

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.37 OF 2011.

Shri Dilip Ram Phal Dessai,
Major in age, Resident of H.
No. 871, Welwado, Poinguinim,
Canacona, Goa.

...Appellant.

Versus

1. Yesso Vaman Pagi
2. Laxman Satu Pagi.
3. Kanak Vithoba Pagi.
4. Keshav Deu Pagi.
5. Budhu Rama Mahale.
6. Premanand Deu Pagi.
7. Govind Vishvanthi Lolayekar.
8. Yesso Vaman Fal Dessai
(since deceased through legal
Representatives)
8. a. Shri Devendra Poinguinkar alias
Devendra Fal Dessai
8. b. Smt. Devashri Poinguinkar alias
Devashri Fal Dessai,
8. c. Shamkant Poinguinkar alias
Shamkant Fal Dessai.
8. d. Smt. Sandhya Poinguinkar alias
Sandhya Fal Dessai
8. e. Shri Sandesh Poinguinkar alias
Sandesh Fal Dessai
8. f. Smt. Sankita Poinguinkar alias
Sankita Fal Dessai
8. g. Nilesh Poinguinkar alias
Nilesh Fal Dessai
8. h. Smt. Prafulla Poinguinkar alias
Prafulla Fal Dessai.
8. i. Smt. Ujswala Subhash Naik.
8. j. Shri Subhash Shankar Naik.
8. k. Smt. Shailini Devidas Gawas.
8. l. Shri Devidas Manohar Gawas.
9. Narayan Vithoba Pagui.
10. Ramakant D. Poinguinkar.

11. Chitrakala Purushottam Phal Dessai.
All major in age, all residing at Welwada,
Poinguinim, Canacona Goa.

... Respondents.

Mr. P. A. Kamat, Advocate for the appellant.

Mr. S. Desai, Advocate for the respondent no.8(E).

Coram:- K. L. WADANE, J.
Reserved on 14th August, 2015.
Pronounced on:-20th August,2015.

JUDGMENT

The present appeal is preferred by the original party no.10 against the judgment and award dated 11.12.2009 passed by the District Judge (3), South Goa, Margao, in Land Acquisition Case No.58/2006.

2. Parties are referred to as per their original status.

3. Brief facts of the case may be stated as follows:-

The description of the suit:

Plot bearing survey No.90/1 to the extent of an area 1030square metres situated at Village Poinguinim of Canacona Taluka (hereinafter referred to as "Suit property" for short).

4. By notification dated 10.1.2002 issued under Section

4 of the Land Acquisition Act, ("the Act" for short) the suit land was intended to be acquired for the construction of road from Velwado to Dharwatem. By the aforesaid notification, the Government was intending to acquire an area of 1030 square metres and after conclusion of the Land Acquisition Proceeding and after passing of the award, the party nos. 8,10 and 12 have claimed compensation determined for the acquired area.

5. According to the party no. 8, original suit property was belonging to his grand father namely Yesso Waman Fal Desai and enrolled in Matriz No. 394 comprising of survey nos. 90/1,90/2,90/3, 90/4, 90/5 and 90/6. Before the Acquisition of the land, there was katcha road leading to the suit property. The same land is acquired in the present case for construction of a road. Land surveyed under No. 90/1 is owned and possessed by party no. 8 as sole occupant. It is further case of the party no. 8 that party no.8 Yesso Waman Fal Desai and his mother Smt. Indira Fal Desai and his wife Smt. Sushila Fal Desai sold many plots from survey no. 90/1 to various persons who in turn mutated their names in the survey records of survey no. 90/1 along with the name of Yesso Vaman Fal Desai in the occupant's column. Purchasers of the said land from the party

no.8 have constructed their residential houses in their respective plots and now they are residing in those houses along with their family members, since more than 25 years ago. Most of them have constructed wells and have made the coconut plantation, teak wood plantation, cashew plantation and other trees including fruit bearing trees and they are possessing and enjoying the said plots of land as their own land. Survey nos. 90/5 and 90/6 forms part and parcel of survey no. 90/1 and the party no. 8 has sold the said plot to Mahadev Manju Naik and Pradip Prema Poinguinkar, respectively and they have separated their plots by way of partition based on their sale deeds. Accordingly, plot of Mahadev Naik is surveyed under survey No. 90/5 and plot of Pradip Poinguinkar is surveyed under survey no. 90/6. There is residential house of the party no. 8 in survey no. 90/1 wherein son of the party no.8 are residing along with their family members who are legal representatives of the party no. 8. Except, party no. 12 all other parties of the present case are purchasers of the plots from survey no. 90/1 from the party no. 8.

6. In sum and substance, the case of the party no.8 is that the party no. 8 and his family members are in peaceful

possession over the suit property inherited by them through their ancestors and that the party no.12 has no right of whatsoever nature in the said land.

7. The claim of party no.10 is that the suit land is enrolled under Matriz no.394 in the Land Revenue Record of Canacona inscribed in the name of Yesso Vaman Fal Dessai and land was locally known as “**Baboiache Saradin**” also known as “**Mumramol**” or “**Dharvtem**” and this land is surveyed under Nos. 90/1,90/2, 90/4, 90/5 and 90/6. The party no. 10 is one of the purchaser of the part of above suit property. He had purchased the same from Smt. Indira Vaman Phaldesai and Shri Yesso Vaman Phaldesai under sale deed dated 11.12.1974. Out of the above mentioned described plot of land, an area of 300 square metres was acquired by the Government, therefore, the party no. 10 is entitled for compensation to the extent of his acquired area i.e. 300 square metres.

8. Party no. 12 has not preferred any appeal or cross objections in the present proceedings, therefore, his claim and pleadings are not referred here.

9. While answering the rival claims by the various parties, the learned Judge has held that the party no. 8 alone is entitled to receive the compensation in respect of an area 1030 square metres from survey no. 90/1. Hence, the present appeal by the party no. 10.

10. I have heard the arguments of Mr. P. A. Kamat, learned Counsel appearing for the appellant (party no. 10) and Mr. S. Desai, learned counsel appearing for the respondent (party no. 8).

11. Considering the pleadings of the parties and upon hearing both sides, it appears that there is no dispute that the party no. 8 had sold some portion from the land surveyed under No. 90/1 to the party no. 10. Sale deed and other relevant documents are produced on record. It is further case of the party no. 8 that party no. 8 had sold many plots to the various persons and that they are in possession over the respective plots.

12. The controversy involved in the present appeal is very short i.e. whether the party no. 10 has proved that an area

of 300 square metres from his land was acquired.

13. To resolve the short and limited controversy, it is material to note that sale deed by which party no. 10 claiming his title and possession over the suit property is placed on record.

14. On careful perusal of the same, it appears that it is mentioned in the sale deed that land is registered in matriz No. 394. However, it does not appears any registration. Further from the contents of the sale deed it appears that boundaries of the land sold to the party no. 10 are as follows:-

Towards east property of Vithoba Phal.

Towards west rain water drain.

Towards North land of Babi Porobo.

Towards South land of Vithoba Phal.

15. From the map of the land surveyed under no. 90/1, it is difficult to identify and demarcate the area sold to the party no.10. Even as per the pleadings of both the parties, various plots were sold by the party no.8 from time to time. Therefore, in the absence of specific area mentioned in the sale deed which

is sold to the party no.10, it is very difficult to determine the exact area mentioned within the boundaries referred in the sale deed. To identify the area sold to the party no.10, it was only way available for party no.10 to rectify the sale deed itself and the party no. 10 has not rectified the sale deed from its vendor and after publication of the notice under Section 4 of the Act and completion of the acquisition proceedings, the title vest with the Government. Now the party no. 10 is not entitled even to rectify the sale deed and get it corrected.

16. Form I and XIV of survey no. 90/1 shows the name of party no.10 along with other purchasers have been recorded in form I and XIV alongwith the party no. 8. However again there is no mention in the Form I and XIV as to the exact portion of the area sold to the party no. 10. In such circumstances, the party no. 10 failed to identify the exact area purchased by him and subsequently acquired for the construction of the road.

17. Considering the oral and documentary evidence on record, though it is seen from the record that the party no. 8 have sold some portion of land to the party no. 10, still party no. 10 failed to establish how much area, he purchased and how

much area was acquired from the purchased land. This inherited defect appearing in the sale deed is not curable by way of adducing other evidence.

18. During the course of arguments, Mr. P. A. Kamat, learned counsel appearing for the appellant wants to produce before this Court the inspection report and the map showing exact area belonging to the party no.10 shown in red colour map attached to the inspection report.

19. Mr. S. Desai, learned counsel appearing for the respondent no. 8 has strong objection to allow the production of the said document as acquisition relates to way back in the year 2002 and inspection report is prepared behind the back of the party no. 8.

20. Considering the arguments advanced by Mr. Desai, I am of the opinion that at this stage such documents cannot be allowed to go on the record.

21. For the reasons stated above, the appellant/party no.10 has failed to establish his claim. Therefore, the learned

District Judge has rightly ordered to pay entire compensation to respondent/party no. 8. Consequently, there is no substance in the present appeal. Hence, the appeal is dismissed with no order as to costs.

K.L. WADANE, J.

vn*