in entirety :

> **"An Act to provide for regulation of use of agricultural land for non- agricultural purposes.**
>
> **Be it enacted by the Legislative Assembly of Goa in the Forty-second Year of the Republic of India as follows :-**
>
> **1. Short title, extent and commencement. - (1) This Act may be called the Goa Land Use (Regulation) Act, 1991. (2) It extends to the whole of the State of Goa. (3) It shall be deemed to have come into force with effect from the 2nd day of November, 1990.**
>
> **2. Regulation of use of land. - Notwithstanding anything contained in the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975), or in any plan or scheme made thereunder, or in the Goa Land Revenue Code, 1968 (Act 9 of 1969), no land which is vested in a tenant under the**

provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) shall be used or allowed to be used for any purpose other than agriculture. Explanation:- The expression "agriculture", "land" and "tenant" shall have the same meaning assigned to them under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964).

3. Exemption. - The provisions of this Act shall not apply to acquisition of any land vested in a tenant under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) by the State for a public purpose under the provision of the Land Acquisition Act, 1894 (Central Act 1 of 1894)."

11. Having regard to section 2 of the said Act, it is clear that notwithstanding anything contained in the Town & Country Planning Act or any scheme thereunder or the Land Revenue Code, 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. In this case it is not in dispute that the acquired land in question vested in the land owner who was the tenant under the provisions of the Tenancy Act. Therefore it cannot be disputed that the respondent could not have used the land for any purpose other than agriculture or even allow anyone else to use the same for any purpose other than agriculture. The only manner in which the land use could be changed was by an acquisition for a public purpose. Thus the prohibition in regard to any use other than agriculture is not with reference to any person or holder with reference to the land itself. Any land which vested in a tenant under the provisions of the Tenancy Act attracted the bar contained in section 2 of the Land Use Act and there was a permanent bar against the use of such land for purposes other than agriculture either by the tenant in whom the land is vested or any of his transferees or successors-in-interest.

12. The question is whether such prohibition will affect the market value of the land. The respondent submitted that this court had repeatedly held that all lands situated in the same area and acquired by the same notification, should be awarded the same compensation. He relied upon the judgment in K. Periasami v.

Sub-Tehsildar (Land Acquisition) [1994 (4) SCC 180] and Delhi Development Authority v. Bali Ram Sharma [2004 (6) SCC 533]. There can be no doubt that similarly situated land in the same area, having the same advantages and acquired under the same notification should be awarded the same compensation. But the question is when one land is a freehold land not subject to any restrictions in regard to user and the adjoining land though similarly situated is subject to a permanent restriction regarding user requiring it to be used only for agricultural purposes, the question is whether the two lands can be termed as comparable lands which should be subjected to the same compensation. We may give a few examples to illustrate the position:

(i) A person constructs two identical houses adjoining each other. He lets out one of them and keeps the other vacant. After some years he sells both the properties. The house sold with vacant possession will fetch a better price than the adjoining premises which is in occupation of a tenant and therefore sold without possession. The fact that both properties are situated adjoining each other and have the same area of construction and face the same road will not mean that the price they will fetch will be the same.

(ii) There are two adjoining properties belonging to the same owner. One falls under area earmarked as commercial and the other falls under area earmarked as residential. Though they are similarly situated, the land which is capable of commercial use is likely to fetch a higher price than a land earmarked for residential use.

(iii) An agricultural land with no development potential sold to another agriculturalist for agricultural purposes will fetch a price which will be lower than the price fetched by an agricultural land with potential of development into residential or commercial plots sold for development into a layout of plots.

(iv) A small plot measures 10' x 20' and is suitable for construction of a shop. If it is to be sold, it will fetch a good price at par with prevailing market value. But if the said plot is subject to an easementary right of passage in favour of the owner of the property to the rear of the said plot and also subject to easementary rights of light and air in favour of the owners of plots on either

side, the plot cannot be used for construction at all and will have to be kept as a vacant plot. Necessarily its market value will be far less than the value of such a plot which is not subject to such easements.

13. In Administrator General of West Bengal vs. Collector, Varanasi [1988 (2) SCC 150], this court observed thus in regard to determination of market value :

> **"The market-value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market-value, as one author put it, is the prediction of an economic event, viz, the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual; and indeed the best, evidences of market-value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available."**

14. In Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona [1988 (3) SCC 751] this court set out the principle regarding determination of market value. One of the principles mentioned is as under :

> **"The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price." Thereafter, this court stated that the exercise of determining the market value has to be taken in a commonsense manner as a prudent man in a business world would do and gave some illustrative facts**

which have a bearing on the value :

“Plus factors Minus factors

1. Smallness of size. 1. Largeness of area.

2. Proximity to a road. 2. Situation in the interior at a distance from the road.

3. Frontage on a road. 3. Narrow strip of land with very small frontage compared to depth

4. Nearness to developed area. 4. Lower level requiring the depressed portion to be filled up.

5. Regular shape. 5. Remoteness from developed locality.

6. Level vis-a-vis land under acquisition 6. Some special disadvantageous factor which would deter a purchaser.

7. Special value for an owner of an adjoining property to whom it may have some very special advantage.”

(emphasis supplied)

15. In Subh Ram vs. State of Haryana [2010 (1) SCC 444], this court observed :

“It is in this context, in some cases, to avoid the need to differentiate the lands acquired under a common notification for a common purpose, and to extend the benefit of a uniform compensation, courts have observed that the purpose of acquisition is also a relevant factor. The said observation may not apply in all cases and all circumstances as the general rule is that the land owner is being compensated for what he has lost and not with reference to the purpose of acquisition.

The purpose of acquisition can never be a factor to increase the market value of the acquired land. We may give two examples. Where irrigated land belonging to 'A' and dry land of 'B' and waste land of 'C' are acquired for purpose of submergence in a dam project, neither 'B' nor 'C' can contend that they are entitled to the same higher compensation which was awarded for the irrigated land, on the ground that all the lands were acquired for the same purpose. Nor can the Land Acquisition Collector hold that in case of acquisition for submergence in a dam project, irrigated land should be awarded lesser compensation equal to the value of waste land, on the ground that purpose of acquisition is the same in regard to both. The principle is that the quality (class) of land, the situation of the land, the access to the land are all relevant factors for determination of the market value."

16. While section 23 of the Land Acquisition Act enumerates the matters to be considered in determining compensation, section 24 enumerates the matters to be neglected in determining compensation. It provides :

"But the court shall not take into consideration-- x x x x x fifthly, any increase to the value of the land acquired likely to accrue from the use to which it till be put when acquired;

x x x x

eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy."

It is thus clear that if there is a prohibition regarding use of the land for purposes other than agriculture, the value of such land on account of the same being put to commercial, residential or industrial use cannot form the basis of determining the market value.

17. Where an acquired land is subject to a statutory covenant that it can be used only for agriculture and cannot be used for any other purpose necessarily it will have to be sold as agricultural land as the land owner cannot sell it for any purpose other than agriculture and the purchaser cannot sell it for any purpose other than agriculture. As a consequence, the price fetched for such land will be low even if it is situated near any urban area. But if the same land is not subject to any prohibition or restrictive covenant regarding use and has the potential of being developed either as a residential layout or put to commercial or industrial use, the land will fetch a much higher price; and the market value of such other land with development potential can be determined with reference to the sale price of nearby residential plots by making appropriate deduction for development. On the other hand if the land is to be used only for agricultural purposes, it may not be possible to arrive at the market value thereof with reference to the market value of nearby residential plots. Therefore we are of the considered view that in regard to the land in question, in view of the permanent restriction regarding user, that is it should only be used for agricultural purposes, and the bar in regard to any non-agricultural use, it will have to be valued only as an agricultural land and cannot be valued with reference to sales statistics of other nearby lands which have the potential of being used for urban development.

18. We may also look at the matter from a slightly different perspective. A vacant land has a particular value. If such land is in the occupation of a long term lessee, and the owner wants to sell it without possession, he will only get a far lesser price that what he would get as price for the same land if vacant possession can be given to the purchaser. If such land in the occupation of a long term lessee is acquired, as the lessee's rights are also taken over, the compensation awarded for the land will be the full value as awarded for any neighbouring property which is not subject to any tenancy. But the entire compensation will not be received by the land owner/landlord. The landlord will have to share the compensation with the long term lessee.

In other words, the landlord will not get the entire value as compensation but will only get a part of the market value and the tenant will get the balance. In that sense even if the market value of the land without any restrictive covenants is

considered to be Rs.110 per sq.m., having regard to the fact that the land is incapable of being used for purposes other than agriculture and the price of Rs.110 is arrived at with reference to a land which can be used for all purposes, an appropriate percentage will have to be deducted from the value of Rs.110 per sq.m. to arrive at the land subject to the statutory restriction regarding use.

19. On the facts and circumstances, having regard to the prohibition regarding use of land for any purpose other than agriculture, the land will have to be treated and valued as agriculture land without any development potential for being used as residential/commercial/industrial plots. We are of the view that at least 50% will have to be deducted from the market value of freehold land with development potential to arrive at the market value of such land which can be used only for agricultural purposes. As we have already determined the market value of neighbouring land (which is not subject to the prohibition under Land Use Act) as Rs.110/- per sq.m. We are of the view that an appropriate compensation for the acquired land should be 50% thereof, that is Rs.55 per sq.m.

20. We may now deal with contentions of the respondent that the prohibition under section 2 of the Land Use Act is inapplicable to the acquired land.

21. The respondent relied on section 3 of the Land Use Act relating to exemption and provides that the provisions of the Land Use Act shall not apply to acquisition of any land vested in a tenant under the Tenancy Act, by the State for a public purpose under the provisions of the Land Acquisition Act, 1894. He contended that once a notification is issued proposing to acquire the land under the Land Acquisition Act, the provisions of the Land Use Act, in particular, the prohibition contained in section 2 will not apply and the acquired land will have to be valued as a freehold land without any restrictions.

22. Though the said argument appears to be attractive at first blush, on a careful reading of the section, we find it to be without merit. The object of the Land Use Act is to ensure that agricultural land which vested in a tenant as a deemed purchaser on account of special provisions of the Tenancy Act subject to payment of a nominal price, (thereby denying the ownership and the market value to the original owner) is not sold or used for any non- agricultural purpose. If the land

was non-agricultural land, the tenant would not have got the title to the land as a deemed purchaser and the land would have continued under the ownership of the landlord. The tenant got the land under the statute, because it was agricultural land and he was the tenant thereof, that too at a very nominal price, by virtue of the special provisions of the Tenancy Act. Therefore the object of the Act is that no tenant in whom a land had vested under the provisions of the Tenancy Act shall use the land for any purpose other than agriculture. To see that he does not easily defeat the said bar by transferring the property, a prohibition was attached to the land itself by providing that no land which vested in a tenant under the Tenancy Act shall be used or allowed to be used for any purpose other than agriculture. But for the exemption contained in section 3, when such a property is acquired under the Land Acquisition Act for public purpose, the prohibition under section 2 in regard to use of the land for any purpose other than agriculture would have continued to apply. Therefore it was necessary to make an exemption in regard to the lands acquired for public purpose. That is, even though a land which vested in a tenant under the Tenancy Act was subject to a covenant that it could not be used for any agricultural purpose in future, once it was acquired under the Land Acquisition Act for a public purpose and vested in the government, the prohibition contained under section 2 would cease to operate, and the state government or the beneficiary of acquisition could use it for any purpose. Section 3 is therefore a provision which entitles the State Government or beneficiary of acquisition to use it for any purpose other than agriculture. The said section will not enable the landowner to get the market value of the land as one with non- agricultural potential. In so far as the landowner is concerned, the compensation to which he is entitled would be what he would have got if he had sold it in open market to a willing purchaser who could have used it only for agricultural purpose.

23. The respondent referred to and relied upon the Preamble of the Act which provides that the object of the Act is to provide for regulation and use of agricultural land for non-agricultural purposes. He contended that if on the date when the Land Use Act came into force, the land in question had ceased to be agricultural land then the Land Use Act would be inapplicable. He submitted that by notification dated 9.11.1988 (gazetted on 24.11.1988) issued under section 13 of the Goa, Daman and Diu Town & Country Planning Act, 1974 (for short

`Town Planning Act'), the said land (Sy. No.102/1) along with other lands in Colvale village were notified for proposed change of use from cultivable land to industrial land; and that by a notification dated 12.3.1990 (gazetted on 5.4.1990) issued under section 15 read with section 17 of the Town Planning Act, the Chief Town Planner notified the amended regional plan for Goa as approved by the government which showed that the said land was earmarked for industrial use. The respondent contended that on 5.4.1990, the land became an industrial land and consequently ceased to be agricultural land before the Land Use Act came into force with retrospective effect from 2.11.1990; and therefore the Land Use Act did not apply to the land in question (Sy. No.102/1).

24. Merely by notifying the regional plan showing certain agricultural lands as earmarked for industrial purpose, those lands will not cease to be agricultural lands. Section 15 notification is only an initial step in a long process under the Town Planning Act. Section 18 provided for declaration of planning area. Section 29 relates to preparation of an outline development plan. Section 31 provides for preparation of comprehensive development plan. Section 37 provides when the development plan will come into operation. Section 41 empowers the state to acquire any land reserved, required, or designated in a development plan as a land needed for a public purpose. Section 42 provides that on and from the date on which a public notice of the preparation of a development plan is published under section 35(1), every land use covered by the development plan shall conform to the provisions of the Act. Publication of a regional plan under section 15 therefore only means that on and from the date of publication of the regional plan, any development programme or development work undertaken should conform to the provisions of the Regional plan and nothing more. As the land was not converted to non-agricultural industrial use under Sections 30 and 32 of the Goa, Daman and Diu Land Revenue Code, 1968 (`Land Revenue Code' for short) the land did not become industrial land. Therefore the said contention based on section 15 of Town Planning Act has no merit. Once the Land Use Act came into force, notwithstanding anything contained in the Town Planning Act or in any plan or scheme made thereunder, a land vested in a tenant under the Tenancy Act could not be used or allowed to be used for any purpose other than agriculture.

25. Section 18A of the Tenancy Act provides that on the Tiller's Day (that is, 8.10.1976, the date of introduction of Goa, Daman and Diu Agricultural Tenancy (Fifth Amendment) Act, 1976 in the Legislative Assembly), every tenant shall subject to the other provisions of the Act, be deemed to have purchased from his landlord the land held by him as a tenant and such land shall vest in him free from such encumbrances on that day. Section 18E provides that on determination of the purchase price by the Mamlatdar under section 18C, the tenant shall deposit the purchase price with the Mamlatdar as provided in section 18E. Section 18H provides that on deposit of the purchase price the Mamlatdar shall issue a certificate of purchase to the tenant-purchaser in respect of the land; and the purchase will be in effective on tenant-purchaser's failure to pay the purchase price. Section 18J provides that where purchase of any land by the tenant under section 18A becomes ineffective under section 18C or 18H or where the tenant fails to exercise the right to purchase the land held by him within the specified period under section 18B, the Mamlatdar may direct the land or part thereof, shall be disposed of in the manner provided therein. Section 18K of the Tenancy Act provides that no land purchased by a tenant under Chapter IIA of the Tenancy Act shall be transferred by sale, gift, mortgage, lease or assignment, without the previous sanction of the Mamlatdar. In this case, in terms of section 18E, the Mamlatdar required the respondent to deposit the purchase price of Rs.59,840/- and on such deposit, a certificate of purchase was issued to the respondent under section 18H only on 6.5.1993. It should be noted that until such a certificate was issued, there was a possibility of resumption and disposal under section 18J. By the time, the certificate of purchase in regard to the land was issued on 6.5.1993, Goa Land Use (Regulations) Act, 1991 had came into force on 2.11.1990. Further, under section 30 of the Land Revenue Code, no land used for agriculture shall be used for any non- agricultural purpose except with the permission of the Collector under section 32 of the Code. Section 32 provides for the procedure for conversion of use of land from agricultural to non-agricultural use. It requires an application to be made by the land holder to the Collector and a permission being granted by Collector for conversion, subject to payment of the fees prescribed therein. It is not the case of the respondent that the land has been converted to non-agricultural use under sections 30 and 32 of the Land Revenue Code. In fact,

before the issue of a purchase certificate on 6.5.1993, it may not be possible for a tenant-purchaser to apply for conversion to non- agricultural use. It is, thus, clear that the land in question was agricultural land as on the date when the Land Use Act came into force and when the land was acquired under the Land Acquisition Act. Therefore, the contention that it was not agricultural land, is rejected.

26. Consequently we allow the appeal filed by the Board and reduce the compensation awarded for land from Rs.100/- per sq.m. to Rs.55 per sq.m. The respondent will be entitled to all statutory benefits as awarded by the High Court. As a consequence the appeal filed by the landowner for increase of compensation stands rejected.

CA No. 8542 2011 [@ SLP (C) No.3723/2009]

27. This appeal relates to acquisition of 9,153 sq.m. of land in the said Sy. No.102/1 of Colvale village under preliminary notification dated 26.9.1991 belonging to the respondent. The facts are the same as in the first two appeals as this appeal relates to acquisition of the another portion of the same land belonging to the same respondent, the only difference being that this appeal relates to an acquisition initiated under preliminary notification dated 26.9.1991. In the other two appeals, we had relied upon the decision of this Court in Goa Housing Board vs. Panduranga V Samant [CA Nos.1992- 93 of 2010 decided on 19.2.2010], wherein this Court had determined compensation as Rs.110 per sq.m. in regard to acquisition of neighbouring land under preliminary notification gazetted on 16.6.1994. Determination of market value in Pandurang V.. Samant was with reference to a sale transaction dated 23.3.1990. This Court had determined the market value as Rs.75 per sq.m. as on 23.3.1990 and increased it by Rs.35 to arrive at the value as Rs.110/- after four years, as on 16.6.1994. In this case, as the relevant date for purpose of determination of market value is 26.9.1991, about one and half years after 23.3.1990 (the date of the relied upon sale transaction). By applying the same principle, the market value of the land as on 26.9.1991 will be Rs.90 per sq.m. The said value is with reference to land with potential for development. As the land acquired was subject to a prohibition under the Land Use Act, for reasons stated in the first two appeals, a deduction of 50% is made

for to arrive at the value of the land with agricultural potential only. Consequently, the market value of the acquired land is determined as Rs.45/- per sq.m.

28. We accordingly allow this appeal in part and reduce the compensation from Rs.140 per sq.m. to Rs.45 per sq.m. The respondent will be entitled to said compensation with all statutory benefits under section 23(1A), section 23(2) and section 28 of the Land Acquisition Act 1894.